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Crl.O.P.No.9589 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.03.2025**

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.9589 of 2025

Yesuraja.M

... Petitioner

Versus

The State rep.by
The Station House Officer,
Grand Bazaar Police Station,
Puducherry.
(Crime No.290 of 2022)

... Respondents

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the order passed by the Learned Sessions Judge, Fast Track Court (POCSO Court), Puducherry in M.P.No.02 of 2024 in Spl.S.C.No.214 of 2023 dated 04.12.2024.

For Petitioner : Mr. A.P.Sathya Murthy

For Respondent : Mr. M.V.Ramachandra Moorthy,
Additional Public Prosecutor(Puducherry)



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ORDER

This Criminal Original Petition has been filed challenging the order dated 04.12.2024 passed in M.P.No.02 of 2024 in Spl.S.C.No.214 of 2023 by the Learned Sessions Judge, Fast Track Court Exclusively to deal with offences under the POCSO, Act, at Puducherry, thereby partly allowing the petition seeking to recall the witnesses P.W.3 to P.W.13(victim children), P.W.17 and P.W.22 for the purpose of cross-examination.

2. Heard both sides and perused the materials available on record.

3. The petitioner is the accused in Special S.C. No. 214 of 2023 and is facing trial for offences punishable under Sections 10 and 12 of the Protection of Children from Sexual Offences Act, (POCSO) Act, 2012. There are a total of 11 victims in this case. P.W.3 to P.W.13 are the victim children, who were fully cross examined by the petitioner. However, the petitioner filed an application under Section 311 of Cr.P.C., to recall P.W.3 to P.W.13(victim children), P.W.17 and P.W.22



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for the purpose of cross-examination. The said application was partly allowed by the Trial Court, granting the recall of P.W.3, P.W.17 and P.W.22 alone, on payment of batta. Aggrieved by the same, the petitioner has filed the present petition before this Court.

4. At this juncture, it is necessary to observe that Section 33(5) of the POCSO Act imposes a statutory embargo on summoning the child victim for repeated examination, except where the Court is satisfied that such recall is necessary in the interest of justice and records the reasons in writing. This provision aims to protect the child victim from secondary victimization and ensure that the judicial process remains child-sensitive and victim-centric. In the present case, no exceptional or compelling circumstances have been shown by the petitioner to justify the recall of P.W.4 to P.W.13(victim children). Therefore, the Trial Court rightly rejected the cross examination of the victim children (P.W.4 to P.W.13) and partly allowed the application for the recall of P.W.3(victim), P.W.17(S.I of Police), P.W.22(Inspector of Police), alone.



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5. Further, the said application under Section 311 of Cr.P.C., for recall was filed at the stage of trial attaining finality, which would only serve to delay the trial and cause unnecessary harassment to the victim children. It is well settled that the power to recall witnesses under Section 311 of Cr.P.C., read with Section 33(5) of the POCSO Act must be exercised sparingly, provided that the Court is convinced such recall is indispensable for the fair adjudication of the case. In the case at hand, the petitioner has failed to establish any such circumstance. Therefore, this Court is of the opinion that the Trial Court has rightly rejected the cross examination of victim children and allowed recall of P.W.3, P.W.17 and P.W.22 alone.

6. In view of the above, this Court does not find any illegality or infirmity in the order dated 04.12.2024 passed in M.P.No.02 of 2024 in Spl.S.C.No.214 of 2023 by the Learned Sessions Judge, Fast Track Court Exclusively to deal with offences under the POCSO, Act, at Puducherry, and the same is hereby confirmed.



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7. Accordingly, this Criminal Original Petition stands dismissed.

28.03.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

klt

To

- 1.The Learned Sessions Judge, Fast Track Court Exclusively to deal with offences under the POCSO, Act, at Puducherry.
2. The Station House Officer,
Grand Bazaar Police Station, Puducherry.
(Crime No.290 of 2022)
- 3.The Public Prosecutor, Puducherry.



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G.K.ILANTHIRAIYAN, J.

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