



WEB COPY



Crl.O.P.No. 12412 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.12412 of 2025 and
Crl.M.P.No.8246 of 2025

Rajadurai

... Petitioner

Vs.

State by
Inspector of Police,
All Women Police Station,
Vellore.
Crime No.14 of 2021.

..Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the order dated 3rd day of March 2025 in Crl.M.P.No.50 of 2025 in Spl.S.C.No.9 of 2022, on the file of the Special Judge for Exclusive Trial of cases under POCSO Act, 2012, Vellore, Vellore District and to allow this criminal original petition.

For Petitioner : Mr.T.Saravanan

For Respondent : Mr.A.Gopinath,



WEB COPY



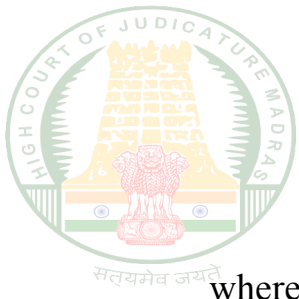
Crl.O.P.No. 12412 of 2025

Government Advocate (crl.side)

ORDER

This Criminal Original Petition has been filed challenging the order dated 03.03.2025 passed by the Special Judge for Exclusive Trial of cases under POCSO Act, 2012, Vellore, Vellore District, in Crl.M.P.No.50 of 2025 in Spl.S.C.No.9 of 2022, thereby allowing the petition filed by the prosecution to reopen its evidence and to recall LW3 to LW14 for examination as prosecution side witnesses.

2. The case of the prosecution is that the victim's father passed away 15 years ago, and her mother became physically challenged due to a road accident. As a result, the victim was cared for by her aunt, the younger sister of her mother, who worked as a coolie and had been deserted by her husband, leaving her to raise three children on her own. The victim had studied up to the 10th standard at the Kuppusamy Government Higher Secondary School in Kodaiyadi, Vellore. When the victim missed her menstruation for five months, her sister-in-law, Deivayani (LW4), took her to the Primary Health Centre in Sathuvachari,



Crl.O.P.No. 12412 of 2025

WEB COPY

where she was informed that the victim was pregnant. After enquiry, the victim revealed that the accused had befriended her while she was on her way to school and subsequently enticed and kidnapped her to his house, where he committed aggravated penetrative sexual assault on her multiple times, resulting in her pregnancy. Based on this, a complaint was lodged by the victim's aunt, leading to the registration of an FIR for the offences punishable under Section 376(3) of the IPC and Section 5(1) read with Section 6 of the POCSO Act, 2012.

3. The learned counsel for the petitioner submitted that the petitioner has denied the charges and pleaded not guilty. Both PW1 (victim's aunt) and PW2 (victim) turned hostile, and the key witnesses LW3, LW4, and LW16 were dispensed with. The prosecution closed its evidence, and the petitioner filed written arguments. Later, the prosecution filed a recall petition under Section 311 of Cr.P.C., on 21.01.2025 to recall LW3 to LW14 without sufficient reason. Despite the Petitioner's counter, the Special Court allowed the petition on 03.03.2025 and directed further investigation. Aggrieved by the same,



Crl.O.P.No. 12412 of 2025

WEB COPY

the petitioner approached this Court under Section 528 of the BNSS as the impugned order is only to fill the prosecution's evidentiary gaps, which is not legally sustainable.

4. The learned Government Advocate (crl.side) submitted that the prosecution filed a recall petition under Section 311 of Cr.P.C., seeking to recall certain witnesses, namely, LW3 to LW14 for the purpose of eliciting relevant facts that are vital to the just adjudication of the case. It is further submitted that allowing the recall petition does not cause any prejudice to the petitioner, who will have the opportunity to cross-examine the witnesses. The learned Advocate (crl.side) contends that the Trial court has exercised its judicial discretion properly by allowing the recall petition, considering the seriousness of the offence, which involves sexual assault on a minor girl under the POCSO Act. The recall was not for the purpose of filling lacunae but to ensure a fair and complete trial in the interest of justice.

5. Heard both sides and perused the materials placed before this



6. On perusal of the records and submissions made by both sides, this Court is of the considered view that the allegations made against the petitioner relate to serious and heinous offences committed as against a minor girl, punishable under Section 376(3) of IPC and Sections 5(l) r/w 6 of the POCSO Act. The prosecution's decision to seek recall of certain witnesses under Section 311 of Cr.P.C., was found to be within the bounds of law and intended to ensure a fair and complete trial. The recall cannot be said to be an attempt merely to fill up lacunae, especially in a case involving grave charges affecting the dignity and bodily integrity of a child.

7. Considering the nature of the offence and the need to protect the interests of the victim, this Court finds no infirmity or illegality in the order passed by the learned Special Judge for Exclusive Trial of cases under POCSO Act, 2012, Vellore, Vellore District, in Crl.M.P.No.50 of 2025 in Spl.S.C.No.9 of 2022 dated 03.03.2025. Accordingly, this



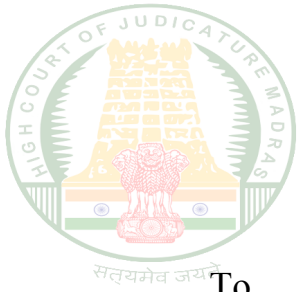
Crl.O.P.No. 12412 of 2025

WEB COPY

Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

25.04.2025

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



Crl.O.P.No. 12412 of 2025

To
WEB COPY

1. Special Judge for Exclusive Trial of cases under POCSO Act, 2012,
Vellore, Vellore District
2. The Inspector of Police,
All Women Police Station,
Vellore.
3. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J.

shk



WEB COPY



Crl.O.P.No. 12412 of 2025

Crl.O.P.No.12412 of 2025 and
Crl.M.P.No.8246 of 2025

25.04.2025