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Crl.O.P.No. 12578 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2025

CORAM:

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

Crl.O.P.No.12578 of 2025 and
Crl.M.P.No.8358 of 2025

Rajendran @ Raji

... Petitioner

Vs.

The State
Represented by the Inspector of Police
Avalurpettai Police Station
Villupuram
(Crime No.28 of 2019).

..Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to allow the criminal original petition and to set aside the order of Session Court / Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram dated 17.05.2022 in Crl.M.P.No.670 of 2022 in Special S.C.No.174 of 2019 dismissing the said petition.

For Petitioner : Mr.R.Srinivas,
Senior Counsel for
M/s.V.Mythili

For Respondent : Mr.A.Gopinath,
Government Advocate (crl.side)



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ORDER

This Criminal Original Petition has been filed challenging the order dated 17.05.2022 passed by the learned Sessions Judge / Special Judge for Exclusive Trial of Cases under the Protection of Children from Sexual Offences (POCSO) Act, Villupuram, in Crl.M.P. No. 670 of 2022 in Special S.C. No. 174 of 2019, thereby dismissing the petition seeking to recall PW2 for further cross-examination.

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

3. The petitioner is the accused in Special S.C. No. 174 of 2019 and is facing trial for offences punishable under Sections 307, 366(A), 354(D), and 506(i) of the IPC read with Section 4 of the POCSO Act. The victim was examined as PW2 on 09.12.2020 and was duly cross-examined by the petitioner on the very same day. Subsequently, in the year 2022, the petitioner filed an application seeking to recall PW2 for further cross-examination. It is an admitted fact that the victim was



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already cross-examined by the petitioner. The only ground urged in support of the present petition is that certain aspects were allegedly left out during the earlier cross-examination.

4. At the outset, 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. The said provision is aimed at protecting the child victim from being subjected to secondary victimization and to 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 PW2. There is no material to indicate that the earlier cross-examination was incomplete or that any new facts have emerged that necessitate further cross-examination. The reasons stated in the recall petition are vague and do not satisfy the threshold contemplated under Section 33(5) of the POCSO Act.



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5. Moreover, the application for recall has been filed after an inordinate delay of nearly three years from the date of the original cross-examination. Such belated applications, filed without satisfactory explanation, only serve to delay the trial and cause unnecessary harassment to the victim, who is a child in conflict with trauma. 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 considered opinion that allowing the recall of PW2 at this stage would not only contravene the express mandate of the POCSO Act but would also amount to an abuse of the process of law.

6. In view of the foregoing, this Court finds no illegality, perversity, or infirmity in the order passed by the learned Sessions Judge / Special Judge for Exclusive Trial of Cases under the POCSO Act, Villupuram, in Crl.M.P. No. 670 of 2022 in Special S.C. No. 174 of



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2019, dated 17.05.2022. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

24.04.2025

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

To

1. The Sessions Judge / Special Judge for Exclusive Trial of Cases under the POCSO Act, Villupuram
2. The Inspector of Police
Avalurpettai Police Station
Villupuram
3. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J.



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