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CrI.O.P.No.24199 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2025

CORAM:

THE HON'BLE MR.JUSTICE N. SATHISH KUMAR

CrI.O.P.No.24199 of 2025
and CrI.M.P.No.16557 of 2025

Siva

... Petitioner

Vs.

State represented by,
The Inspector of Police,
AWPS, West, Coimbatore City.
(Crime No.5 of 2021)

... Respondent

PRAYER : Criminal Original Petition is filed under Section 482 Cr.P.C./528 of BNSS, to set aside the order dated 12.08.2024 in CrI.M.P.No.865 of 2024 in Spl.C.C.No.62 of 2021 by the learned Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.

For Petitioner : Mr.R.Radha Pandian

For Respondent : Mr.R.Vinothraja
Government Advocate (Criminal Side)

ORDER

Challenging the order of the trial Court dated 12.08.2024, partly allowing the petition filed by the petitioner in CrI.M.P.No.865 of 2024 in Spl.C.C.No.62 of 2021, under Section 311 Cr.P.C to recall PW1 to PW6, PW8, PW9, PW11 and PW12 for the purpose of cross examination, the



Crl.O.P.No.24199 of 2025

present Criminal Original Petition has been filed.

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2. The petitioner is an accused in Crime No.5 of 2021, registered for the offences punishable under Sections 5(l), 5(m), 5(n) r/w Section 6 of POCSO Act, 2012, Section 506(2) of IPC and Section 3(1)(w)(i), 3(2)(v) of SC/ST (POA) Amendment Act, 2015. The case is now pending trial before the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, in Spl.C.C.No.62 of 2021.

3. In the said proceedings, the petitioner filed a petition in Crl.M.P.No.865 of 2024 seeking to recall PW1 to PW6, PW8, PW9, PW11 and PW12 for cross examination. The trial Court, vide order dated 12.08.2024, partly allowed the petition in respect of the witnesses PW8, PW9, PW11 and PW12 and dismissed in respect of PW1 to PW6, holding that the victim girl was below 18 years and that the other witnesses were already cross examined. Considering these aspects, the trial Court rejected the recall of PW1 to PW6. Against which, the present petition has been filed.



4. It is the contention of the learned counsel for the petitioner that the counsel for the petitioner/accused before the trial court was changed and since PW1 was never cross examined, the petitioner filed the petition under Section 311 Cr.P.C. It is further submitted that the right of the petitioner/accused to a fair opportunity of defence cannot be denied.

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

6. At the outset, this Court is of the view that when a person fails to avail the opportunity to cross examine the witnesses, particularly minor witnesses, he has no right to complain that there is a violation of the right to a fair trial. The concept of a fair trial means affording the accused reasonable opportunity to defend his case and contest the charges framed against him. When several opportunities have already been granted to the petitioner to cross examine the witnesses and he has purposefully failed to do so for more than two years, now he cannot contend that there is a violation of the fair trial concept.



Crl.O.P.No.24199 of 2025

7. In this case, the charge against the accused is that he had committed aggravated sexual assault when the victim was 10 years old.

Even after several opportunities were given to the accused during the course of the trial, particularly in a case involving such a grave offence under POCSO Act, the accused cannot be permitted take an undue advantage for many years by repeatedly seeking to recall the minor victim for examination after a lapse of several years. Further, despite the several hearings from the year 2022, the accused has not taken any steps to cross examine the witnesses. Further, as per Section 33(5) of POCSO Act, a minor child shall not be called repeatedly to testify in Court.

8. In view of the above, this Court finds no merit in interfering with the order passed by the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, dated 12.08.2024 in Crl.M.P.No.865 of 2024 in Spl.C.C.No.62 of 2021. Accordingly, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

03.09.2025

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Neutral Citation:Yes/No

To

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Crl.O.P.No.24199 of 2025

1. The Principal Special Court for Exclusive
WEB COPY Trial of Cases under POCSO Act, Coimbatore.

2. The Inspector of Police,
AWPS, West, Coimbatore City.

3. The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.O.P.No.24199 of 2025

N. SATHISH KUMAR, J.

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***Crl.O.P.No.24199 of 2025
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