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CRL OP No. 21187 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-07-2025

CORAM

THE HONOURABLE MR JUSTICE P. VELMURUGAN

CRL OP No. 21187 of 2025

and

CRL MP No.14553 of 2025

1. P.Nagarajan
S/o.Pandian,
No.L-4, Lotus Colony,
1st Street, Nandanam,
Chennai-600 034.

Petitioner(s)

Vs

1.The State Rep by,
The Inspector of Police,
W-10, All Women Police Station,
Flower Bazaar, Chennai.
Cr.No.03/2021.

Respondent(s)

PRAYER

This Criminal Original Petition is filed under Section 528 of BNSS, to set aside the order passed in CrI.M.P.No.418/2025 dated 17.04.2025 in Spl.S.C. No.158/2021 on the file of the learned Special Judge for Trial of POCSO Act cases at Chennai.



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For Petitioner(s): Mr.G.Prabhakaran

For Respondent(s): Mr.S.Vinoth Kumar
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed to set aside the order dated 17.04.2025 passed in Crl.M.P.No.418/2025 in Spl.S.C. No.158/2021 on the file of the learned Special Judge for Trial of POCSO Act cases at Chennai.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent-Police and perused the materials available on record.

3. The e learned counsel for the petitioner submitted that with regard to the petitioner's potency status, one Dr.Gokulakrishnan had been examined as P.W.9 on the side of the prosecution. Further, P.W.9 - Dr.G.Gokulakrishnan had referred the petitioner to an Urologist of Royapettah Hospital, to evaluate the status of erectile dysfunction of the petitioner. Urologist/ Dr.G.Sivakumar had



given the report with regard to potency status of the petitioner/accused, based on the reference made by P.W.9. The report of the Urologist is marked Ex.P.20.

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On the basis of the said urologist report, P.W.9 has given final opinion at the time of examination. During trial, opinion given by the said Doctor had been marked as Ex.P19 through prosecution witness. But the prosecution has failed to summon the said Urologist as prosecution witness. Hence, the petitioner has filed the application under Section 311 Cr.P.C., in Crl.M.P.No.418 of 2025 seeking to summon the Urologist Dr.G.Sivakumar to examine him as a Court witness. The learned Sessions Judge dismissed the Crl.M.P.No.418 of 2025, vide impugned order dated 17.4.2025. Challenging the same, the petitioner has filed this criminal original petition.

4. It is settled proposition of law that all the experts need not be examined as a witness, unless the prosecution or defence or the Court feels that it is necessary to examine the said witness. If at all the petitioner wants to examine the said Doctor, regarding the report given by him, it is for the petitioner to summon the witness for clarification. One of the main defence



taken by the petitioner is that the petitioner is a diabetic patient for long time

and hence, he may suffer from erectile dysfunction . Hence, he seeks to

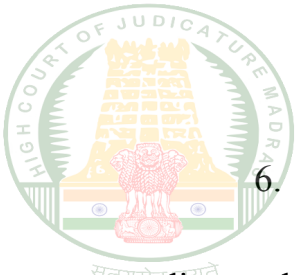
examine the said Doctor as witness. Since the opinion of the Doctor has already

been marked as an exhibit, the Court and Prosecution felt that the expert need

not be examined as a witness. However, the petitioner can very well summon

the Doctor for the limited purpose of clarification of the report given by him.

5. In view of the above, this Court is inclined to set aside the impugned order passed by the learned Magistrate. Accordingly the impugned order passed in Crl.M.P.No.418/2025 dated 17.04.2025 in Spl.S.C. No.158/2021 on the file of the learned Special Judge for Trial of POCSO Act cases at Chennai is set aside. The petitioner is at liberty to summon the Urologist Dr.G.Sivakumar as a witness for the limited purpose for clarification with regard to report given by him.



6. With the abovesaid direction, this Criminal Original Petition is

disposed of.

Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. The Special Judge for Trial of
POCSO Act cases at Chennai.

2. The Inspector of Police,
W-10, All Women Police Station,
Flower Bazaar, Chennai.

3. The Public Prosecutor,
High Court, Chennai.



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P.VELMURUGAN J.

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