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CRL OP No. 22286 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-08-2025

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

CRL OP No. 22286 of 2025

1. Muruganantham
Son of Ramasamy, 21, Thanthai periyar
Street, Azhappa Colony,
Suleswaranpatti, Pollachi Taluk,
Coimbatore.

Petitioner(s)

Vs

1. The State Rep. by
The Inspector of Police, AWPS-
Pollachi, Coimbatore. Crime No.38 of
2021

Respondent(s)

PRAYER Criminal Original Petition filed under section 528 of BNSS to set aside the order dated 07.03.2025 with regard to recall of PW-1 Passed in Crl.M.P.No.1581 of 2024 in Special S.C.No.102 of 2022 on the file of Principal Special Court for exclusive Trial of cases under POCSO Act, Coimbatore and thus render justice

For Petitioner(s): M/s.K.Balaganesh



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CRL OP No. 22286 of 201

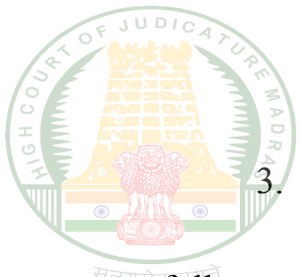


For Respondent: Mr.R.Vinodhraja,
Government Advocate [Crl.Side]

ORDER

Challenge has been made to the Order of the trial Court dismissing the petition filed to recall P.W.1 for cross examination, the present Criminal Original Petition has been filed.

2. The petitioner has been charged for the alleged offences under section 9 [m] read with 10 of POCSO Act 2012 for committing aggravated sexual assault. The petitioner has been represented by a legal aid counsel. Though the petitioner had engaged a counsel earlier, he has not cross examined the witness at the first instance. Thereafter, a legal aid counsel has been appointed for the petitioner. At this stage, the learned counsel appearing for the petitioner took out an application to recall P.W.1, P.W.5, P.W.8 and P.W.11. The trial Court has allowed the petition in respect of cross examination of P.W.5, P.W.8 and P.W.11. However, dismissed the petition, for cross examination of P.W.1, taking note of Section 33 of the POCSO Act.



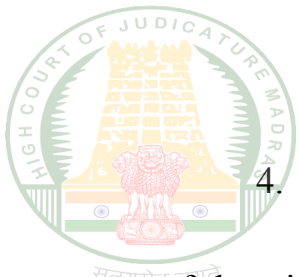
3. It is relevant to extract Section 33[5] of POCSO Act, which reads as

follows :

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33 [5] - The Special Court shall ensure that the child is not called repeatedly to testify in the court.

It is not the case of the petitioner that he had filed the petition to recall P.W.1 repeatedly. In fact, the accused has not been properly defended and only a legal counsel has been appointed. Merely because P.W.1 has not been cross examined by the earlier counsel, it cannot be said that his right of cross examination is totally forfeited. In order to meet the ends of justice, the Court can very well permit cross examination of the minor. When a persons is fastened with severe charges, the trial Court ought to have granted an opportunity to the petitioner to cross examine the witness, instead of in a mechanical manner dismissed the petition. Hence, the Order of the trial Court has to be set aside.



4. Accordingly, this Criminal Original Petition is allowed and the Order of the trial Court in CrI.M.P.No.1581 of 2024 in Spl.S.C.No.102 of 2022 is set aside. The trial Court shall fix a date for cross examination of the P.W.1 and cross examination of P.W.1 shall be completed on the date fixed by the trial Court. If the accused fails to cross examine the witness on the said date, his right for cross examination of P.W.1 will be forfeited.

11-08-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

vrc

To,

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

2. The Inspector of Police, AWPS-
Pollachi, Coimbatore. Crime No.38 of
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