



Crl.OP.No.33045 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2025

CORAM:

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.OP.No.33045 of 2025

and

Crl.MP.No.23071 of 2025

Bhuvaneshwaran

...Petitioner

Vs.

State rep. by,
The Inspector of Police,
Erode Taluk Police Station,
Erode District.
(Crime No.428 of 2021)

...Respondent

Criminal Original Petition filed under Section 528 of BNSS, 2023, to call for the records relating to the dismissal order dated 23.09.2025 made in Crl.M.P.No.870 of 2025 in Spl.SC.No.90 of 2022 on the file of the Court of Sessions Magalir Neethi Mandram (Fast Track Mahila Court), Erode and set aside the same by allowing this Criminal Original Petition.

For Petitioner : Mr.J.Ranjith Kumar

For Respondent : Mr.S.Santhosh, GA(Crl. Side)



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ORDER

This criminal original petition has been filed seeking quashment of the dismissal order dated 23.09.2025 made in Crl.M.P.No.870 of 2025 in Spl.SC.No.90 of 2022 on the file of the Court of Sessions Magalir Neethi Mandram (Fast Track Mahila Court), Erode.

2. It is the case of the petitioner that he is an accused facing trial in Spl.SC.No.90 of 2022 for the offences under Section 366 of IPC, Section 5(1) r/w. 6 of POCSO Act 2012 and Section 9 of POCM Act. The petitioner had filed a petition under Section 348 of BNSS / Section 311 of Cr.P.C. in Crl.M.P.No.870 of 2025 in Spl.SC.No.90 of 2022, seeking to recall the victim, who was examined as P.W.1, for cross-examination. However, the trial court, vide impugned order dated 23.09.2025, relying on Section 33(5) of the POCSO Act and holding that the Special Court should ensure that a child is not repeatedly called to give her testimony before the trial court, dismissed the said petition. Challenging the same, the present petition has been filed.



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3. Learned counsel for the petitioner submitted that relying on Section 33(5) of POCSO Act, the trial court had dismissed the recall petition filed by the petitioner, by holding that the victim child should not be repeatedly called to testify, in order to prevent further trauma. Learned counsel, however, submitted that the victim has now attained majority and that it was only a consensual love affair between the petitioner and the victim girl and that there was no sexual assault by the petitioner and now, the parties have also compromised the matter and thereby, the petitioner had earlier filed a petition before this Court in Crl.OP.No.28566 of 2025 seeking quashment of the final report/charge sheet in Spl.SC.No.90 of 2022. However, this Court, finding that the trial is almost at the verge of completion, had dismissed the said petition. Therefore, the petitioner filed the present recall petition, in order to examine the victim girl to record the compromise arrived at between them. However, without considering any of the above said facts, the trial court had dismissed the said petition, which is not sustainable. Learned counsel also submitted that it would suffice if this Court permits the petitioner to file a petition seeking to summon the victim girl, in order to examine her as a defence side witness.



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4. Learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that the trial court, finding that the victim girl cannot be called to testify repeatedly and also holding that the victim child was examined on 26.08.2025 and on the very same day, the defence had done a detailed cross-examination on the victim girl, dismissed the present recall petition filed by the petitioner, which cannot be said to be erroneous. Accordingly, he prayed for dismissal of this petition.

5. Heard the learned counsel on either side and perused the materials available on record.

6. Considering the facts and circumstances of the case, the above submissions made by the learned counsel on either side and also on perusal of the materials available on record, this Court finds that there is no infirmity or illegality in the impugned dismissal order dated 23.09.2025 passed by the Court of Sessions Magalir Neethi Mandram (Fast Track Mahila Court), Erode in the recall petition filed by the petitioner/accused under Section 311 of Cr.P.C. in Crl.M.P.No.870 of 2025 in Spl.SC.No.90 of 2022. However,



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considering the fact that the parties are said to have settled the dispute and that the victim girl has attained majority, this Court, without interfering with the order impugned in the present petition, grants liberty to the petitioner to file a fresh petition before the trial court seeking to summon the victim girl in order to examine herself as a defence side witness within a period of two weeks from the date of receipt of a copy of this order. Upon filing of such petition, the trial court shall consider the same on merits and pass appropriate orders in accordance with law, after confirming whether the victim girl is willing to be examined as a defence side witness.

7. With the above observations and directions, this criminal original petition stands disposed of.

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Index	: Yes/No
Speaking order	: Yes/No
NCC	: Yes/No



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To:

1. The Sessions Court,
Magalir Neethimandram (Fast Track Mahila Court),
Erode.
2. The Inspector of Police,
Erode Taluk Police Station,
Erode District.
3. The Public Prosecutor,
Madras High Court.



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A.D.JAGADISH CHANDIRA, J.

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