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Crl.OP.No.30264 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2025

CORAM:

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

Crl.OP.No.30264 of 2025

Karunamoorthy

...Petitioner

Vs.

The State rep. by,
The Inspector of Police,
AWPS,
Sooramangalam, Salem.
(Crime No.23 of 2020)

...Respondent

Criminal Original Petition filed under Section 528 of BNSS, 2023, to set aside the order passed in Crl.MP.No.854 of 2025 in Spl.SC.No.82 of 2021 on the file of the Hon'ble Sessions Judge, Principal POCSO Court, Salem and thereby permit to cross-examine the witnesses.

For Petitioner : Mr.D.Mario Johnson

For Respondent : Mr.R.Vinothraja, GA(Crl. Side)

ORDER

This criminal original petition has been filed seeking quashment of the order dated 25.06.2025 passed in Crl.MP.No.854 of 2025 in Spl.SC.No.82 of



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2021 by the learned Sessions Judge, Principal POCSO Court, Salem and to consequently, permit the petitioner to cross-examine the witnesses.

2. The case of the petitioner is that he is an accused facing trial in Spl.SC.No.82 of 2021 for the offences under Section 363 of IPC and Sections 3(a) r/w. 4 of POCSO Act, 2012 before the Sessions Judge, Principal POCSO Court, Salem and he filed a petition under Section 311 of Cr.P.C./348 of BNSS in CrI.MP.No.854 of 2025 seeking to recall P.Ws.1 to 4 and P.Ws.6 to 9 for cross-examination. However, the trial court, vide impugned order dated 25.06.2025, dismissed the said petition on the ground that the said petition has been filed only to drag on the proceedings. Challenging the same, the present petition has been filed.

3. Learned counsel for the petitioner submitted that initially, the petitioner did not appoint a counsel to appear on his behalf and thereafter, he had changed his counsel and hence, he was unable to cross-examine the prosecution side witnesses and as no opportunity has been given to the petitioner to cross-examine the witnesses, he filed the present petition under Section 311 of Cr.P.C. He further submitted that the petitioner has certain



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valid questions to be put to the witnesses P.W.1 to P.W.4 and P.W.6 to P.W.9, in order to prove his innocence and to substantiate his case, enabling the trial court to arrive at a just and proper decision. However, the trial Court, without considering the necessity for cross-examining the prosecution side witnesses viz., P.W1 to PW4 and PW6 to PW9, had dismissed the said recall petition, which is not sustainable. He also submitted that if the petitioner is not permitted to recall P.W1 to PW4 and PW6 to PW9 for cross-examination, he would be put to grave hardship. Hence, he prayed to set aside the impugned order dated 25.06.2025.

4. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent submitted that as per Sections 33(5) and 33(6) of the POCSO Act, the Special Court shall ensure that the child is not called repeatedly to testify in the Court and shall not permit aggressive questioning or character-assassination of the child and also ensure that dignity of the child is maintained at all times during the trial, creating a child-friendly judicial process to protect vulnerable victim child and that the witnesses cannot be recalled at the convenience of the defence. He further submitted that the defense side witness has been closed and the case is now posted for



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arguments and at this stage, the petitioner filed the present recall petition in order to delay the trial proceedings. Thereby, the trial court had rightly dismissed the petition filed by the petitioner under Section 311 of Cr.P.C., which cannot be said to be erroneous. Accordingly, he prayed for dismissal of this petition.

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

6. There is no dispute with regard to the facts of this case. On a perusal of the order impugned, it is evident that the complaint has been lodged in the year 2020 and the final report has been filed in the year 2021 and it is also seen that the prosecution side witnesses were examined as early as in the year 2022. However, the petitioner had filed the present recall petition only in the year 2025 on the ground that as he has not appointed a counsel to appear on his behalf, he could not cross the above said witnesses. However, it is seen that one Narayanan had entered appearance for the petitioner/accused as early as on 12.10.2021 and he was very much available at the time of examination of the witnesses, despite which, no steps have



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been taken by the petitioner to cross-examine the said witnesses. Thereafter, two other counsel have filed change of vakalath on behalf of the petitioner and even at those stages, no such recall petition was filed and the same was filed only on 29.05.2025.

7. In such circumstances, the present petition filed by the petitioner/accused on the ground that, no opportunity was given to him to cross-examine the above said witnesses is not sustainable. Further, the petitioner had failed to establish the fact that recalling of P.W.1 to 4 and P.W.6 to 9 is absolutely necessary and that the same is necessary to arrive at a just and proper decision and he had miserably failed to explain the delay of three years (from the date of completion of examination of the above said witnesses) in filing the present recall petition. Further, as rightly held by the Hon'ble Apex Court in a catena of decisions, in cases of such nature, the defence counsel must cross-examine the witnesses on the same day without seeking further adjournments and that when the accused had appointed a counsel of his choice, who was given due opportunity, mere incompetence or change of counsel cannot be a ground to recall the witnesses under Section



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311 of Cr.P.C. Superadded, Section 33(5) of the POCSO Act also stares at the face of the trial Judge.

8. Accordingly, the trial court, holding that the said petition has been filed by the petitioner is nothing but a dilatory tactic adopted by him to fill up the lacuna and to drag on the proceedings, had dismissed the same and this Court is of the view that no interference is warranted in the impugned dismissal order passed by the trial court in the recall petition filed by the petitioner under Section 311 of Cr.P.C., as there is no infirmity or irregularity in the said order.

9. For the reasons aforesaid, this criminal original petition stands dismissed.

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



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To:

1. The Sessions Judge,
Principal POCSO Court, Salem.
2. The Inspector of Police,
AWPS,
Sooramangalam, Salem.
3. The Public Prosecutor,
Madras High Court.



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A.D.JAGADISH CHANDIRA, J.

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