



Crl.OP.No.33358 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.33358 of 2025

and

Crl.MP.No.23285 of 2025

Raju

...Petitioner

Vs.

State rep. by,
The Inspector of Police,
AWPS, Thudiyalur,
Coimbatore.
Crime No.14 of 2023.

...Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C./528 of BNSS, 2023, to set aside the order passed on 03.04.2025 in Crl.MP.No.81 of 2025 in Spl.S.C.No.247 of 2024 by the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.

For Petitioner : Ms.R.Radha Pandian

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



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ORDER

This criminal original petition has been filed seeking quashment of the order dated 03.04.2025 made in CrI.MP.No.81 of 2025 in Spl.S.C.No.247 of 2024 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.

2. The case of the petitioner is that he is an accused facing trial in Spl.S.C.No.247 of 2024 for the offences under Sections 7 r/w. 8 of the POCSO Act, 2012 before the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore and he filed a petition under Section 311 of Cr.P.C. in CrI.MP.No.81 of 2025 seeking to recall P.Ws.1 to 5 for further cross-examination. However, the trial court, vide impugned order dated 03.04.2025, dismissed the said petition on the ground that the victim girl/P.W.1 and her family members/P.W.2 to P.W.5 were examined in chief on 13.12.2024 and were cross-examined on the very same day itself and such being case, filing the present petition after a lapse of about three months, cannot be accepted. Challenging the same, the present petition has been filed.



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3. Learned counsel for the petitioner submitted that the petitioner had changed his counsel and also due to the insufficient information given to the earlier counsel, proper cross-examination was not done and thereby, the petitioner filed the present petition under Section 311 of Cr.P.C. He further submitted that the petitioner has certain valid questions to be put to P.W.1 to P.W.5, in order to enable the trial court to arrive at a just and reasonable decision. However, the trial Court, without considering any of the above said facts and without considering the necessity for cross-examining P.W1 to PW5, had dismissed the petition under Section 311 Cr.P.C. which is not sustainable. He also submitted that if the petitioner is not permitted to recall PW1 to PW5 for further cross-examination, he would be put to grave hardship. Hence, he prayed to set aside the impugned order dated 03.04.2025.

4. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent submitted that as per Section 33(5) of the POCSO Act, the Special Court shall ensure that the child is not called repeatedly to testify in the Court. Accordingly, the trial court had rightly dismissed the petition



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filed by the petitioner under Section 311 of Cr.P.C., which cannot be said to be erroneous. Hence, he prayed for dismissal of this petition.

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

6. The facts are not in dispute. On a perusal of the order impugned, it is evident that, on the date of occurrence ie., 06.05.2023, the victim girl was aged only about 14 years and seven months. Further, the trial court had specifically recorded that on 13.12.2024, the victim girl and her family members were examined in chief as PW1 to PW5 and were cross-examined in detail on the very same day. In such circumstances, the present petition has been filed by the petitioner/accused stating that, as no sufficient information were given to his earlier counsel, who appeared on his behalf before the trial court, proper cross-examination could not be done at the relevant point of time and hence, requested for allowing the petition under section 311 of Cr.P.C. in order to prove his innocence.



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7. However, the said claim of the petitioner is not substantiated in any manner and the petitioner had failed to establish the fact that recalling of PW1 to 5 is absolutely necessary and that the same is necessary to arrive at a just and proper decision. Unless the petitioner establishes that examination of a witness is necessary, examination of a witness cannot be done at the pleasure or at the leisure of the defense counsel. Further, as held by the Hon'ble Apex Court in a plethora of decisions, when the accused had appointed a counsel of his choice, who was given due opportunity and had duly conducted cross-examination, mere incompetence or change of counsel cannot be a ground to recall the witnesses under Section 311 of Cr.P.C.

8. It is not the case of even the petitioner that P.Ws.1 to P.W.5 were not at all examined. When PW1 to 5 were cross-examined on the day they were examined in chief, it is beyond the ken of this Court as to what prevented the petitioner from eliciting the contradictions which he wants to do now on the day he cross-examined them for the first time in detail. Superadded, Section 33(5) of the POCSO Act also stares at the face of the trial Judge.



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9. Hence, the trial court, holding that the said petition has been filed by the petitioner only 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.

10. For the reasons aforesaid, this criminal original petition stands dismissed. Consequently, the connected miscellaneous petition is closed.

05.12.2025

skt

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

To:

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

2. The Inspector of Police,
AWPS, Thudiyalur,
Coimbatore.

3. The Public Prosecutor,
Madras High Court.



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A.D.JAGADISH CHANDIRA, J.

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