



Crl.OP.No.35060 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2025

CORAM:

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

Crl.OP.No.35060 of 2025

1. Sarankumar @ Ayyandurai

2. Shanmugaraj

...Petitioners

Vs.

State rep. by its,
Inspector of Police,
Tharamangalam Police Station,
Salem District.
Crime No.866 of 2020.

...Respondent

Criminal Original Petition filed under Section 528 of BNSS, 2023 to set aside impugned order passed in Crl.M.P.No.1212 of 2025 on the file of the Principal Special Court for Cases under POCSO Act, Salem and recall the witness PW1 to PW8 and permit the petitioners to cross examine them.

For Petitioners : Mr.C.Deepakkumar

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 28.11.2025 passed in Crl.M.P.No.1212 of 2025 in Spl.SC.No.122 of 2021 on the file of the Principal Special Court for Cases under POCSO Act, Salem.

2. The case of the petitioners is that they are accused facing trial in Spl.SC.No.122 of 2021 for the offences under Sections 506(I) and 450 of IPC and Sections 6, 5(l), 5(n) and 5(j)(ii) of the POCSO Act, 2012 and they filed a petition under Section 311 of Cr.P.C./348 of BNSS in Crl.M.P.No.1212 of 2025, seeking to recall P.Ws.1 to 8 for cross-examination. However, the trial court, vide impugned order dated 28.11.2025, dismissed the said petition on the ground that the same has been filed only to drag on the proceedings. Challenging the same, the present petition has been filed.

3. Learned counsel for the petitioners submitted that at the time of examination of the witnesses, the petitioners were in jail and therefore, they



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were unable to give proper instruction to their counsel, due to which, no proper cross-examination of the witnesses was conducted and that the petitioners have certain valid questions to be put to P.Ws.1 to 8 and hence, the petitioners filed the present petition under Section 311 of Cr.P.C., seeking to recall P.Ws.1 to 8 for further cross-examination, as the same is absolutely necessary, 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, had dismissed the petition under Section 311 Cr.P.C. which is not sustainable. He also submitted that if the petitioners are not permitted to recall P.Ws.1 to 8 for further cross-examination, they would be put to grave hardship. Hence, he prayed to set aside the impugned order dated 28.11.2025.

4.1. 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. In this context, the learned Government Advocate (Crl. Side), relied on the decision of the Hon'ble Apex Court in the case of *Madhab Chandra Pradhan & Ors. Vs. State of Odisha (Special*



Leave Petition (CrI.) No.10082 of 2024), wherein the Hon'ble Apex Court has held as hereunder:

“5. We have heard learned counsel for the petitioners, who would submit that Section 33(5) does not operate as an absolute bar for recalling the child as a witness for re-examination. Learned counsel for the petitioners would argue that Section 33 (5) would also not come in the way of the Special Court's powers under Section 311 of the Cr.P.C to recall or re-examine any person who has already been examined. It would be apposite to reproduce Section 311 of the Cr.P.C before adverting to the facts of the present case. Section 311 of the Cr.P.C reads as under:

"311. Power to summon material witness, or examine person present.- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case..."

We are of the considered opinion that although Section 33 (5) would not act as an absolute bar to recall the victim for re-examination as a witness, each case must be looked at in the context of its individual facts and circumstances. Thus, the question which falls for our consideration in the present case is whether in the exercise of its powers under Section 311 of the Cr.P.C, the Special Court ought to have recalled the child/victim for re-examination as witness, keeping in mind the mandate under Section 33 (5) of the Act.



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6. The principles which would guide the exercise of a Court's power under Section 311 of the Cr.P.C were succinctly summed up by this Court in ***State (NCT of Delhi) v. Shiv Kumar Yadav (2016) 2 SCC 402***. It was laid down by this Court that first, the plea for recall of a witness under Section 311 must be bona fide and genuine. Secondly, applications for recall of a witness under Section 311 should not be allowed as a matter of course and the discretion given to the Court must be exercised judiciously, not arbitrarily.

7. Let us now examine whether in the given facts and circumstances, plea of the petitioners for recalling the victim as witness for re-examination ought to have been allowed by the Special Court. The victim here is a girl who at the time of the incident was around 15 years of age allegedly. It is an admitted fact here that even before the application under Section 311 of the Cr.P.C was filed by the petitioners, the defence counsel was given the opportunity to cross-examine the victim twice already. On 22.07.2023, the examination-in-chief of the victim was conducted and on the same day, she was cross-examined by the counsel engaged by the petitioners before the Special Court. Thereafter, further cross-examination of the victim was deferred to 14.08.2023 on the request of the counsel engaged by the petitioners. On 14.08.2023, she was cross-examined at length and yet again, a request for adjournment was made by the counsel engaged by the petitioners, which was then turned down by the Special Court. It is then that the application under Section 311 of Cr.P.C came to be filed by the petitioners seeking recall of the victim which was rightly rejected vide Order dated 10.10.2023 of the Special Court.

8. What weighed with the Special Court, while dismissing their application was the fact that the after having availed their first opportunity to cross-examine the victim on 22.07.2023, the accused sought an adjournment which was granted and thus they were given a second opportunity to cross-examine the victim on 14.08.2023 and on this day, their advocate cross-examined her at length but again sought an



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adjournment which was disallowed as there was no justification for seeking an adjournment. Since the accused did not challenge this order of rejection, the Special Court observed that its findings in the said order that there was no justification to adjourn or defer cross-examination to a later date had attained a finality. The Special Court also placed its reliance on Section 33 (5) of the Act and emphasised that it is mandated to ensure that the child is not repeatedly called to testify before it.

9. From a perusal of the record of the case, it is abundantly clear that ample opportunities were given to the defence counsel to cross-examine the victim. When the victim has been examined and then cross-examined at length twice already, mechanically allowing an application for recall of the victim, especially in trial of offences under the POCSO Act would defeat the very purpose of the statute. Hence, we find no error or illegality in the impugned order of the High Court or the Order dt. 10.10.2023 of the Special Court.

10. In view of the above, we see no reason to interfere with the impugned order passed by the High Court.

11. Accordingly, the Special Leave Petition filed by the petitioners is dismissed.”

(Emphasis supplied by this Court)

4.2. Accordingly, the trial court had rightly dismissed the petition filed by the petitioners under Section 311 of Cr.P.C., which cannot be said to be erroneous. He also submitted that the petitioners were absconding from June 2022 and they were secured only during July 2025 and were remanded to judicial custody, after about three years, on execution of Non Bailable Warrant. He further submitted that though the petitioners were in jail, they

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were produced before the trial court at the time of cross-examination of the witnesses and hence, the contention of the learned counsel for the petitioners that since they were in jail, no proper cross-examination could be conducted, cannot be accepted. He also submitted that the case now stands posted for examination of L.Ws.23 & 24 on 05.01.2026 and at this stage, recalling P.Ws.1 to 8 for cross-examination would not be appropriate. Accordingly, he prayed for dismissal of this petition.

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

6. The facts are not in dispute. For better appreciation, the relevant portion of the impugned order is extracted hereunder:

“4. Point for consideration:

Whether the prayer of the petitioners/Accused to recall PW1 to PW3, PW4 to PW8 for their cross-examination is to be granted?

5. Considering the submissions made on either side and as well the available material records, this court orders as follows:

6. When considering the recall of PW1 to PW3, the crime number relates to the year 2020 and the case is of the year 2021. PW1 to PW3 were examined in chief even on 16.05.2022



and 25.05.2022. All these three witnesses were cross examined on the very same day. Thereafter from June 2022 the accused, both of them remained absent and only in July 2025 after 3 years they were secured and were remanded to judicial custody on execution of non bailable warrant.

7. When considering the facts before this court, the victim was already cross examined even in 2022 and now after a gap of 3 years this application is filed without any proper reason and just by referring that some vital points were not addressed to the witnesses during the cross examination. The petitioners were present on the date of examination and were duly represented by a counsel who had cross examined PW1 to PW3 elaborately on the date of their examination even in May 2022. As per Section 33 (5) of POCSO Act, victim cannot be recalled again and again and it has been mandated that the victim is to be cross examined on the very same day of the recording of the chief examination. When the victim was already cross examined, as well the other two witnesses PW2 and PW3, now when the case is of the year 2021 and it stands for the examination of the investigating officers, the petitioners cannot now seek to recall the witnesses PW1 to PW3 for further cross examination. This court relies on **Madhop Chandra Pradhan vs. State of Odisha**, dated 05.08.2024 of our Apex Court, wherein the second victimisation of the victim has been held to be not as per the scope and object of POCSO Act. Further in **Arjun Sonar vs. State of Arunachal Pradesh 2025 SCC Online SC 2065**, Apex Court has again reiterated that the witnesses, the victim in POCSO case cannot be recalled, and on this basis, the prayer to recall PW1 to PW3 is hereby denied.

8. The petitioners have also prayed to recall PW4 to PW8 who were examined in chief. PW6 is the doctor, PW7 and PW8 are the Head Masters of the school and college where the



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victim and the two accused had studied. When these three witnesses PW6 to PW8 were examined in chief, on behalf of the accused it was reported that there is no cross and the same was recorded to the deposition of those witnesses. Further the doctor has brought out the fact that the victim was pregnant when she was admitted in the hospital and the school authorities have provided the date of birth of the victim and of the two accused which is not a dispute, as the age is not disputed. That was the reason which made the counsel on record to report that there is no cross on behalf of the accused in respect of PW6 to PW8.

9. As far as PW4 and PW5 are concerned they are the witnesses who have signed in the observation mahazars, who identified the house of the victim and the house of the 2nd accused Shanmugaraj respectively. Though the counsel on record was present, these witnesses were not cross examined and these two accused though were in judicial custody, were produced in person before this court on the date of examination of PW4 and PW5. This being a case under the POCSO Act, wherein the accused are said to have committed penetrative sexual assault, the existence of the house of the victim and the house of the accused is not in dispute nor does it in any way assist the defence in proving the contrary if the foundational facts are submitted by the prosecution and the presumption is raised under Section 29, Section 30 of the POCSO Act. Considering all these aspects, it is apparent that the intention of the petitioners is only to protract the proceedings to again start afresh the process from scratch, therefore, this court hereby denies the prayer of the petitioners and accordingly, the petition stands dismissed in entirety.”

(Emphasis supplied by this Court)



7. On a perusal of the order impugned, it is evident that the victim girl/PW.1, her parents/P.W.2 and 3 respectively were examined in chief on 16.05.2022 and 25.05.2022 and on the same dates, they were cross-examined in detail. Further, it has been specifically recorded by the Special Court that recalling of other witnesses P.W.4 to P.W.8 is not necessary. In such circumstances, after a lapse of about three years from the date of cross-examination of P.Ws.1 to 3, the petitioners filed the present recall petition under Section 311 of Cr.P.C stating that, proper cross-examination could not be done at the relevant point of time and hence, sought allowing the petition under Section 311 of Cr.P.C. in order to prove their innocence. Even assuming but without conceding that recalling of other witnesses namely, P.Ws.4 to 8 is necessary for proving the innocence of the petitioners, the petitioners should have filed the petition under Section 311 of Cr.P.C., with promptitude and dispatch and should not have slept over the matter like Rip Van Winkle.

8. It is not the case of even the petitioners that P.Ws.1 to 8 were not at all examined. When P.Ws.1 to 8 were cross-examined on the same dates they were examined in chief, it is beyond the ken of this Court as to what



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prevented the petitioners from giving necessary information to their counsel on record to put forth the vital questions which they want to do now on the day they cross-examined them for the first time. Other than the monotonous stance taken by the defence in the petition filed under Section 311 of Cr.P.C. to the effect that the prosecution witnesses could not be properly cross-examined on the days they were examined in chief, no other valid reason has been assigned by the petitioners. Superadded, Section 33(5) of the POCSO Act also stares at the face of the trial Judge.

9. In view of the above, this Court is of the view that the trial court had rightly dismissed the recall petition filed by the petitioners and hence, no interference is warranted in the impugned dismissal order.

10. 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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A.D.JAGADISH CHANDIRA, J.

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To:

1. The Principal Special Judge for Cases under POCSO Act,
Salem.
2. The Inspector of Police,
Tharamangalam Police Station,
Salem District.
3. The Public Prosecutor,
Madras High Court.

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