



Crl.R.C(MD)No.200 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2025

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THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.R.C(MD)No.200 of 2024

and

Crl.M.P(MD)No.2266 of 2024

Jeevanraj

... Petitioner

Vs.

State of Tamil Nadu rep.by
The Inspector of Police,
All Women Police Station,
Kumbakonam,
Thanjavur District.

... Respondent

Prayer : Criminal Revision Case is filed under Section 397 & 401 of the Code of Criminal Procedure, to call for the records and set aside the order, dated 24.11.2023 passed in Crl.M.P.No.729 of 2023 in S.S.C.No. 93 of 2022 on the file of the Special Court for Exclusive Trial of cases under POCSO Act, Thanjavur, Thanjavur District.

For Petitioner : Mr.C.Suresh Kannan

For Respondent : Mr.M.Sakthi Kumar
Government Advocate(Crl.Side)



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ORDER

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This Criminal Revision Case has been filed challenging the order passed by the learned Special Court for Exclusive Trial of cases under POCSO Act, Thanjavur, in Crl.M.P.No.729 of 2023 in S.S.C.No.93 of 2022, dated 24.11.2023.

2. Brief Facts:

(i) The petitioner is the accused in S.S.C.No.93 of 2022, pending trial before the learned Special Court.

(ii) By way of Crl.M.P.No.729 of 2023, the petitioner sought, under Section 27 of the POCSO Act and Section 3 of the Mental Health Act, read with Section 118 of the Indian Evidence Act, a direction to the Trial Court to refer P.W.2 (victim, a girl aged five years) to the competent Medical Board at Thanjavur Medical College Hospital for examination to determine whether she is suffering from any mental illness.

(iii) The learned Special Court dismissed the petition by a non-speaking order—"In the result, this petition is dismissed" (impugned order dated 24.11.2023)—without considering the merits.



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3. Submissions on Behalf of the Petitioner:

(i) The petition under Section 27 of the POCSO Act was founded on the fact that during examination-in-chief, P.W.2 did not narrate the alleged occurrence, raising a reasonable doubt as to the alleged prosecution story against the accused.

(ii) Following which the learned Trial Court without examining the victim further, stopped the proceedings.

(iii) Thereafter, the prosecution filed a petition under Section 164(5A)(b) of the Code of Criminal Procedure and Section 137 of Indian Evidence Act in Crl.M.P.No.252/2023 requiring the learned Trial Court to convert the statement obtained from the victim under section 164 of the Cr.P.C into examination in chief of PW2.

(iv) Despite resistance made by the accused by way of filing counter, the learned Trial Court allowed the aforesaid petition and thereafter posted the case for cross examination of PW2.

(v) The aforesaid petition was allowed by the Trial Court by observing that the child in question is mentally disabled in terms of section 164(5A)(b) of Cr.P.C.

(vi) The Trial Court ought to have examined the medical question



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by referring her to a competent Board before treating her Section 164 statement as her examination-in-chief.

(vii) The dismissal of the petition by a cryptic order, without any reasoning, violated principles of natural justice and judicial transparency.

4. Submissions on Behalf of the Respondent:

(i) P.W.2 is a five-year-old child who, post-trauma, is reported to be suffering from depression.

(ii) Referring her again for medical examination would amount to harassment and re-traumatization of an already vulnerable victim.

(iii) The trial Court, in Crl.M.P.No.252 of 2023, had already found her condition to be such as to permit treating her Section 164(5A)(b) statement as examination-in-chief, and no further enquiry was necessary.

5. Consideration:

(i) It is well settled that whenever a question arises regarding the mental fitness of a witness—more so a child witness—Courts must ensure that such questions are resolved before relying on her testimony. An order of the Court which dismisses a statutory petition without speaking reasons offends the mandate of Section 27 of the POCSO Act



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and the duty of the Court to issue a reasoned order.

WEB COPY (ii) Though the Trial Court in Crl.M.P.No.252 of 2023 recorded that P.W.2 was “mentally disabled” to the extent of justifying her Section 164 statement as examination-in-chief, the petitioner’s petition sought a formal medical examination by a Board constituted under the Mental Health Act. The Court’s concurrence with the prosecution’s petition under Section 164(5A)(b) of Cr.P.C. does not obviate the need for an expert medical opinion when specifically prayed for under Section 27 of the POCSO Act read with the Mental Health Act.

(iii) A non-speaking order deprives the parties of the rationale on which their rights are adjudicated. The spirit of the POCSO Act is welfare-oriented and mandates child-friendly procedures; medical examination by a competent Board is eminently in furtherance of that mandate.

6. Conclusion and Order:

(i) The impugned order dated 24.11.2023 in Crl.M.P.No.729 of 2023 in S.S.C.No.93 of 2022 is hereby set aside.

(ii) The learned Special Court is directed to refer P.W.2 for a medical examination before a Competent Medical Board to be constituted by the Dean of Thanjavur Medical College Hospital, limited



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exclusively to the determination of whether P.W.2 is suffering from any mental illness or disability affecting her capacity to give evidence.

(iii) The Special Court shall place on record the Board's report and thereafter, proceed with P.W.2's examination in accordance with law.

(iv) This Criminal Revision Case is accordingly **allowed**.
Consequently, Connected Miscellaneous Petition is closed.

16.06.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Special Court for
Exclusive Trial of cases under POCSO Act,
Thanjavur, Thanjavur District.
- 2.The Inspector of Police,
All Women Police Station,
Kumbakonam,
Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI ,J.

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Order made in
CrI.R.C.(MD)No.200 of 2024

Dated: 16.06.2025