



Crl.O.P.(MD)No.5860 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.03.2025

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.5860 of 2025
and
Crl.M.P(MD) No.4263 of 2025

K.Vetriselvan

.. Petitioner

Vs.

The Inspector of Police
Nalatinpudur Police Station
Thoothukudi District

.. Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to set aside the order passed by the learned Sessions Judge (FAC), Special Court for Exclusive trial of Cases under POCSO Act, Thoothukudi in Cr.M.P.No.5 of 2025 in Spl.S.C.No.33 of 2020 dated 05.03.2025

For Petitioner : Mrs.Maria Vinola

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

ORDER

This petition has been filed by the petitioner to set aside the order passed by the learned Sessions Judge (FAC), Special Court for Exclusive



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trial of Cases under POCSO Act, Thoothukudi in Cr.M.P.No.5 of 2025 in
Spl.S.C.No.33 of 2020 dated 05.03.2025.

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2. The learned counsel appearing for the petitioner would submit that the petitioner is accused in the above said case and already PW1 was examined in chief on 31.05.2022. On the date of examination, the petitioner was unable to cross examine witnesses due to some difficulties and thereafter, he filed petition to recall PW1 and the same dismissed by the trial Court.. Therefore, PW1 has to be cross examined.

3. The learned Government Advocate(Crl.Side) appearing for the respondent would submit that on 22.11.2024 a petition was filed in Crl.M.P.No.220 of 2024 to recall P.W.1 and the same was allowed on condition that the petitioner shall pay a cost of Rs.10,000/- to P.W.1 on her appearance failing which the petition shall stand dismissed. On 29.11.2024, P.W.1 appeared before the Court but the defence side had not paid the costs hence she had not turned up for cross examination, hence the evidence of P.W. 1 was closed on 29.11.2024. Now the case is posted for defence side evidence at this stage the petitioner has filed this petition Further the First Information Report was registered on 23.12.2019 and the



case was taken on file in the year 2020 and the Trial Court correctly dismissed the petition. Therefore, the present petition is liable to be dismissed.

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

5. In this case PW1 is the victim and already she was chief examined on 31.05.2022 but the petitioner has failed to cross examine the witnesses on the date of examination of witnesses. The petitioner has filed petition before the Trial Court to recall P.W.1 on 22.11.2024 in Crl.M.P.No.220 of 2024 and the same was allowed on condition that the petitioner shall pay a cost of Rs.10,000/- to P.W.1 on her appearance failing which the petition shall stand dismissed. On 29.11.2024, P.W.1 appeared before the Court but the defence side had not paid the costs hence she had not turned up for cross examination, hence the evidence of P.W. 1 was closed on 29.11.2024. Since PW1 is the victim, the Trial Court dismissed the petition.



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6. It is true that PW1 is the victim and the charges are under Section 452 and 506(1) of IPC and also Section 5(l),5(j)(ii)(t) r/w. 6 of Protection of Children from Sexual Offences Act, 2012.

7. It is true that the Court has to ensure that the child is not called repeatedly to testify in the Court as far as the POCSO Cases are concerned. At the same time, the Court has also give opportunity to cross examine the witnesses to ensure fair trial. The charges are viz., Sections 452 and 506(1) of IPC and also Section 5(l),5(j)(ii)(t) r/w. 6 of Protection of Children from Sexual Offences Act, 2012. Though the petitioner failed to cross examine the witness on the particular date, on that ground alone the Court cannot prevent the right of the petitioner to cross examine the witnesses. Therefore, in order to ensure the fair trial and in order to give a fair chance to the petitioner, it is appropriate to allow this petition by setting aside the order of the Trial Court. Considering the gravity of the offence and in order to give a fair chance to the petitioner, it is appropriate to allow this petition by setting aside the order of the Trial Court.



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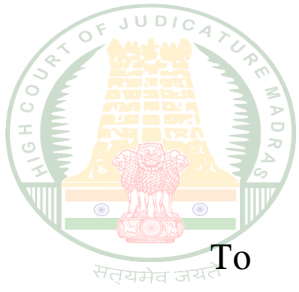
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8. In view of the above discussion, this petition is allowed and the order passed by the Trial Court in Cr.M.P.No.5 of 2025 in Spl.S.C.No.33 of 2020 dated 05.03.2025 is set aside. The petitioner shall deposit a sum of Rs.1000/- before the Trial Court within a period of 15 days from the date of receipt of a copy of this order. On such deposit being made, the Trial Court has to issue summons to the victim and fix the date for cross examination. After appearance of the witness, the petitioner has to cross examine the witness on the same day itself. The deposited amount shall be paid to the petitioner after cross examination.

9. With the above said observations, the criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

28.03.2025

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

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1. The Sessions Judge (FAC),
Special Court for Exclusive trial of Cases under POCSO Act,
Thoothukudi
2. The Inspector of Police
Nalatinpudur Police Station
Thoothukudi District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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