



Crl.O.P.(MD)Nos.9840 and 9841 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 12.06.2025

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.(MD)Nos.9840 and 9841 of 2025

and

Crl.M.P.(MD)Nos.7263 and 7264 of 2025

S.Ajithamalajeevan

... Petitioner in
both Crl.O.Ps.

versus

State of Tamil Nadu through
The Inspector of Police,
Vedasandur Police Station,
Dindigul District.

... Respondent in
both Crl.O.Ps.

Prayer in Crl.O.P.(MD)No.9840 of 2025: Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the order made in Cr.M.P.No.169 of 2025 in Spl.S.C.No.35 of 2024 dated 24.03.2025 passed by the Special Court for exclusive trial of cases under POCSO Act, Dindigul and allow this petition.

Prayer in Crl.O.P.(MD)No.9841 of 2025: Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the order



Crl.O.P.(MD)Nos.9840 and 9841 of 2025

made in Cr.M.P.No.1579 of 2024 in Spl.S.C.No.35 of 2024 dated 19.10.2024 passed by the Special Court for exclusive trial of cases under POCSO Act, Dindigul and allow this petition.

For Petitioner in
both W.Ps. : Mr.R.Aravindraaj

For Respondent : Mr.A.S.Abul Kalaam Azad,
in both W.Ps. Government Advocate (Crl. Side)

COMMON ORDER

Crl.O.P.(MD)No.9840 of 2025 has been filed challenging the order dated 24.03.2025 passed in Cr.M.P.No.169 of 2025 in Spl.S.C.No.35 of 2024 on the file of the Special Court for Exclusive Trial of cases under POCSO Act, Dindigul.

2. Crl.O.P.(MD)No.9841 of 2025 has been filed challenging the order dated 19.10.2024 passed in Cr.M.P.No.1579 of 2024 in Spl.S.C.No. 35 of 2024 on the file of the Special Court for Exclusive Trial of cases under POCSO Act, Dindigul.



Crl.O.P.(MD)Nos.9840 and 9841 of 2025

3. The petitioner is an accused in Spl.S.C.No.35 of 2024. He is facing charges for the offences under Sections 363 and 376(3) IPC and Section 5(i) r/w. Section 6 of POCSO Act 2012. In this case, the trial has commenced and twelve witnesses have already been examined. While so, the petitioner has filed Cr.M.P.No1579 of 2024 to re-call the witnesses P.W.1 to P.W.4 and Cr.M.P.No.169 of 2025 to re-call the witnesses P.W.5 to P.W.12. According to the petitioner, the reasoning for re-calling the above witnesses is that certain important questions have been omitted to be asked by the earlier counsel and therefore, the present petitions had been filed by the new counsel. The trial Court has permitted the petitioner to re-call P.W.3 and P.W.4 as they have not been cross examined by the petitioner. With regard to other witnesses, the trial Court has rejected the petitions that they have already been cross examined on behalf of the accused/petitioner and therefore, there is no necessity to re-call the witnesses. Challenging the same, the present petitions have been filed.

4. The learned Government Advocate (Crl. Side) opposed that P.W.2 in this case is 15 years old girl and P.W.1 and P.W.3 are her parents.



Crl.O.P.(MD)Nos.9840 and 9841 of 2025

With regard to P.W.3 and P.W.4, they have not been cross examined.

Therefore, the trial Court has permitted them to be cross examined.

However, with regard to all other witnesses, the petitioner has already cross examined them. Therefore, re-calling the witnesses again for the purpose of further cross examination would certainly amount to a harassment to the witnesses in this nature of offence.

5. The learned Government Advocate (Crl. Side) has also relied on the Judgment of the Hon'ble Supreme Court in ***Rajaram Prasad Yadav vs. State of Bihar and another***, reported in ***CDJ 2013 SC 561*** and submits that while dealing with an application under Section 311 Cr.P.C., the Courts must act in a judicial manner and also with care and caution. The Hon'ble Supreme Court has already issued certain guidelines in ***Sudevanand vs. State through CBI*** reported in ***2012 3 SCC 387***, as under:

“23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:



WEB COPY



Crl.O.P.(MD)Nos.9840 and 9841 of 2025

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

d) The exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

f) The wide discretionary power should be



WEB COPY



Crl.O.P.(MD)Nos.9840 and 9841 of 2025

exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest



WEB COPY



Crl.O.P.(MD)Nos.9840 and 9841 of 2025

manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”



Crl.O.P.(MD)Nos.9840 and 9841 of 2025

6. This Court considered the rival submissions made and perused the materials placed on record.

7. The petitioner is an accused in Spl.S.C.No.35 of 2024 and he is facing the charges for the offences under Sections 363, 376(3) IPC and Section 5(1) r/w. Section 6 of POCSO Act. The prosecution has examined 12 witnesses. Except P.W.3 and 4, the petitioner has examined all other witnesses. The petitioner has filed two petitions, i.e. Cr.M.P.No. 1579 of 2025 to re-call P.W.1 to P.W.4 and Cr.M.P.No.169 of 2025 to re-call P.W.8 to P.W.12. In Cr.M.P.No.1579 of 2024, the trial Court has permitted the petitioner to re-call P.W.3 and P.W.4 as they have not been cross examined by the petitioner. With regard to other witnesses, the trial Court has rejected the petitions that they have already been cross examined.

8. The learned counsel for the petitioner has also admitted that the petitioner has examined all other witnesses, however, he changed his counsel and the new counsel has insisted that all these witnesses have to be cross examined on certain questions, which have been omitted to be



Crl.O.P.(MD)Nos.9840 and 9841 of 2025

asked by the previous counsel.

WEB COPY

9. Witnesses cannot be re-called again and again and that too in the case of POCSO Act by changing a counsel. Since the petitioner has not offered any proper grounds for re-calling the witnesses, this Court is not inclined to entertain these petitions.

10. Accordingly, both the Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

12.06.2025

Index : Yes / No.

Internet : Yes / No.

NCC : Yes / No.

ogy

To

1. The Inspector of Police,
Vedasandur Police Station,
Dindigul District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

9/10



WEB COPY



Crl.O.P.(MD)Nos.9840 and 9841 of 2025

B.PUGALENDHI, J.

ogy

Crl.O.P.(MD)Nos.9840 and 9841 of 2025

12.06.2025