

Crl.O.P.(MD)No.11324 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2025

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

Crl.OP(MD)No.11324 of 2025

and

Crl.M.P.(MD)No.8573 of 2025

Ashok Kumar

... Petitioner

versus

State of Tamil Nadu,
Rep. by the Inspector of Police,
Uthirakosamangai Police Station,
Ramanathapuram District.

...Respondent

Prayer : Criminal Original Petition filed under Section 528 of BNSS, to call for the records and set aside the order passed by the learned Mahalir Neethimandram (Fast Track Mahila Court), Ramanathapuram, in Cr.M.P.No. 374 of 2025 in Spl.S.C.No.56 of 2021 dated 09.05.2025 in respect of dismissing the petition filed by the petitioner under Section 348 of BNSS to examine the P.Ws.-2, 3, 4, 5, 9 and 10, within a time frame fixed by this Court by allowing this petition.

For Petitioner : M/s.PL.S.Solaialagan

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



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ORDER

The petitioner is the sole accused in Spl.S.C.No.56 of 2021 on the file of the Fast Track Mahila Court, Ramanathapuram, for the offence under Sections 363, 365 and 366(A) IPC and Sections 3, 4, 5(l) and 6 of Protection of child from sexual offences Act, 2012. He has filed a petition under Section 348 BNSS before the trial Court in Cr.M.P.No.374 of 2025 to recall the witnesses, namely, P.W.2, P.W.3, P.W.4, P.W.5, P.W.9 and P.W.10. The trial Court, by its order dated 09.05.2025, dismissed the said petition. Aggrieved over the same, the petitioner has filed this petition.

2. The learned counsel appearing for the petitioner submits that the earlier cross examination was made by a Legal Aid Counsel, who has not conducted the trial effectively. Therefore, the petitioner has engaged a new counsel and he is now prosecuting the case. Since the earlier cross examination was not conducted in a proper manner, the petitioner seeks to re-examine those witnesses.



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3. The learned Government Advocate (Crl. Side) submits that the witnesses, namely, P.W.1 to P.W.3 were already re-called and cross examined. Therefore, there is no necessity to re-call P.W.1 to P.W.3 again and again for the purpose of cross examination. He further submits that the petitioner has evaded the trial twice and therefore, a Non-Bailable Warrant was issued and thereafter, he was secured. According to the learned Government Advocate (Crl. Side), this petition is filed in order to drag on the proceedings further. He also submits that all these witnesses have already been cross examined and there is no necessity for further cross examination.

4. This Court considered the rival submissions made.

5. This petition raises an issue regarding the re-call of victim under the POCSO Act for cross examination and scope of the same. The victims in POCSO cases are the most vulnerable and sensitive and therefore, courts are duty bound to adopt victim centric approach when such victims come in contact with the trial process. To understand this point, it would be pertinent to refer to the “Guidelines for Recording of Evidence of Vulnerable Witnesses” (R.O.C.No.15447/2023/F1) made by this Court.



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These guidelines have been adopted in line with the decision of the Supreme Court in *Smruti Tukaram Badade vs. State of Maharashtra* (Crl.A.No. 1101 of 2019) and are applicable to all courts in Tamil Nadu and Puducherry. Rule 6 of these guidelines lists out certain stress factors in respect of which courts must take measures to minimize or mitigate the same. The following are certain relevant factors:

“a. Multiple depositions.

c. Delays and repeated adjournments.

.....

d. Testifying more than once.”

6. Rule 18 of the above guidelines provides certain directions to be followed by the courts when dealing with vulnerable witnesses. The following are relevant for this case:

“(i) Vulnerable witnesses shall receive high priority and shall be dealt with as expeditiously as possible, minimizing unnecessary delays and adjournments to avoid repeated appearances of the witness in the Court. (Whenever necessary and possible, the court schedule will be altered to ensure that the testimony of the vulnerable witness is recorded on sequential days, without delays.)”



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7. Section 33 (5) of the POCSO Act deals with the restriction on calling such victims to testify in the court. The same is reproduced below for reference:

"33(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court."

8. In ***Madhab Chandra Pradhan vs. State Of Odisha(Special Leave Petition (CRL.) No. 10082 of 2024)***, the Hon'ble Supreme Court with regard to repeatedly calling the victims under the POCSO Act to court for cross-examination, has observed as follows:

"4.....A bare perusal of Section 33 (5) of the Act indicates that a duty is cast upon the Special Court to ensure that a child is not repeatedly called to give his/her testimony before the court. The legislative intent behind this provision is clear. It is to ensure that the child who has suffered a traumatic experience of sexual assault is not called time and again to testify about the same incident.

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



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Act would defeat the very purpose of the statute.....”

9. In view of the above, calling of such vulnerable witnesses to the court for testifying should be done in a careful manner and it should be ensured that the victim is not traumatised repeatedly. The process of trial should not be weaponised to harass or intimidate the victim.

10. In ***Vinoth Kumar vs. State of Punjab*** reported in **2015 (1) MLJ (Crl.) 288**, the Hon'ble Supreme Court has observed as follows regarding the cross examination of witnesses:

“41The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons. In fact, it is not all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in- chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial....”



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11. Ideally therefore, the cross-examination ought to be conducted on the same day of examination-in-chief or on the next day. The practice of calling a witness for cross-examination after a long span of time is detrimental to the trial process and steps have to be taken to cross-examine as early as possible after the examination-in-chief. Especially when vulnerable victims are involved the above guidelines have to be followed.

12. However, this issue also needs to be looked at from the perspective of the accused involved in the offence and their right to a fair trial. There can be no doubt that every person accused of a crime has a right to defend himself before he is punished for the same. In ***Natasha Singh vs. CBI (State)*** reported in **2013 (5) SCC 741**, the Supreme Court has observed as follows:

“15. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person’s



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right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial...”

13. The process of cross-examination is an essential tool available to the accused to put forth his side in the trial. The objects of cross-examination are to question the accuracy, credibility, and general value of the evidence given in-chief, to go through the facts already stated by the witness, to expose discrepancies, or to elicit hidden facts which will support the case of the cross-examining party.

14. *In Jayendra Vishnu Thakur vs. State of Maharashtra* reported in **2009 (7) SCC 104**, the Hon'ble Supreme Court has observed as follows:

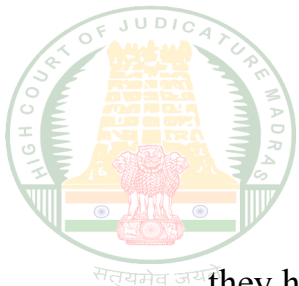
“13.... A right to cross-examine a witness, apart from being a natural right is a statutory right. Section 137 of the Evidence Act provides for examination- in-chief, cross-examination and re-examination. Section 138 of the Evidence Act confers a right on the adverse party to cross-examine a witness who had been examined in chief, subject of course to expression of his desire to the said effect. But indisputably such an opportunity is to be granted. An accused has not only a valuable right to represent himself, he has also the right to be informed thereabout....”



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15. Therefore, the right to fair trial also entails the right to cross-examine the witnesses and the same is an ingredient of natural justice inherent in the criminal trial process. No doubt, the court has a duty to protect vulnerable victims from repeated trauma and the possibility of secondary victimisation. But it is through cross-examination that the defence is afforded a real and meaningful opportunity to test the accuracy, credibility and consistency of the evidence brought against the accused. Considering the circumstances, this court is obligated to balance the rights of the accused to a fair trial and the victim's right to dignity and protection from distress.

16. In this case, the petitioner has filed a petition to recall P.W.2, P.W.3, P.W.4, P.W.5, P.W.9 and P.W.10. The grounds raised by the petitioner is that the earlier cross examination was made by a Legal Aid Counsel appointed by the Legal Aid authority and that counsel has not cross examined the witnesses effectively. Therefore, the petitioner has filed this petition. Engaging a counsel through Legal Aid Authority is not a mere formality. The Legal Aid Authority has to find out suitable counsels to conduct the trial proceedings in an effective manner and thereafter only,



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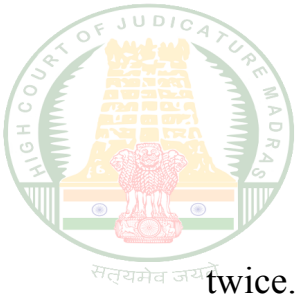
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they have to be engaged as legal aid counsel.

17. The petitioner is facing a charge in Spl.S.C.No.56 of 2021 on the file of the Fast Track Mahila Court, Ramanathapuram for the offence under Sections 363, 365 and 366(A) IPC and Sections 3, 4, 5(l) and 6 of Protection of child from sexual offences Act, 2012, for which, the punishment is upto 20 years.

18. It appears that the petitioner was not in a position to engage a counsel and therefore, he contested the case through a Legal Aid Counsel. The petitioner has made a specific allegation that the earlier cross examination was made by a Legal Aid Counsel, who has not conducted the trial effectively. Therefore, he has engaged a new counsel to contest the case.

19. Considering the period of imprisonment prescribed for the offence involved, the importance of the victim's testimony and the right of the accused to a fair trial, this court is inclined to grant one final opportunity to the petitioner to cross-examine the witnesses. At the same time, this Court has to consider the plight of the victims, who have already been examined



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twice. Therefore, this Court is inclined to allow this petition on payment of cost of Rs.5,000/- (Rupees five thousand) for each witnesses.

20. Accordingly, this Criminal Original Petition is allowed and order dated 09.05.2025, passed by the learned Mahalir Neethimandram (Fast Track Mahila Court), Ramanathapuram, in Cr.M.P.No.374 of 2025 in Spl.S.C.No.56 of 2021 is hereby set aside. Consequently, connected miscellaneous petition is closed.

21. The petitioner shall deposit a sum of Rs.5,000/- (Rupees five thousand) for each witnesses before the trial Court and file a necessary application to recall the witnesses. In the event, if the petitioner files an application to recall the witnesses, the trial Court shall entertain the same and fix a date for cross examination of those witnesses. The petitioner is expected to cross examine the witnesses on the day when the witnesses are present.

22. This Court expects the trial Court to refer this order and the evidence to the Legal Aid Authority to scrutinize the manner in which the counsel, who was engaged through Legal Aid Authority, has conducted the



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trial. In the event, if the trial has not been conducted properly by the Legal Aid Counsel, then, he has to be removed from the panel and necessary action to be initiated as against him.

04.07.2025

NCC : Yes/No

Index : Yes/No

Internet: Yes

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To

1. The Mahalir Neethimandram (Fast Track Mahila Court),
Ramanathapuram.
2. The Inspector of Police,
Uthirakosamangai Police Station,
Ramanathapuram District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI, J.

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