



CrIOP(MD)No.11122 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : .07.2025

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

CrIOP(MD)No.11122 of 2025

and

CrI MP(MD)No. 8355 of 2025

Selvam @ Mariselvam

... Petitioner

Vs.

The State rep by
the Inspector of Police,
Tirunelveli Town Police Station,
Tirunelveli. [Crime No.29 of 2019]

...Respondents

Prayer : Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, to set aside the order made in CrMP No.3525 of 2023 in SplCC No.314 of 2019, dated 12.01.2024 passed by the Special Court for POCSO Cases, Tirunelveli by allowing this criminal original petition.

For Petitioner : Mr.Aravind Raj.R
For Respondent : Mr.AS.Abul Kalam Azad
Government Advocate (Crl. Side)



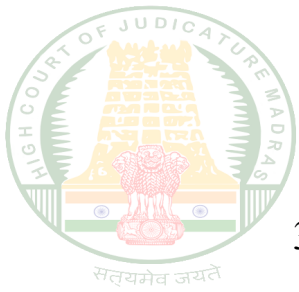
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ORDER

This Criminal Original Petition is filed as against the order passed by the learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli in CrMP No.3525 of 2023 in SplCC No.314 dated 12.01.2024 rejecting the application filed by petitioner to re-call the victim for cross examination.

2.The petitioner is facing trial for the offences under Section 366 (A) of IPC and Section 6 of POCSO Act, 2012. The allegations against the petitioner are that he being a distant relative of the victim (aged 16 years at the time of occurrence) frequently interacted with the victim and lured her with promise of marrying her. On the date of the incident, through phone he forced her to leave work and took her to various places and sexually assaulted the victim. Charges were framed against the petitioner and PW 1 (mother of the victim) and PW 2 (the victim) were examined in chief on 17.11.2021. Though the petitioner and his counsel were present on the day, they did not cross examine the victim. Thereafter, the petitioner has made an application under Section 311 CrPC to recall the victim for cross-examination and the same has been rejected vide the impugned order.



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3.The learned counsel for the petitioner submits that denying of opportunity to cross-examine the victim would affect the right of the accused to a fair trial. He further submits that petitioner's counsel was engaged in some other courts on the day of chief examination and also due to personal inconvenience of the counsel, PW2 / victim was not cross examined. He further submits that the petitioner undertakes to pay the cost of Rs.25,000/- the victim as fixed by this Court.

4.On the other hand, the learned Government Advocate has pointed out the serious nature of the offence and the fact that the petitioner's counsel did not cross-examine the victim on the day of chief examination itself.

5.The Court has considered the rival submissions made and perused the materials placed on record.

6.This petition raises an issue regarding the re-call of victims 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



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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. 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.”

7.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



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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.)”

8. 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."

9. 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



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

10. 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.

11. 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:

“41.....The trial courts are expected in law to follow the command of the procedure relating to trial and



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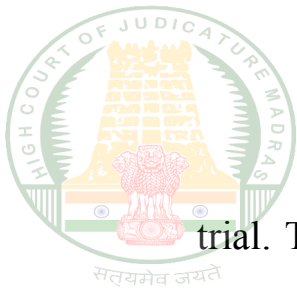


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not yield to the request of the counsel to grant adjournment for non-acceptable reasons. In fact, it is not all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in- chief is over, 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....”

12.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.

13.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

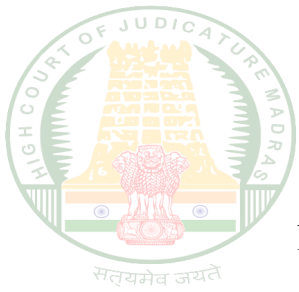


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trial. There can be no doubt that every person accused of a crime has a right to defend himself before he is punished for the same. In ***Natasha Singh vs. CBI (State)*** reported in ***2013 (5) SCC 741***, the Supreme Court has observed as follows:

“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 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...”

14. 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.



15. *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....”

16. 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



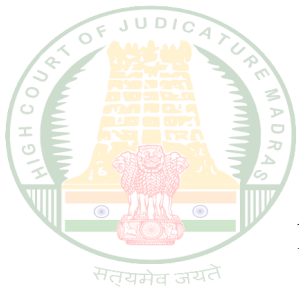
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evidence brought against the accused. Considering the circumstances, this court is obligated to balance the rights of the accused to a fair trial and the victim's right to dignity and protection from distress.

17.The petitioner is facing trial for the offences under Section 366 (A) of IPC for which the punishment prescribed is up-to 10 years imprisonment and the minimum punishment prescribed for the offence under Section 6 of POCSO Act 2012 is 20 years, which may extend up- to life imprisonment. The examination in chief of the victim was conducted on 17.11.2021 itself. It is claimed that by the petitioner that his counsel was engaged in some other courts on the day of chief examination and also due to personal inconvenience of the counsel, they were unable to cross examine the victim. The petitioner thereafter has made an application in 2024 to re-call the victim for cross-examination, after a period of three years.

18.The above conduct of the petitioner cannot be encouraged. However, considering the lengthy period of imprisonment prescribed for the offences 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 more opportunity to the petitioner to cross-examine the victim.



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19. Accordingly, this Criminal Original Petition is allowed on the

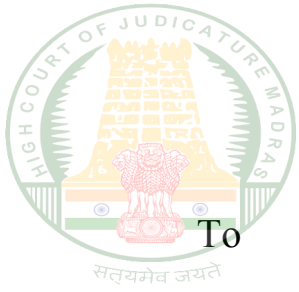
following terms:

- i. The impugned order is set aside on the undertaking of the petitioner that he would pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand) to the victim for recalling her for cross examination.
- ii. The petitioner shall file a fresh application before the trial Court for recalling the victim for cross examination.
- iii. The trial court shall fix a convenient date and time for the cross-examination of PW2 / the victim after verifying the same with the victim.
- iv. The petitioner shall cross-examine the victim on the date fixed by the trial court without fail and it is made clear that no more opportunity would be provided to the petitioner in this regard.

Consequently connected miscellaneous petition is closed.

.07.2025

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To

- 1.The Sessions Judge,
Special Court for POCSO Act Cases,
Tirunelveli.
- 2.The Inspector of Police,
Tirunelveli Town Police Station,
Tirunelveli
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI,J

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