



CRL RC(MD)No.834 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.834 of 2025

and

CRL MP(MD)No.8883 of 2025

Shankar @ Shankareshwaran

... Petitioner / Respondent /
Accused

Vs.

The State through Tamil Nadu,
The Inspector of Police,
Masarpatti Police Station,
Thoothukudi.

... Respondent /Petitioner /
Complainant

PRAYER: Criminal Revision Petition is filed under Section 438 r/w 442 of BNSS, to call for the records and set aside the orders passed in Cr.M.P.No.5836/2024 in S.C.No.220/2017 dated 26.05.2025 on the file of the Fast Track Mahila Court, Tuticorin, Tuticorin District.

For Petitioner : Mr.Ka.Raamakrishnan

For Respondent : Mr.S.Ravi,
Additional Public Prosecutor



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ORDER

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This criminal revision petition is directed against the order dated 26.05.2025 passed by the learned Judge, Fast Track Mahila Court, Tuticorin, in CrI.M.P. No. 5836 of 2024 in S.C. No. 220 of 2017, whereby an application filed under Section 173(8) of the Code of Criminal Procedure, 1973 ('Cr.P.C.') was allowed, directing that the victim-witness be produced before a psychiatrist for the purpose of ascertaining her intelligence quotient (IQ).

2. Facts of the Case:

2.1 Sessions Case No. 220 of 2017 was registered on the basis of a complaint lodged by the victim on 30.08.2015 (Exhibit P1), alleging rape by the accused for offences under Sections 376 and 506(ii) of the Indian Penal Code, 1860.

2.2 The medical examination of the victim was conducted on 01.09.2015 at the Government Headquarters Hospital, Kovilpatti (Exhibit P11). Thereafter, her statement under Section 164 Cr.P.C. was recorded on 26.11.2015 before the Judicial Magistrate (Exhibit P2).



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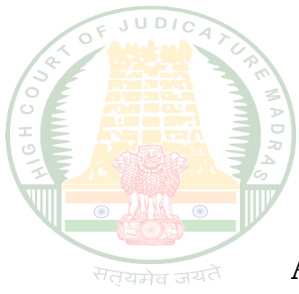
2.3 During the trial, PW-1 (the victim) and PW-2 (her grandmother, one Pechiammal) were examined. PW-2 deposed on 06.08.2021 that the victim had suffered brain fever in childhood, resulting in mental retardation and ongoing mental instability.

2.4 After closure of the prosecution evidence (PW-1 to PW-17), the respondent-police filed an application under Section 173(8) Cr.P.C., seeking a psychiatric evaluation of the victim's IQ for proper adjudication of her competence as a witness.

3. Petitioner's Submissions:

The learned counsel for the petitioner contended that no mention of mental retardation was made during investigation or in any document until after prosecution evidence was closed. The application under Section 173(8) Cr.P.C. constituted an impermissible further investigation, in breach of the principle that once prosecution evidence is closed, the investigating agency cannot re-open the case without new or credible material (relying upon ***K. Vadivel v. K. Shanthi & Others***)¹.

¹ 2024 (4) MLJ (Criminal) 344 (SC)



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As no fresh material had emerged, the application was malafide and caused prejudice to the accused's right to a fair and expeditious trial.

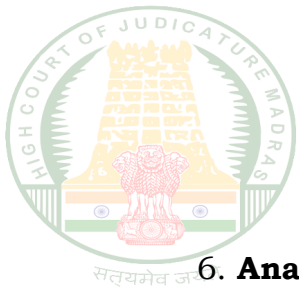
4. Respondent's Submissions:

The learned Additional Public Prosecutor, Mr. S. Ravi, submitted that the application, though framed under Section 173(8) Cr.P.C., was in substance a petition for expert evidence under Section 45 of the Indian Evidence Act, 1872, mis-described by the police. Allowing the application did not amount to further investigation into the offence, but was confined to obtaining expert opinion on the victim's mental capacity to testify.

5. Issues for Consideration:

a. Whether the allowance of the application under Section 173(8) Cr.P.C., for psychiatric evaluation of the victim, amounts to impermissible further investigation after closure of prosecution evidence.

b. Whether the Trial Court was justified in permitting expert assessment of the victim's IQ in order to ensure a fair trial.



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6. Analysis and Reasons:

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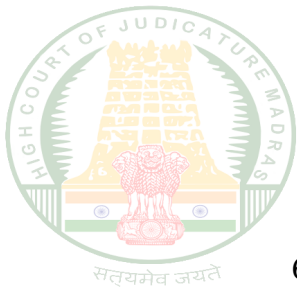
6.1 On “Further Investigation”:

Section 173(8) Cr.P.C. empowers the investigating officer to submit a supplementary report to the Magistrate, if he deems it necessary to report on further facts or circumstances discovered during the investigation. However, once the prosecution evidence is closed, re-opening facts already in issue without new material may infringe the accused’s right to a fair and timely trial.

6.2 Applicability of *K. Vadivel v. K. Shanthi & Others*:

In *K. Vadivel*², the Supreme Court held that further investigation under Section 173(8) Cr.P.C. cannot be ordered in the absence of credible new material; to permit otherwise would lead to endless reopening of cases. That principle, however, applies to investigation of the criminal offence itself, not to collateral steps necessary to evaluate the competence of a witness called by the prosecution.

² Supra 1



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6.3 Expert Evidence on Mental Capacity:

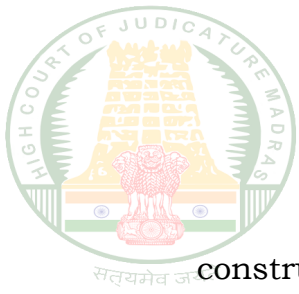
Section 45 of the Evidence Act provides for expert opinion on matters of special skill, such as mental health, when the Court considers it necessary. Competence of a witness to comprehend questions and give rational answers is fundamental to fair trial.

6.4 Merits of the Application:

Here, PW-2's credible testimony about the victim's childhood brain fever and enduring mental instability raises a legitimate doubt as to the victim's capacity to testify coherently and understand the nature of oath and proceedings. To deny assessment of such a core facet of competence would risk violation of the accused's right to confront and cross-examine a competent witness, as guaranteed by Articles 20(3) and 21 of the Constitution.

6.5 Mis-description of the Provision:

While the application should ideally have been filed under Section 45 of the Evidence Act, the procedural misnomer does not vitiate the substantive right to expert assessment. Courts are duty-bound to



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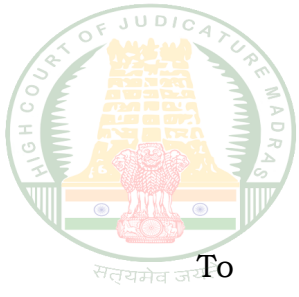
construe applications sensibly to serve justice rather than technical formalities.

7. Conclusion:

In the facts and circumstances of this case, the learned Trial Court rightly directed psychiatric evaluation of the victim to ascertain her intelligence quotient and mental fitness to testify. The order does not amount to impermissible further investigation into the offence but is a necessary step to ensure the fairness of the trial. The criminal revision petition is without merit and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15.07.2025

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

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- 1.The Fast Track Mahila Court,
Tuticorin,
Tuticorin District.
- 2.The Inspector of Police,
Masarpatti Police Station,
Thoothukudi.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

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