

Crl.O.P.(MD)No.13651 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.08.2025

CORAM :

THE HON`BLE MR.JUSTICE B.PUGALENDHI

Crl.O.P(MD)No.13651 of 2025

Esakkiraj

.. Petitioner

versus

The State of Tamil Nadu rep. by
The Inspector of Police,
Sankarankovil Town Police Station,
Tenkasi District,
Crime No.246 of 2019.

...Respondent

Prayer : Criminal Original Petition filed under Section 528 of BNSS, to set aside dismissal order of the Special Court for POCSO Act cases, Tirunelveli in Cr.M.P.No.8 of 2025 in Spl.S.C.No.621 of 2024 dated 18.06.2025.

For Petitioner : Mr.G.Karuppasamy Pandian

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



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ORDER

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The petitioner is facing trial in Spl.S.C.No.621 of 2024 on the file of the Special Court for POCSO Act Cases, Tirunelveli, for the offences under Sections 366(A) and 376 IPC and Sections 5(i) and 6 of the POCSO Act. It is alleged that, when the victim/P.W.2 was about 17 years old, the petitioner had taken her away for three days, and upon the complaint of her father/P.W.1 the case was registered. The respondent police filed the final report, and the trial commenced in the year 2022. P.W.1 and P.W.2 were examined in chief on 16.03.2022. The petitioner failed to cross-examine them at that stage. Thereafter, he filed Cr.M.P.No.2128 of 2022 seeking to recall P.W.1 and P.W.2. The said petition was partly allowed by the trial court, permitting the recall of P.W.1, but was dismissed insofar as P.W.2 was concerned, by order dated 03.09.2022. The petitioner did not challenge the rejection of recall insofar as P.W.2. P.W.1 was thereafter cross-examined.

2. Subsequently, in the year 2025, the petitioner filed Cr.M.P.No.8 of 2025 seeking to recall P.W.2, the victim girl. By order dated 18.06.2025, the trial court dismissed Cr.M.P.No.8 of 2025, taking note of the earlier proceedings and the lapse of time. Aggrieved by the said order, the petitioner has filed the present petition.



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3. The learned counsel for the petitioner, by referring to the statement of the victim girl recorded under Section 164 Cr.P.C. by the Judicial Magistrate at the time of initiation of the case in the year 2019, submits that the petitioner is the uncle's son of the victim girl and that they were in a love affair. Without understanding the consequences, they left their home without informing their parents, which led to the registration of the present case. It is further submitted that, with the hope of resolving the issue amicably within the family, the petitioner had been waiting until 2015. Since no settlement was arrived at, and the matter was not resolved, the petitioner is now left with no option but to seek the recall of P.W.2, the victim girl.

4. According to the learned counsel for the petitioner, P.W.2 had voluntarily travelled along with the petitioner, and there was no act of abduction on his part. However, the case has been registered for the offences under Sections 366(A) and 376 IPC. It is further submitted that there was no sexual or physical relationship between the petitioner and P.W.2, and the petitioner can establish this fact only through the cross-examination of P.W.2. Hence, the learned counsel seeks one more opportunity for the petitioner to cross-examine P.W.2.



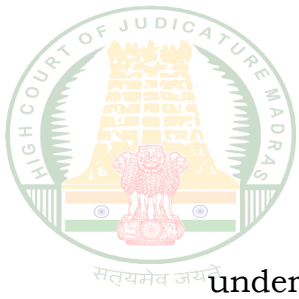
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5. The learned Government Advocate (criminal side) submits that the case was registered in the year 2019, the final report was filed in the same year, and the trial commenced in 2022. P.W.1 and P.W.2 were examined in chief on 16.03.2022. The petitioner intentionally failed to cross-examine them at that stage and thereafter filed Cr.M.P.No.2128 of 2022 seeking to recall both P.W.1 and P.W.2. The said petition was partly allowed. P.W.1 alone was permitted to be recalled, while insofar as P.W.2 was concerned, the trial court dismissed the petition by order dated 03.09.2022. That order was never challenged by the petitioner. Since the petitioner has not questioned the order dated 03.09.2022 refusing recall of P.W.2, the present application is not maintainable. It is further submitted that recalling P.W.2 for cross-examination after a lapse of six years would seriously affect her normal life and cause demoralisation. Therefore, the learned Government Advocate contends that the trial court was right in dismissing the application.

6. This Court considered the rival submissions made and also perused the materials.

7. The petitioner failed to cross-examine P.W.2 when she was examined in chief on 16.03.2022. The learned counsel for the petitioner submits that, since the parties are close relatives, the petitioner was



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under the impression that the matter would be amicably resolved among the family members and, therefore, P.W.2 was not cross-examined on that particular day.

8. The trial court, by its order in Cr.M.P.No.8 of 2025, dated 18.06.2025, rejected the application filed by the petitioner to recall P.W. 2. The petitioner is facing serious charges under Sections 366(A) and 376 IPC and also under Sections 5(1) and 6 of the POCSO Act. These are grave offences, and a presumption under Section 29 of the POCSO Act also operates against the petitioner. In such circumstances, an opportunity must be provided to the petitioner to cross-examine P.W.2. However, considering fact that the petitioner failed to cross-examine P.W2 when she was available on 16.03.2022, and also failed to challenge the order of the learned Judicial Magistrate in Cr.M.P.No.2128 of 2022 dated 03.09.2022, this Court is inclined to allow the present application only on terms. Accordingly, the petitioner is directed to deposit a cost of Rs.10,000/- (Rupees Ten Thousand only) before the trial court. On such deposit, the petitioner shall file an application to recall P.W.2. The trial Court, after ascertaining the convenient date of P.W.2, shall recall her for the purpose of cross-examination. The petitioner shall cross-examine P.W.2 without fail on the date so fixed. The trial court is directed to pay a sum of Rs.10,000/- to P.W.2.



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9. This criminal original petition is ordered accordingly.

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

- 1.The Inspector of Police,
Sankarankovil Town Police Station,
Tenkasi District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI, J.

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