



CrIOP(MD)No.13818 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.08.2025

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

CrIOP(MD)No.13818 of 2025

and

CrIMP(MD)No.11038 of 2025

Muthiah

... Petitioner

Vs.

The State of Tamil Nadu rep by
The Inspector of Police,
All Women Police Station,
Nanguneri,
Tirunelveli District.
[Crime No.5 of 2022]

...Respondent

Prayer : Criminal Original Petition filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, to call for the order passed by the Sessions
Judge, Special Court for POCSO Act Cases, Tirunelveli in CrMP.No.284
of 2025 dated 17.07.2025 and set aside the same as illegal and arbitrary.

For Petitioner : Mrs.C.Geetha

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



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ORDER

WEB COPY The petitioner / accused in CC No.59 of 2022 on the file of the Special Court for POCSO Act Cases, Tirunelveli has filed this petition challenging the order dated 17.07.2025 passed in CrMP.No.284 of 2025, which was filed by the petitioner to recall the witnesses PW1 to PW3 for the purpose of cross examination.

2.PW1 to PW3 were examined in chief on 17.10.2022. However on that day the petitioner has not cross examined PW1 to PW3. Therefore, he has filed a petition to recall PW1 to PW3 for the purpose of cross examination and the same was allowed. Subsequently PW1 to PW3 were cross examined elaborately on 20.03.2023 . Thereafter the prosecution was completed. The case was posted for defence. After five hearings, the petitioner at the fag end of the trial, has filed the present petition on 08.05.2025 to recall PW1 to PW3.

3.The petitioner is facing the charges under the POCSO Act. 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



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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.”

4.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,



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the court schedule will be altered to ensure that the testimony of the vulnerable witness is recorded on sequential days, without delays.)”

5. 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."

6. 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.



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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.....”*

7. 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.

8. 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 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



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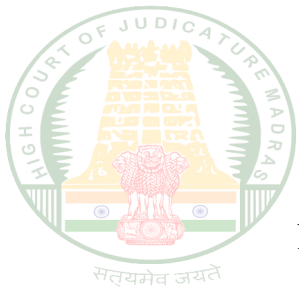


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after such a long span of time. It is imperative if the examination-in- chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for 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....”

9.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.

10.In this case PW1 to PW3 were examined in chief on 17.10.2022, but they were not cross examined. However by way of a recall petition they were cross examined on 20.03.2023. The present petition is filed after a period of two years on 08.05.2025. The trial court considered all these facts and also observed that the petitioner has not mentioned any valid reason for recalling the witnesses.



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11.In view of the above discussion and the judgments cited supra,

this court is not inclined to interfere with the orders of the trial court.

Accordingly, this petition is dismissed. Consequently connected miscellaneous petition is also dismissed.

20.08.2025

DSK

To

1.The Sessions Judge,
Special Court for POCSO Act Cases,
Tirunelveli.

2.The Inspector of Police,
All Women Police Station,
Nanguneri, Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI,J

DSK

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