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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2025

CORAM:

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CrI.O.P(MD)No.15440 of 2025
and CrI.M.P(MD)No.12560 of 2025

S.Karthika

... Petitioner/2nd Petitioner/A2

vs.

The State rep. By
The Inspector of Police,
Pamban Police,
Ramanathapuram
(In Crime No.156 of 2022)

... Respondent/Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS to set aside the order passed by the learned Sessions Judge, (FTMC), Ramanathapuram in Cr.M.P.No.125 of 2025 in Spl.S.C.No.35 of 2023 dated 12.02.2025 in so far as the petitioner is concerned.

For Petitioner
For Respondent

: M/s.M.Maria Vinola
: Mr.R.M.Anbunithi
Additional Public Prosecutor

ORDER

This petition is filed to set aside the impugned order dated 12.02.2025 by which the petitioner's application to recall P.W.1 for cross-examination was



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dismissed and the petition to recall other witnesses namely P.W.2,3,9 and 10 was allowed.

2. The petitioner had sought for recalling P.W. 2, 3, 9 and 10 who were examined in chief on 02.08.2023, 04.10.2023, 07.02.2024 and 26.04.2024 respectively. The learned Sessions Judge dismissed the application in so far as P.W.1 alone since she was seven years old at the time of occurrence. It is now reported that the case is listed for hearing on 23.09.2025.

3. The learned counsel for the petitioner would submit that right of the accused to cross-examine P.W.1, the victim, cannot be curtailed. In support of his contention, the learned counsel relied upon the order passed by this Court in CrI.O.P(MD)No.5860 of 2025 dated 28.03.2025, wherein this Court had observed that in order to ensure fair trial, one opportunity should be granted for cross-examination, even if the victim is a minor.

4.The learned Additional Public Prosecutor per contra submitted that the order impugned in this petition is justified as the victim is aged 11 years and



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under Section 33(5) of the POCSO Act, the victim shall not be called repeatedly for examination.

5. Heard both sides and perused the records.

6. Considering the submissions made on either side and on perusing the records, it is seen that none of the witnesses were cross-examined at the first instance. Hence, the request of the petitioner in respect of other witnesses was considered favourably. The only reason for rejecting the request to recall P.W.1 is that she is a child and she cannot be called repeatedly in terms of Section 33(5) of the POCSO Act.

7. This Court is of the view that the victim was once examined in chief and it is not the case of repeated examination. The accused has a right to fair trial and cross-examination is one of the facets of fair trial. Since the petitioner had not cross-examined the victim, this Court is of the view that one more opportunity can be granted to cross-examine the said witness. Hence, the impugned order is set aside and the petitioner is permitted to recall P.W.1. The petitioner shall



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examine P.W.1 on the date to be fixed by the trial court and shall not seek adjournment.

8. With the above direction, this petition is allowed. Consequently, the connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
CM



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SUNDER MOHAN. J.

CM

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