



Crl.OP(MD)No.21706 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.12.2025

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.21706 of 2025

Santhosh Kumar

... Petitioner

Vs.

State of Tamil Nadu,
rep. by The Inspector of Police,
All Women Police Station,
Colachel,
Through Special Public Prosecutor,
Kanyakumari District.
(Crime No.14 of 2019)

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records relating to the impugned order passed in Crl.M.P.No.372 of 2025 in Spl.SC.No.77 of 2019 on the file of the learned Special Court for POCSO at Nagercoil dated 07.10.2025 and set aside the same and summoning the documents from investigation officers.

For Petitioner : Mr.R.J.Karthick

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



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to summon such documents. This Court is called upon to examine the correctness of that refusal.

Factual Background:

3. The respondent police registered a case in Crime No.14 of 2019 for the offences punishable under Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012. After investigation, the offences were altered to Sections 5(l), 5(m), and 6 of the POCSO Act, 2012. Upon taking cognizance, the case was assigned Special S.C.No.77 of 2019.

4. After completion of committal proceedings, the trial commenced before the learned Special Court for POCSO Cases, Nagercoil.

5. On 17.07.2025, the petitioner filed Crl.M.P.No.454 of 2025 seeking recall of P.W.1 to P.W.5 under Section 311 Cr.P.C., 1973. On 12.01.2025, the learned trial Court permitted the counsel for the



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petitioner to examine P.W.1 and P.W.2. The petitioner contends that P.W.5, who is examined as one of the prosecution witnesses, had an illicit relationship with P.W.1, the mother of the victim child. According to the petitioner, he had caught P.W.1 and P.W.5 red-handed and warned them.

6. The petitioner's case is that P.W.1's husband, Suresh (since deceased), had lodged several complaints against P.W.5 before Kollemcode Police Station, and the Inspector of Police had enquired into those complaints and found the allegations to be true.

7. On 25.09.2025, the petitioner filed Crl.M.P.No.372 of 2025 seeking summons to produce:

- (i) complaints lodged by the deceased husband of P.W.1 before Kollemcode and Kaliakkavilai Police Stations;
- (ii) the connected F.I.R.s;
- (iii) enquiry reports of the Inspectors;
- (iv) enquiry reports of the Superintendent of Police; and



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(v) complaints lodged before the Child Welfare Office,
Kanyakumari.

8. It is the petitioner's specific contention that these documents are essential to prove:

- (a) the motive for false implication;
- (b) prior animosity between the parties;
- (c) conduct of P.W.1 and P.W.5;
- (d) credibility of prosecution witnesses; and
- (e) possibility of fabrication of allegations.

Gist of the Impugned order:

9. By order dated 07.10.2025, the learned Special Judge dismissed the application. The learned trial Court held that the documents sought for have no relevance to the allegations of sexual assault faced by the victim child.

10. The learned Judge further held that the petitioner ought to have taken steps to summon the documents before the



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commencement of prosecution evidence. The learned Judge concluded that the application was filed only to protract the proceedings.

Grounds of challenge:

11. The petitioner contends that the impugned order is contrary to law, facts, and procedure. According to the petitioner, the documents sought are indispensable for effective cross-examination of P.W.1 and P.W.5.

12. That the evidence of prosecution witnesses suffers from contradictions and inconsistencies and that the deceased father of the victim child had allegedly committed suicide due to the illicit relationship between P.W.1 and P.W.5.

13. It is further contended that the medical evidence does not support the prosecution's version of sexual assault and that denial of access to these documents infringes his fundamental right to a fair trial under Articles 20 and 21 of the Constitution of India.



Submissions:

14. The learned counsel for the petitioner submits that, Section 91 Cr.P.C., 1973, and Section 94 BNS empower the Court to summon any document necessary for the trial. It is further submitted that the learned Trial Court misdirected itself in concluding that the documents are irrelevant. It is also contended that the documents are required to impeach the credibility of prosecution witnesses.

15. The learned Additional Public Prosecutor submitted that the documents pertain to marital discord and have no bearing on the POCSO allegation. It is argued that the petition under Section 91 Cr.P.C., 1973, was filed at a belated stage and that the learned Trial Court rightly rejected the petition to prevent delay in the conclusion of the trial.

Point for determination:

16. Whether the learned Trial Court was justified in dismissing the petition filed under Section 91 Cr.P.C. / Section 94 BNS for summoning documents essential for the defence of the accused?



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Analysis:

17. Section 91 Cr.P.C., 1973, empowers the Court to summon any document if its production is necessary or desirable for the purpose of investigation, inquiry, trial or other proceeding. Section 94 BNS retains the same scope and intent.

18. The test is not whether the prosecution relies on the document but whether the accused requires it for his defence.

19. The right to a fair trial includes:

- (i) the right to access relevant documents;
- (ii) the right to confront prosecution witnesses;
- (iii) the right to present a complete defence.

20. These principles have been underscored by the Hon'ble Supreme Court in ***Maneka Gandhi v. Union of India***¹ and subsequent cases.

¹ 1978 1 SCC 248



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21. The documents relate to the alleged illicit relationship between P.W.1 and P.W.5, past complaints lodged by P.W.1's husband, official enquiry reports, conduct of witnesses.

22. Such documents are relevant for impeaching the credibility of P.W.1 and P.W.5. The learned Trial Court erred in assuming irrelevance without properly examining the defence case.

23. The learned Trial Court rejected the petition as belated. However, the Hon'ble Supreme Court has held that relevant evidence cannot be excluded merely due to delay. The paramount consideration must always be the discovery of truth.

24. There is no material to suggest that the petitioner acted with mala fide intent to delay the trial. The petitioner had already taken steps to recall witnesses, which negates any allegation of deliberate delay.



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25. While POCSO cases must be conducted expeditiously, speed cannot override fairness. A conviction based on incomplete or one-sided evidence is antithetical to justice.

26. The documents sought by the petitioner are not collateral or irrelevant. They have a direct bearing on the defence theory. They are required for confronting prosecution witnesses. Their non-production has caused prejudice to the petitioner. The impugned order, therefore, cannot be sustained.

27. In view of the foregoing reasons, the Criminal Original Petition is allowed.

28. The impugned order dated 07.10.2025 passed in Crl.M.P.No.372 of 2025 in Spl.S.C.No.77 of 2019 on the file of the learned Special Court for POCSO Cases, Nagercoil, is set aside.

29. The learned Trial Court is directed to summon the following documents under Section 91 Cr.P.C., 1973 / Section 94 BNS:



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- (i) complaints lodged by the deceased husband of P.W.1;
- (ii) connected F.I.R.s;
- (iii) relevant enquiry reports of the Inspectors of Kollemcode and Kaliakkavilai Police Stations;
- (iv) enquiry reports of the Superintendent of Police;
- (v) complaints lodged before the Child Welfare Office, Kanyakumari.

30. The petitioner shall be permitted to mark the documents in accordance with law.

31. The petitioner shall be permitted to further cross-examine P.W.1 to P.W.5, strictly confined to the contents of the summoned documents. Thereafter, the learned Trial Court shall proceed with the case and complete the trial as expeditiously as possible.

Epilogue:

32. The criminal justice system stands on the twin pillars of fairness and truth. To deny an accused access to evidence vital for his defence is to strike at the foundation of justice. The intervention



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of this Court aims only to restore that balance and ensure that the trial proceeds on a fair, complete and just footing.

33. In fine, the Criminal Original Petition is allowed.

03.12.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Sml

To

1. Special Court for
POCSO at Nagercoil.
- 2.The Inspector of Police,
All Women Police Station,
Colachel,
Through Special Public Prosecutor,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Sml

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