



Crl.OP(MD)No.22161 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2025

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.22161 of 2025

and

Crl.M.P.(MD)No.19095 of 2025

Muthusami

... Petitioner / Sole Accused

Vs.

The State of Tamilnadu,
Rep. by, the Inspector of Police,
Sankarankovil AWPS,
Tenkasi District.

(Cr.No.35 of 2024)

... Respondent / Petitioner

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records and duly set aside the order in Unnumbered Cr.M.P. in Spl.S.C.No.319 of 2025 dated 15.10.2025 on the file of the learned Principal District Court, Tenkasi District.

For Petitioner : Mr.V.Kathirvel
Senior Counsel,
For Mr.K.Prabhu

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



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ORDER

The present petition raises an important procedural question concerning the nature of judicial scrutiny required when further investigation during trial is sought under Section 193(9) BNSS, 2023, an issue that must be viewed through the lens of the right of the accused to a fair trial, the principles of natural justice, and the duty of the Court to ensure that prosecution does not fill up lacunae under the guise of further investigation.

2. The controversy pivots around an order of the learned Principal District Judge, Tenkasi, which consists of a single word – “Permitted”, passed on 15.10.2025, allowing a petition purportedly filed under Section 193 BNSS for further investigation after 9 witnesses had already been examined in a POCSO special trial.

Case of the Prosecution:

3. The prosecution alleges that the victim, aged about 17 years, mentally disabled and a stammerer, was sexually assaulted by the petitioner on 15.12.2024 at 2.30 p.m. at her residence. Crime



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No.35/2024 was registered for offences under Section 6 r/w 5(l), 5(n), 5(k) of POCSO Act, and Section 351(2) of the BNS 2023. A final report was filed and taken cognizance in Spl.S.C.No.319/2024, and 9 witnesses were examined during trial.

4. At the near conclusion of trial, the prosecution filed a petition under Section 193 BNSS for further investigation, essentially to examine the victim, who had not been cited originally in the charge sheet.

5. The learned Principal District Judge, Tenkasi, passed a one-word order on 15.10.2025 – “PERMITTED”, without issuing notice to the accused, without hearing the defence, and without assigning any reasons. The victim was subsequently examined as PW10 on 19.11.2025.

Submissions:

6. The learned counsel for the petitioner contended that the victim was not cited as a witness in the original charge sheet. Only



the interpreter was cited, which cannot substitute the testimony of the victim. The petition under Section 193 BNSS was filed as an afterthought to cure defects exposed during cross-examination. The impugned order is non-speaking, cryptic, and violates natural justice. No copy of the petition was furnished to the defence, no counter was invited. As per Section 193(9) BNSS, further investigation requires judicial application of mind, especially during trial. The victim has 80% mental disability, and the belated attempt to examine her drastically prejudices the accused. Prosecution cannot be permitted to fill up lacunae at the fag end of trial.

7. The learned Public Prosecutor submitted that Section 193(9) BNSS permits further investigation even during trial. In light of the victim's mental condition, the earlier Investigating Officer did not examine her properly. A fresh Investigating Officer moved the petition and thereafter examined the victim. Relying on **Ramlal Narang v. State¹**, it was argued that notice to the accused is not mandatory. The proceedings have already progressed, and therefore, the order must not be interfered with.

¹ (1979) 2 SCC 322



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8. Heard the learned counsels on either side and carefully perused the materials available on record.

Points for determination:

9. The following issues arise:

(i) Whether the learned Principal District Judge was justified in allowing the petition for further investigation without notice to the accused?

(ii) Whether the one-word order “Permitted” satisfies judicial standards under Section 193 BNSS?

(iii) Whether permitting further investigation at the fag end of trial amounts to filling up lacunae?

(iv) Whether the impugned order warrants interference under Section 528 BNSS?

Analysis:

10. Section 193(9) BNSS allows further investigation during trial only with permission of the court, which implies: (i)Judicial application of mind, (ii)Recording of reasons, (iii)Consideration of prejudice to the accused.



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11. A one-word order cannot amount to a legal adjudication. The Hon'ble Supreme Court has reiterated this in the case of **Kranti Associates v. Masood Ahmed Khan**², that, "Reason is the heart of judicial decision-making" and in **State of Punjab v. Bhag Singh**³, that, "Non-speaking orders are impermissible when rights are affected."

12. The impugned order contains no reasons and hence fails the test of legality.

13. The learned Trial Court neither issued notice to the accused, nor furnished a copy of the petition, nor heard the defence. Although Ramlal Narang (1979) allows further investigation without notice at pre-trial stage, the BNSS has since codified stricter safeguards.

14. Section 193(9) BNSS expressly conditions further investigation upon permission during trial. Permission cannot be granted behind the back of the accused whose rights are directly

² (2010) 9 SCC 496

³ (2004) 1 SCC 547



prejudiced. Judicial permission must be meaningful, not mechanical.

15. The prosecution had already examined 9 witnesses, including the doctor who certified that the victim had 80% mental disability, and was unable to understand or answer questions. Only when the defence pointed out that the victim was not cited and the interpreter alone cannot testify, prosecution rushed with a petition to cure the defect.

16. Courts have condemned such attempts in **Hardeep Singh v. State of Punjab**⁴, that, “Court must guard against attempts to fill lacunae under guise of further investigation.” **Vinubhai Malviya v. State of Gujarat**⁵, that, “Further investigation must be founded on new material, not convenience.”

17. No new material was shown and the sole object was to repair earlier omissions.

⁴ (2014) 3 SCC 92

⁵ (2019) 17 SCC 1



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18. Allowing further investigation at the fag end of the trial, after substantial evidence has been recorded, particularly when the victim's mental condition renders effective cross-examination difficult, causes serious prejudice. Such prejudice violates Article 21 , which ensures the right to a fair trial.

19. Section 528 BNSS confers supervisory jurisdiction to remedy grave procedural illegality.

20. The impugned order suffers from: (i)Lack of reasons, (ii)Violation of natural justice(iii)Mechanical exercise of power (iv)Improper invocation of Section 193 BNSS. Therefore, interference is warranted.

21. For the foregoing reasons, this Court is satisfied that the impugned order dated 15.10.2025 permitting further investigation is illegal, arbitrary, mechanically passed, and violative of natural justice.



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22. Accordingly the Criminal Original Petition is allowed.

23. The order dated 15.10.2025 in unnumbered Cr.M.P. in Spl.S.C.No.319 of 2025 on the file of the learned Principal District Court, Tenkasi District, is set aside.

24. All further proceedings pursuant thereto, including the examination of PW10 (victim), stand eschewed from consideration.

25. The learned Trial Court shall proceed with the case strictly based on the evidence recorded prior to the impugned order, uninfluenced by the subsequent further-investigation proceedings. Connected miscellaneous petition is closed.

10.12.2025

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

To

1.The Principal District Court, Tenkasi District.

2.The Inspector of Police,



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Sankarankovil AWPS,
Tenkasi District.

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



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L.VICTORIA GOWRI, J.

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