



CRL.O.P.(MD) NO.2058 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

CRL. O.P.(MD) No.2058 of 2025

and

CRL. M.P.(MD) No.1401 of 2025

Kishore

... Petitioner

vs.

1.The State through
The Inspector of Police,
Kodaikanal Police Station,
Kodaikanal,
Dindigul.
(Crime No.522 of 2021)

... Respondent

PRAYER: Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 to call for the records pertaining to the order passed by the learned Special Sessions Court (POCSO Act, 2012), Dindigul in Crl.M.P.No.1668 of 2024 in Special S.C.No.99 of 2023, dated 23.10.2024 and to set aside the same.



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For petitioner : Mr.M.Kannan
For respondent :Mr.K.Sakthi Kumar,
Government Advocate (Crl.Side)

ORDER

This petition has been filed by the petitioner to set aside the order passed by the learned Special Sessions Judge, Special Sessions Court (POCSO Act, 2012), Dindigul in Crl.M.P.No.1668 of 2024 in Special S.C.No.99 of 2023, dated 23.10.2024.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the accused in this case, who is aged about 17 years. At the time of examination of the witnesses, without any instructions from the petitioner, one counsel has cross-examined the witnesses P.W.1 to 4 , 7 and 9, by putting improper questions. The cross-examination of the victim/P.W.2 was also completed. Therefore, he filed a petition before the Trial Court to recall the witnesses in P.W.1 to 4, 7 and 9. The Trial Court allowed the petition in respect of the witnesses P.W.1, 3, 4, 7 and 9 and dismissed the petition in respect of P.W.2/victim by referring the Circular of this Court in R.O.C.No.543/RG/2023/POCSO, dated 12.07.2024. In the said Circular, there are some observations in respect of the best practice to



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be followed in the POCSO cases in Tamil Nadu and Puducherry. In view of the same, the Trial Court dismissed the petition in respect of the victim/P.W.2 and allowed the petition in respect of the other witnesses P.W.1, 3, 4, 7 and 9, on a condition to pay a sum of Rs.1,000/- each to the witnesses.

3. He would further submit that the cross-examination of P.W.2 is very essential to this case and without cross-examining the victim, the case cannot be disposed of. Once the Trial Court is inclined to allow the petition in respect of other witnesses, the Trial Court ought to have allowed the petition as against the victim also. Therefore, he prayed to set aside the order passed by the Trial Court.

4. The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that initially, the case was registered as girl missing and thereafter, altered to Sections 366(A) and 450 of IPC and Sections 5(n), 6, 9(n) and 10 of POCSO Act. Thereafter, the Special S.C.No.99 of 2023 was assigned and now, the case is pending before the Special Sessions Court (POCSO Act), Dindigul. Already, the cross-examination of the witnesses was completed including the victim.



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Thereafter, the petitioner filed this petition stating that without any instruction, the counsel cross-examined the witnesses. Therefore, the petition filed by the petitioner was allowed in respect of the other witnesses and dismissed as against the victim.

5. He would further submit that as per Section 33(5) of the POCSO Act, 2012, the Special Court shall ensure that the victim is not repeatedly called to testify in Court. Therefore, the order passed by the Trial Court is within the purview of the POCSO Act and hence, this petition is liable to be dismissed.

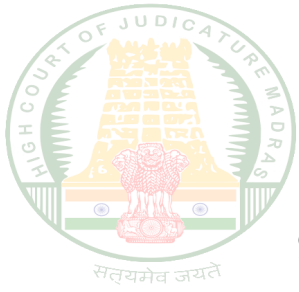
6. This Court has heard both sides and perused the records.

7. In this case, it is an admitted fact that already the witnesses were cross-examined by one counsel. According to the petitioner, without any instructions, that counsel cross-examined the witnesses. The Trial Court also, after accepting the reasons, allowed the petition to cross-examine the witness P.W.1, 3, 4, 7 and 9, however, dismissed the petition as against P.W.2, who is the victim of this case, after referring said Circular of this Court.



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8. The said Circular indicates the best practices to be followed in the POCSO Courts in Tamil Nadu and Puducherry and there is no direction to scrupulously follow the above said Circular. It is well settled law that the Circular issued on administrative side cannot take away the rights granted under the Procedural law. It is true that as per Section 33(5) of POCSO Act, the Special Court shall ensure that the victim is not repeatedly called to testify in Court. But the Trial Court has not passed order based on Section 33(5) of POCSO Act. Per contra, by relying the Circular, passed order. Further, once the Trial Court came to a conclusion that the other witnesses have to be cross-examined by the accused, the same benefit also to be extended in respect of the victim. The Court shall ensure that the child is not repeatedly called to testify by the Court. However, in this case, unfortunately, the accused and the victim are on the same age and according to the petitioner, due to the love affair, the occurrence was happened. In order to give fair chance to the petitioner and to ensure fair trial and to meet the ends of justice, it is appropriate to give a chance to the petitioner to cross-examine the victim. Therefore, in view of the said reasons, the order of dismissal in respect of the victim/P.W.2 by the Trial Court is liable to be set aside by allowing this petition.

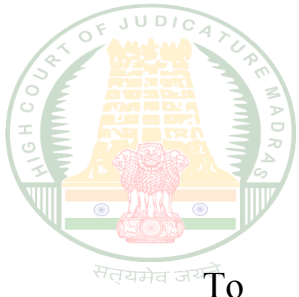


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9. In view of the above, this Criminal Original Petition is **allowed** and the order passed by the Trial Court in CrI.M.P.No.1668 of 2024 in Special S.C.No.99 of 2023, dated 23.10.2024, in respect of dismissing the petition in so far as P.W.2 is concerned, is set aside. Further this Court directs the petitioner to deposit a sum of Rs.1,000/- before the Trial Court within a period of 15 days from the date of receipt of a copy of this order. Thereafter, the Trial Court is directed to issue summon to P.W.2/victim by fixing date. On the particular date, the petitioner has to cross-examine the witness/P.W.2 and thereafter, the said deposited amount has to be paid to the P.W.2/victim. Consequently, connected miscellaneous petition is closed.

12.02.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd



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To
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1.The Special Sessions Judge,
The Special Sessions Court (POCSO Act, 2012),
Dindigul.

2. The Inspector of Police,
Kodaikanal Police Station,
Kodaikanal,
Dindigul.

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



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P.DHANABAL,J

apd

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