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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-02-2026

CORAM

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

CRL MP No. 1899 of 2026

IN

CRL A NO. 81 OF 2022

Murali
S/O.Pillappa, Vanniyar Street,
Kelamangalam, Denkanikottai Taluk,
Krishnagiri District.

Petitioner(s)

Vs

State Represented by The Inspector of Police
The Inspector Of Police, Denkanikottai, All
Women Police Station, Denkanikottai,
Krishnagiri District. Cr.No.15/2017.

Respondent(s)

PRAYER: Criminal Miscellaneous Petition is filed under Section 432 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to permit the petitioner to adduce the additional evidence such as to the Head Master of Kelamangalam Higher Secondary School to come and depose evidence before the Hon'ble High Court along with the records relating to the N.Chandrika D/o. Nagaraju more particularly, Transfer Certificate issued by the Government Higher Secondary School Kelamangalam in Sl.No.277/2017-18 on 17.11.2017 and Secondary School Leaving Certificate issued by State Board of School Examination in Certificate Sl.No.3646947 dated 23.05.2014 with Register Number of the Child as 2189049 in Crl.A.No.81 of 2022 and mark the same as Exhibits in Spl.S.C.No.30 of 2018 on the file of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri dated 18.08.2021.

For Petitioner(s): Mr.V.Rajamohan

For Respondent(s): Mr.R.Kishore Kumar
Government Advocate (Crl.Side)



ORDER

Criminal Miscellaneous Petition is filed under Section 432 of BNSS seeking to adduce additional evidence.

2. The petitioner / appellant was convicted by the trial Court for the offence under Section 366 and 506(ii) IPC and Section 5(l) r/w. 6 of POCSO Act and was sentenced for a period of 10 years. Assailing the judgment dated 18.08.2021, the accused preferred the above appeal in Crl.A.No.81 of 2022.

3. In the appeal now the petitioner / appellant has come out with the present petition filed under Section 432 of BNSS (erstwhile Section 391 Cr.P.C.), seeking to produce additional evidence.

4. The learned counsel for the petitioner / appellant submitted that in the trial, in order to prove that the age of the victim is above 18 years and the victim is not a child within the meaning of Section 2(d) of POCSO Act, the accused had examined the Headmaster of the school as D.W.2 and also examined himself as D.W.3 and had marked Exs.D1 and D2 which the admission register and attendance register of the victim.

5. Though as per the evidence of the Headmaster – D.W.2 and the documents marked in Exs.D1 and D2, the appellant had established the date of



birth of the victim as 28.06.1999, based on which, the victim would not be a child on the date of occurrence. However, the trial Court had gone by the birth certificate filed on the side of the prosecution in Ex.P11 and came to the conclusion that the date of birth of the child is 30.10.1999 and that thereby, concluded that the victim was a child and convicted the appellant.

6. It is submitted that the Matriculation School Certificate of the victim child is now available and a copy of which is produced before this Court showing the date of birth of the child as 28.06.1999.

7. He further submitted that in view of Section 94 of the Juvenile Justice Act, the matriculation certificate of the victim will take precedence over the birth certificate and for ascertaining the age of the victim, the same provision is to be applied under POCSO Act also, as per the decision of the Hon'ble Supreme Court in the case of *P.Yuvaprakash Vs. State Rep. By the Inspector of Police* reported in **2023 SCC OnLine SC 846**. Only since this mark certificate was not available during trial, in spite of the efforts taken by the appellant in producing other materials and examining the witness, the mark certificate which is now sought to be produced as additional evidence, was not produced during trial. The document sought to be produced is a material piece of evidence which would alter the entire case as the victim is not at all a child on the date of occurrence.



8. Opposing the petition, the learned Government Advocate (Crl.side) though had not filed the counter, argued that even though the appellant is entitled to produce additional evidence during the appeal, it is not a matter of course and the appellant has to satisfy that the document produced is required or material and also there is valid reason for not producing such a document during the trial. Therefore, sought for dismissal of this petition.

9. Heard the rival submissions and perused the materials.

10. The petitioner / appellant has been charged for the offences under Section 366 and 506(ii) IPC and also under Section 5(l) r/w. 6 of POCSO Act. When the appellant is charged with the offence under POCSO Act, first it was for the prosecution to establish before the Court the age of the victim. As per Section 2(d) of the POCSO Act, a child is defined who has not completed the age of 18 years. In the case on hand, the prosecution had filed the birth certificate of the victim as Ex.P11 to prove the age of the victim based on the date of birth in the certificate. To disprove the same in view of the presumption contained under POCSO Act, the appellant in order to dislodge the presumption, had examined the Headmaster as D.W.2 and also examined himself as D.W.3 and marked Exs.D1 and D2 which are the admission register and the attendance register of the victim. As per the documents produced on the side of the accused i.e. the admission register, the date of birth of the victim is 28.06.1999.



11. Though there is no specific provision in the POCSO Act, which stipulates the documents to be relied which takes precedence in ascertaining the date of birth of the victim, Section 94 of the Juvenile Justice Act stipulates the mode in which the age should be ascertained. Section 94 of the Juvenile Justice Act is extracted hereunder:

“ 94. Presumption and determination of age.

(1)Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2)In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining -

(i)the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii)the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii)and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3)The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”



12. The Hon'ble Supreme Court while dealing with *Yuvaprakash's case* (cited supra) had held that the same provision is to be applied to ascertain the age of the victim under the POCSO Act also. In view of the same, as per the provision, the matriculation certificate or any other equivalent certificate issued by the Board takes precedence in ascertaining the age of the victim. In the absence of the same, the birth certificate is to be relied on and only in the absence of these two certificate, the report from the ossification test should be taken into account.

13. In the instant case, though the matriculation certificate was available in the school, the prosecution had not taken steps to bring the material on record and the petitioner / appellant was able to bring in the other documents in Exs.D1 and D2 - the admission register and attendance register.

14. Now since the petitioner / appellant was able to procure a copy of the matriculation certificate of the victim, he has come up with the present petition for producing the document as an additional evidence in the appeal. In view of the vital nature of the document now sought to be produced and also the reasons adduced for not having been produced this document during trial, in the interest of justice, this Court is of the considered opinion that the production of this additional evidence would be necessary for effective adjudication of the appeal.



15. In view of the above, this Criminal Miscellaneous Petition is allowed and the petitioner is permitted to produce the Secondary School Leaving Marksheet of the victim through appropriate witness.

16. In view of the orders passed, the Registry is directed to send the records to the trial Court and the trial Court is directed to take the additional evidence on record and forward it to this Court for disposal of the appeal. For the said purpose the case shall be listed before the trial Court on 03.03.2026, on which date the petitioner / appellant shall be present before the Court. The said exercise shall be completed within a period of 6 weeks from then on.

17. List the Criminal Appeal after the receipt of the records.

06-02-2026

Index: Yes/No
Speaking/Non-speaking order
bkn

To:
1. The Inspector of Police
The Inspector Of Police, Denkanikottai,
All Women Police Station,
Denkanikottai, Krishnagiri District.
Cr.No.15/2017.
2. The Sessions Judge, Mahila,
Krishnagiri.



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G.ARUL MURUGAN J.
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