



CrI.OP.No.3790 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2026

CORAM:

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

CrI.OP.No.3790 of 2026

and

CrI.MP.No.2625 of 2026

Ravi

...Petitioner

Vs.

State rep. by its,
The Inspector of Police,
All Women Police Station,
Koothapakkam, Villupuram District.
Crime No.16 of 2021.

...Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C./528 of BNSS, 2023, to call for the records relating to the proceedings of the order in CMP.No.121 of 2025 in Spl.S.C.No.94 of 2022 (wrongly mentioned as Spl.S.C.No.94 of 2025) on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram, Villupuram District.

For Petitioner : Mr.R.Muruga Bharathi

For Respondent : Mr.S.Santhosh, GA(Crl. Side)



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ORDER

This criminal original petition has been filed seeking quashment of the order dated 29.07.2025 made in CMP.No.121 of 2025 in Spl.S.C.No.94 of 2022 (wrongly mentioned as Spl.S.C.No.94 of 2025 in the prayer portion in the affidavit and petition and hence, this Court proceeds to refer to the case with the correct number, namely, Spl.S.C.No.94 of 2022) by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram District.

2. The case of the petitioner is that he is an accused facing trial in Spl.S.C.No.94 of 2022 for the offences under Sections 354A, 341, 294(b) and 323 (3 counts) of IPC, Sections 9(m) r/w. 10 of the POCSO Act, 2012 and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram, Villupuram District and he filed a petition under Section 311 of Cr.P.C./348 of BNSS in CMP.No.121 of 2025 seeking recall of P.Ws.1 to 3 for cross-examination. However, the trial court, vide impugned order dated 29.07.2025, though allowed the said petition in



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respect of P.Ws.2 & 3, dismissed the said petition in respect of P.W.1.

Challenging the same, the present petition has been filed.

3. Learned counsel for the petitioner submitted that since certain necessary questions were not put to the victim girl/P.W.1 during the course of cross-examination, and as P.Ws.2 & 3 were not at all cross-examined due to some personal inconvenience, the petitioner filed a petition as aforesaid, seeking recall of P.Ws.1 to 3. The trial Court, vide order dated 29.07.2025, though allowed the said petition in respect of P.Ws.2 & 3, dismissed the same in respect of P.W.1/victim girl, without considering the necessity for cross-examining her, which is not sustainable. He further submitted that the petitioner has certain valid questions to be put to P.W.1/victim girl and the same is necessary to unfold the defence, enabling the trial court to arrive at a just and reasonable decision and if the petitioner is not permitted to recall PW1 for further cross-examination, he would be put to grave hardship. He also submitted that P.W.2 had already turned hostile and P.W.3, who is none other than the father of the victim girl is only a hearsay witness. Hence, he prayed to set aside the impugned order dated 29.07.2025.



4. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent submitted that the P.W.1/victim girl was aged only about 11 years at the time of occurrence and now she is aged about 15 years. He further submitted that as per Section 33(5) of the POCSO Act, the Special Court shall ensure that the child is not called repeatedly to testify in the Court. Accordingly, the trial court had rightly dismissed the recall petition filed by the petitioner under Section 311 of Cr.P.C., only in respect of P.W.1, while allowing the same in respect of P.W.2 & P.W.3, which cannot be said to be erroneous. Hence, he prayed for dismissal of this petition.

5. Heard learned counsel on either side and perused the materials available on record.

6. The facts are not in dispute. On a perusal of the order impugned, it can be seen that the trial court had specifically recorded that the victim girl/P.W.1 was examined in chief on 28.06.2023 and she was elaborately cross-examined by the petitioner on the very same day. In such circumstances, the petitioner/accused filed the recall petition in CMP.No.121 of 2025 stating that due to some personal inconvenience, proper cross-examination could not be done at the relevant point of time and hence,



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requested for allowing the petition under section 311 of Cr.P.C. in order to prove his innocence.

7. However, the said claim of the petitioner is not substantiated in any manner and the petitioner had failed to establish the fact that recalling of PW1 is absolutely necessary and that the same is necessary to arrive at a just and proper decision. Unless the petitioner establishes that examination of a witness is absolutely necessary, examination of a witness cannot be done at the pleasure or at the leisure of the defence counsel. Further, as held by the Hon'ble Apex Court in a plethora of decisions, when the accused had appointed a counsel of his choice, who was given due opportunity and had duly conducted cross-examination, mere incompetence or change of counsel cannot be a ground to recall the witnesses under Section 311 of Cr.P.C.

8. Superadded, it is not in dispute that P.Ws.2 & 3 were not cross-examined by the petitioner and hence, the trial court had allowed the recall petition in respect of the above said witnesses. It is not the case of even the petitioner that P.W.1 was not at all examined. When PW1 was cross-examined on the day she was examined in chief, it is beyond the ken of this



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Court as to what prevented the petitioner from eliciting the contradictions which he wants to do now on the day he cross-examined her for the first time in detail. Moreover, Section 33(5) of the POCSO Act also stares at the face of the trial Judge. Furthermore, when the cross-examination of P.W.1/ victim girl had taken place on 28.06.2023, the petitioner had filed the recall petition only in the year 2025, which fact cannot be slightly brushed aside.

9. Hence, the trial court, holding that the said petition has been filed by the petitioner only to fill up the lacuna and as a dilatory tactic, had dismissed the said recall petition in respect of P.W.1 and allowed the same in respect of P.W.2 & P.W.3 and this Court is of the view that no interference is warranted in the well merited order passed by the trial court in the recall petition filed by the petitioner under Section 311 of Cr.P.C..

10. For all the reasons aforesaid, this criminal original petition stands dismissed. Consequently, the connected miscellaneous petition is closed.

17.02.2026

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NCC : Yes/No

6/8



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To:
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1. The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Villupuram, Villupuram District.
2. The Inspector of Police,
All Women Police Station,
Koothapakkam, Villupuram District.
3. The Public Prosecutor,
Madras High Court.



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A.D.JAGADISH CHANDIRA, J.

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