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Crl OP No.5109 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2026

CORAM:

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl OP No.5109 of 2026

Kavikumar

... Petitioner

VS

State Rep by
The Inspector of Police,
Kandhili Police Station,
Tirupattur District.

.... Respondent

Prayer: Criminal Original Petition filed under Section 528 of BNSS, 2023, to set aside the order passed by the learned District and Sessions Judge, Tirupattur in Crl MP No.202 of 2026 in Spl SC No.89 of 2024 dated 02.02.2026 by permitting the petitioner to cross examine the PW1 to PW3.

For Petitioner : Mr.S.Ambigapathi

For Respondent : Mr.Leonard Arul Joseph Selvam
Additional Public Prosecutor

ORDER

This criminal original petition is filed to set aside the order passed by the learned District and Sessions Judge, Tirupattur in Crl MP No.202



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of 2026 in Spl.S.C.No.89 of 2024 dated 02.02.2026 by permitting the petitioner to cross examine the PW1 to PW3.

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2. Heard learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent.

3. On perusal of the materials, it is seen that the petitioner is facing the trial in Spl SC No.89 of 2024 has not cross examined PW1 to PW3 who are examined in Chief on 06.01.2026. The petitioner and PW2 had a love affair for quite some time. PW1 is the father and PW3 is the mother of PW2. They have not given approval of the love affair. On earlier occasion they had beaten the petitioner. But PW2 continued her love relationship with the petitioner. In fact according to the petitioner, his relative in Bangalore had died and he gone to attend the funeral on 06.01.2026. It was informed to the Trial Court and the Trial Court also condone his absence. The defence of cross examination was prayed but it was not granted. Thereafter, the petitioner has filed a petition under Section 348 of BNSS on the very next hearing date on 20.01.2026. In the meanwhile, the petitioner had filed a petition on 12.01.2026 under

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Section 348 of BNSS seeking to recall PW1 to PW3 for the purpose of cross examination in Crl MP No.202 of 2026 and the same has been dismissed by an order dated 02.02.2026.

4. It is seen from the contention and from the evidences of the witness, there was a love affair between the petitioner and PW2. PW2 in her evidence admitted that she had gone and met the petitioner and one of the days, PW2's father had seen both of them together and he had beaten the petitioner. On 05.04.2024, they both of them had gone to Bangalore and they were staying there. The police had come on 27.04.2024 in Bangalore and they were taken. PW1 and PW3 admitted that the victim girl was found missing from 05.04.2024 and they had filed Habeas Corpus Petition before this Court and thereafter, the victim girl was secured. The petitioner is aged about 24 years and the victim girl is aged 17 years and few months but less than 18 years. They have been in love affair despite the objection of the parents. These factors have to be necessarily put to the witnesses in this case. It is seen that to all the three witness the Trial Court had shown the photograph of the petitioner and through the photograph they identified, what is the photograph and when

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was the photograph was taken and now the photograph would be a substitute of physical identification. No reason has been given. Subsequently, it may be questioned in the appeal in future. This might be questioned and very identity would become questionable. Now the petitioner is ready to cross examine the witnesses in their recall.

5. In view of the above, this Court set aside the order passed by the Trial Court and directs the Trial Court to issue summons to the witnesses PW1 to PW3 to appear on 20.04.2026, which the case now been adjourned. The petitioner on receipt of order, shall deposit Rs.3,000/- to the credit of Spl SC No.89 of 2024 on the file of the District and Sessions Judge, Tirupattur.

6. Accordingly, this Criminal Original Petition is disposed of. No costs.

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Neutral Citation: Yes/No
mtl

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M.NIRMAL KUMAR, J.

mtl

To

1.The Inspector of Police,
Kandhili Police Station,
Tirupattur District.

2. The District and Sessions Judge, Tirupattur.

3. The Public Prosecutor
High Court, Madras.

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