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Crl.O.P. No. 6163 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2026

CORAM

THE HONOURABLE MR. JUSTICE M. NIRMAL KUMAR

Crl.O.P. No. 6163 of 2026

Karthikeyan

..Petitioner

Vs.

State rep. by
The Inspector of Police,
All Women Police Station,
Salem Town,
Salem District.
(Crime No. 47 of 2021)

..Respondent

Prayer: Criminal Original Petition under Section 528 of BNSS to set aside the order dated 24.11.2025 made in Crl.M.P. No. 1184 of 2025 in Spl. S.C. No. 142 of 2022 on the file of learned Sessions Judge, Principal POCSO Court, Salem.

For Petitioner :: Mr.J. Jayan

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

O R D E R

The petitioner/accused, who is facing trial in Spl. S.C. No.142 of 2022 for offences under Section 342 IPC and Sections 3 & 4 of POCSO Act,



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had filed a petition in Crl.M.P. No. 1184 of 2025 to recall P.W.2/the victim, in order to cross-examine her. The Trial Court, by order dated 24.11.2025, dismissed the said petition as against which the present criminal original petition has been filed.

2(i). The contention of the learned counsel for the petitioner is in this case, P.W.1, the mother of the victim and P.W.2, the victim, were examined in chief on 13.07.2023. On the same day, P.W.2 was cross-examined elaborately. However, P.W.1 was not cross-examined and subsequently, the petitioner had filed C.M.P. No. 911 of 2023 to recall P.W.1 and it was finally allowed on 24.08.2024. Though the recall petition was ordered, P.W.1 was hesitant to appear before the Court and only after bailable warrant was issued and coercive action was taken, she appeared and she was cross-examined in detail.

2(ii). According to the learned counsel for the petitioner, the evidence of P.W.1 was contradictory to that of the victim P.W.2 with regard to who had informed P.W.1 about the occurrence, which led to the lodging of complaint. P.W.2, in her evidence, had stated that she informed her mother about the occurrence and thereafter, the complaint was lodged while



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P.W.1 had stated that she was informed by one Sakunthala, who is the wife of her brother and this contradiction has to be proved. The learned counsel would also submit that there is prior enmity between the parties, regarding which suggestions will have to be put forth.

2(iii). It is further submitted by the learned counsel for the petitioner that in this case, the Trial Court dismissing the petition referring to Section 33(5) of POCSO Act is not proper and in support of this contention, he relied on the judgment of this Court dated 28.06.2022 passed in Crl.O.P. (MD) No. 11427 of 2022 (*Sankar V. State rep. through The Inspector of Police, Tirunelveli Town Police Station, Tirunelveli District (Crime No. 274 of 2019)*)).

3. Learned Additional Public Prosecutor for the respondent submitted that the case was registered in the year 2021 and almost 5 years have elapsed and the case in Special S.C. No. 142 of 2022 is yet to reach its finality. He would submit that after completion of investigation, charge sheet was filed in the year 2022 and the case was taken on file in Special S.C. No. 142 of 2022; P.W.s 1 and 2 were examined in chief on 13.07.2023; on the same day, P.W.2/victim was cross-examined in detail; however, the



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petitioner deliberately did not cross-examine P.W.1; subsequently, the petitioner filed a petition under Section 311 Cr.P.C. to recall P.W.1, the mother of the victim and the same was allowed on 24.08.2024, almost a year thereafter; P.W.1 appeared only on 08.09.2025 and she was cross-examined in detail. Since certain contradictions were elicited in the evidence of P.W.1, the petitioner filed Crl.M.P. NO. 1184 of 2025 on 25.09.2025 to recall P.W.2, the victim. According to the learned Additional Public Prosecutor, the citation relied on by the learned counsel for the petitioner would not be applicable in this case since the petitioner had been given a chance to cross-examine the victim and the victim had also been cross-examined in detail. Further, he relied on the judgment of the Honourable Apex Court rendered in ***Madhab Chandra Pradhan V. State of Orissa*** wherein the Apex Court has reiterated the principle that the victim should not be recalled unnecessarily and that too, in the present case, for the purpose of putting forth certain contradictions elicited during cross-examination of P.W.1/victim's mother, when already, the victim had been cross-examined in detail. The learned Additional Public Prosecutor would submit that the petitioner can very well put these contradictions to the



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Investigating Officer and if required, he may also examine the said Sakunthala to probabalise his defence of prior enmity and false implication. Therefore, he would submit that for this purpose, recalling P.W.2/victim is not justified.

4. Considered the submissions made on either side.

5. It is seen that the Trial Court, by a well-reasoned order, had dismissed the application filed by the petitioner to recall P.W.2/victim and there is a bar under Section 33(5) of POCSO Act. The victim had already been cross-examined in detail and if there is any contradiction, the petitioner can put forth the same to the Investigating Officer and if required, to Sakunthala, wife of P.W.1's brother. The grounds raised by the petitioner to recall P.W.2 are not justified. In view of the same, the criminal original petition stands dismissed.

10.03.2026

Neutral Citation: yes/No

nv

**(Note to Office: Issue order copy
today (10.03.2026))**



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M. NIRMAL KUMAR,J.

nv

To

1. The Sessions Judge,
Principal POCSO Court,
Salem.
2. The Inspector of Police,
All Women Police Station,
Salem Town,
Salem District.
3. The Public Prosecutor,
High Court, Madras.

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