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CRL OP No. 8906 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 09-04-2026**

CORAM

**THE HON'BLE MR JUSTICE M. NIRMAL KUMAR**

**CRL OP No. 8906 of 2026**

Babu

..Petitioner(s)

Vs

State Represented by  
The Inspector of Police,  
Polur All Women Police Station,  
Tiruvannamalai District.  
Cr. No.13/2023

..Respondent(s)

To set aside the order in Crl M.P. No. 344 of 2026 in Spl S.C. No.102 of 2023 dated 18-3-2026 passed by the Learned Special Court for Exclusive Trial of Cases Under POCSO Act, Tiruvannamalai and pass any or other such orders, that this Honorable Court may deem fit and proper under the facts and circumstances of the case and thus render justice.

For Petitioner(s): M/s. E. Sathiyaraj

For Respondent(s): Mr.Leonard Arul Joseph Selvam,  
Additional Public Prosecutor

### **ORDER**

The petitioner, who is arrayed as accused in Spl S.C. No.102 of 2023, for the offence under Sections 366, 354B, 376(3), 511, 506(ii) IPC and Section 7 r/w. 8, 6 r/w. 18 of POCSO Act 2012 filed a petition in Crl.M.P. No. 344 of 2026 to recall PW1 to PW3. The Trial Court by order dated 18.03.2026



dismissed the said petition. Aggrieved over the same, the present petition is filed.

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2. The contention of the petitioner is that there are 12 witnesses in this case. All the witnesses, except PW.1 to PW.3, were cross examined then and there without any delay. PW1 is the victim and PW2 and PW3 are the mother and father of the victim respectively, were examined in chief on 23.07.2025. On that day, since there was an Advocate boycott, the learned counsel for the petitioner was not permitted to enter the Court hall and therefore, he had not cross-examined the witnesses PW.1 to PW.3. With regard to other witnesses, they have been cross examined then and there. After completing the evidence by the Investigating Officer, a petition under Section 311 Cr.P.C. was filed and it was dismissed citing the judgment of the Supreme Court in *Vinothkumar vs. State of Punjab reported in 2015(1) MLJ (CRL) 288* and citing Section 33(5) of the POCSO Act as well as High Court's circular in ROC No.543/RG.2023/POCSO, dated 12.07.2024.

3. The learned counsel for the petitioner submitted that the Trial Court while dismissing the recall petition relied upon the decision of *Vinothkumar case*, but the same is not applicable to the facts of the present case, as the same pertains to the Prevention of Corruption Act. With regard to Section 33(5) of the POCSO Act, it is the contention of the learned counsel for the petitioner that it



is general in nature to ensure that the child witness is not repeatedly called for evidence to avoid physical and mental torment. Likewise, High Court's circular will be applicable, only when the trial is conducted in usual course and normal circumstances.

4. The learned counsel for the petitioner further by referring to deposition of PWs.1 to 3 submitted that it was not recorded as if opportunity was given and the counsel failed to cross examine the witness. It was only recorded as "no cross". Further, the learned counsel on the merits of the case submitted that the petitioner and the victim and are relatives having adjacent land and there was a family dispute with regard to property. Therefore, the petitioner has been falsely implicated in this case.

5. The learned counsel further submitted that PW1 is the victim and PW2 and PW3 are the parents of the victim. The admitted case is that they had gone to a Temple on that day and returned in the night hours. The incident was informed by PW1 that when the petitioner attempted to misbehave with PW1 and made a bad touch, it was PW4 another cousin, came their and rescued the victim. However, PW4 has deposed that on seeing him, the petitioner ran away. However, PW1's case is an exaggerated version. Thus, the evidence of PW1 and PW4 are contradictory.



6. The learned Additional Public Prosecutor submitted that PWs.1 to 3 were examined-in-chief on 23.07.2025. Thereafter, rest of the witnesses have been examined. The petitioner has not filed any petition to defer the cross and gave any reason at the time of examination, but after the end of trial, when Investigating Officer evidence was completed, the present petition has been filed. Therefore, the present petition is filed only to protract the trial. He further submitted that as per Section 33(5) of POCSO Act, the victim cannot be called again and again to undergo the trauma. Further, the Supreme Court judgment as well as the High Court's circular in ROC.No.543/RG.2023/POCSO, dated 12.07.2024 gave a direction that the witness has to be cross examined then and there without any delay. Now, the case is posted for examination of the accused under Section 313 Cr.P.C. on 22.04.2026. Hence, strongly opposed the present petition.

7. Considering above submissions and on perusal of materials, it is not in dispute that the petitioner and the victim's family are relatives and own adjacent lands. The case projected is that on 30.06.2023, the victim had gone to the field to collect tamarind. At that time, the petitioner attempted to undress her and PW4, who is a relative, came there and rescued her. However, the evidence of PW4 is that the petitioner holding the victim by hand and pulled her. There appear to be certain inconsistencies in the testimony, which require proper appreciation. Further, in this case, it is also to be seen that there exists a



property dispute between the parties. It is also to be taken in to account that on 23.07.2025, when PW1 and PW3 were examined, there was an Advocate boycott.

8. In view of the above circumstances, this Court finds sufficient grounds to interfere with the order of the Trial Court. Accordingly, the order 18.03.2026 passed by the Trial Court in Crl.M.P. No.344 of 2026 in Spl S.C. No.102 of 2023, is set aside. PW1 to PW3 are recalled for cross examination. It is made clear that the petitioner shall cross examine PW1 to PW3 on the date of their appearance without seeking any further time. In the event of failure to cross-examine on that day, the petitioner's right to cross-examine shall stand forfeited.

9. With the above directions, this Criminal Original Petition is allowed.

**09-04-2026**

Index: Yes/No  
Speaking/Non-speaking order  
Neutral Citation: Yes/No  
PVS

To

1. The Special Court for Exclusive Trial of Cases  
Under POCSO Act, Tiruvannamalai
2. The Inspector of Police,  
Polur All Women Police Station,  
Tiruvannamalai District. Cr. No.13/2023
3. The Public Prosecutor,  
High Court, Madras.



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**M.NIRMAL KUMAR, J.**

**PVS**

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