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CRL OP No. 9247 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-04-2026

CORAM

THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

CRL OP No. 9247 of 2026

Seetharaman

..Petitioner(s)

Vs

State Rep. by
The Inspector of Police
Kalasapakkam Police Station,
Tiruvannamalai District.
Cr.No. 56/2023.

..Respondent(s)

To set aside the order passed by the learned Sessions Judge, Special Court (POCSO Cases) Tiruvannamalai in Crl.M.P.No.1325/2025 in Spl.S.C.No. 119/2023 dt. 20.02.2026 and to pass such or other orders.

For Petitioner(s): Mr.A.Sathishkumar

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

ORDER

The petitioner, who is arrayed as accused in Spl.S.C.No.119 of 2023 for the offence under Sections 366, 354D, 511, 341, 363, 366(A), 376(1) of IPC and Sections 7, 8, 4, 18 11(iv) and 12 of POCSO Act, filed a petition in Crl.M.P.No.1325 of 2025 under Section 311 of Cr.P.C. to recall PW1 to PW4 and PW7 for cross examination. The Trial Court by order dated 20.02.2026, partly allowed the same by permitting to recall PW4 and PW7 and dismissed with regard to PW1 to PW3. Against which, the present petition has been filed.



2. The contention of the petitioner is that there exists a civil dispute between him and the parents of the victim. In this case, the victim was examined as PW1 and parents of the victim were examined as PW2 and PW3. The victim has been used as tool to implicate the petitioner. To prove the motive of false implication, the petitioner has necessarily to recall these witnesses for the purpose of cross-examination. He submitted that the petitioner was arrested in this case on 19.07.2025 and he came out on bail only on 10.10.2025. In the meantime, PWs.1 to 3 were examined in chief on 26.08.2025 and PWs.3 and 4 were examined on 10.09.2025. The petitioner while he was in custody, engaged a counsel, however, he failed to cross-examine the witnesses. After coming out of bail, the petitioner came to know that there was no cross-examination with regard to witnesses PWs.1 to 4 and 7. Hence, the petitioner engaged a new counsel and filed the present petition to recall. The Trial Court not considered the fact that at the time of chief examination, the petitioner was confined in prison and he was not having free access and he could not interact with his counsel and give proper instruction. This being so, by referring to the judgment of the Hon'ble Supreme Court in ***Vinoth Kumar vs. State of Punjab, reported in 2015 1 MLJ CRIMINAL 288*** and Section 33(5) of POCSO Act, dismissing the petition would not be proper. Hence, the petitioners seeks to set aside the said order and to recall PWs.1 to 3 for cross-examination.



3. The learned Additional Public Prosecutor opposed the petition and submitted that the ground that the earlier counsel failed to cross-examine the witnesses and a new counsel has been appointed, is not a valid ground for recall. This Court as well as the Apex Court have not entertained such contentions. Further, though the petitioner was in prison, he was very much present during the trial. At that time, he had not made any objection or requests for his counsel not cross-examining the witnesses. At that time keeping quite and later raising such plea cannot be entertained.

4. The learned Additional Public Prosecutor further submitted that Section 33(5) of POCSO Act, there is a clear bar to repeatedly call the victim for testimony. Further, a Division Bench of this Court in HCP.(MD).No.147 of 2025 has observed that the circular in ROC.No.543/RG.2023/POCSO, dated 12.07.2024 has to be strictly followed, wherein it has been directed that the witness to be cross-examined then and there and no opportunity will be given to recall the victim for cross-examination.

5. In reply, the learned for the petitioner submitted that the petitioner was arrested and he was in custody during the period when the witnesses were examined. Therefore, the Trial Court considering the plea of the petitioner, has recalled PW4 and PW7 on payment of Rs.2,000/- to each of the witnesses.



6. Considering the above submissions and on perusal of materials, it is not in dispute that the petitioner was arrested in this case on 19.07.2025 and he was in prison till 10.10.2025. In the meantime, PW1 and PW2 were examined on 26.08.2025 and PW3 and PW4 were examined on 10.09.2025. PW1 is the victim and PW2 and PW3, are the parents of the victim. It is the specific contention of the petitioner that there is a civil dispute between the parties and that the prosecution is motivated.

7. In view of the above, this Court finds that the petitioner was in jail during cross-examination of the witnesses and he was having only limited access at that time. Further, the erstwhile counsel committed a mistake, for which, the petitioner cannot be punished. The evidence of the witness get completed only when it is tested by cross-examination. Embargo citing Section 33(5) of POCSO Act and *Vinothkumar's case* will not be applicable to the facts of the case.

8. In view of the same, this Court is inclined to set aside the order of dismissal to recall PW1 to PW3. Accordingly, PW1 to PW3 are permitted to be recalled on payment of costs of Rs.2,000/- (Rupees two thousand only) to each of the witnesses (totalling Rs.6,000/-). The petitioner shall cross-examine the witnesses on the day of their appearance without seeking any further



adjournment. The Trial Court shall ensure that the entire process is completed expeditiously without any delay. Accordingly, this petition is allowed.

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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

PVS

To

1. The Sessions Judge, Special Court (POCSO Cases) Tiruvannamalai

2. The Inspector of Police
Kalasapakkam Police Station,
Tiruvannamalai District.
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3. The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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