



WEB COPY

CRL OP No. 9968 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-04-2026

CORAM

THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

CRL OP No. 9968 of 2026

and

CRL MP No. 7113 of 2026

Sathish

..Petitioner

Vs

The State Rep By,
The Inspector of Police
Vandavasi - AWPS,
Tiruvannamalai District.
(Crime No.5 of 2021)

..Respondent

Prayer: Criminal Original Petition filed under Section 528 of BNSS to set aside the order in Crl.M.P.No.1156 of 2025 in Spl.SC.No.50 of 2021 dated 07.03.2026 passed by the learned Special Court for Exclusive Trial of Cases under POCSO act, Tiruvannamalai.

For Petitioner:

Mr. Sathiyaraj. E

For Respondent:

Mr. Leonard Arul Joseph Selvam
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order in Crl.M.P.No.1156 of 2025 in Spl.SC.No.50 of 2021 dated 07.03.2026 passed by the learned Special Court for Exclusive Trial of Cases under the POCSO act, Tiruvannamalai.



2. The petitioner / accused facing trial in Spl. S.C. No.50 of 2021 had filed a petition in Crl.M.P.No.1156 of 2025 before the trial Court to recall PW1, PW2 and PW5. The trial Court, by order dated 07.03.2026, partly allowed the petition, permitting the petitioner to recall and cross-examine PW5, but dismissed the petition insofar as PW1 and PW2 are concerned, who are the victim and the mother of the victim.

3. The contention of the petitioner is that PW1 and PW2 were examined on 31.10.2023 and PW5 was examined on 25.03.2024. Due to the ill health, his counsel was unable to appear and therefore, the cross-examination of PW1, PW2 and PW5 could not be conducted. He further submitted that a false case has been projected against the petitioner, alleging that he made improper sexual advances towards the victim girl. There is a dispute between the petitioner and the defacto complainant's family and for that reason, the petitioner has been falsely implicated. To prove his defence, it is necessary for him to cross-examine the witnesses.

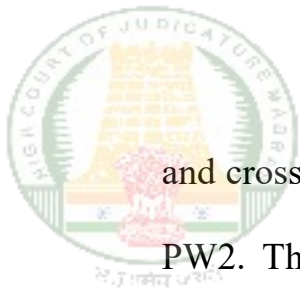
4. The learned Additional Public Prosecutor for the respondent strongly opposed the petitioner's contention and submitted that in this case, the victim, was 10 years old at the time of the occurrence and that the petitioner had committed the offence. After a lapse of three years, the victim has now been examined. The victim is a school going child who was studying in the 6th



standard at the time of the occurrence and she has been examined in chief on 31.10.2023. She had earlier confirmed the case of the prosecution in her statement recorded under Section 164 Cr.P.C. Recalling the petitioner and the school going child repeatedly would not be proper and would attract Section 33(5) of the POCSO Act. The learned Additional Public Prosecutor, therefore, opposed the petition and fairly submitted that the mother of the victim may be permitted to be cross-examined, provided that the petitioner pays sufficient costs.

5. Considering the submissions and upon perusal of the materials on record, it is seen that the petitioner, who is facing trial in Spl.S.C.No.50 of 2021, has filed a petition under Section 311 Cr.P.C., to recall PW.1, PW2 and PW5, who are the victim, victim's mother and a relative, respectively. The said petition was partly allowed by the trial Court, dismissed the same in respect of PW1 and PW2 and permitting recall of PW5 on payment of costs of Rs.2,000/-.

6. In view of the above, this Court is of the opinion that insofar as PW1 is concerned, she being a victim girl, recalling her for cross-examination would cause unnecessary hardship and repeated exposure to the incident, which is impermissible in view of the mandate under Section 33(5) of the POCSO Act. Hence, the petition for recall and cross-examination, insofar as PW1 is concerned, is dismissed. In respect of PW2, the petitioner is permitted to recall



and cross-examine the said witness, subject to payment of costs of Rs.2,000/- to PW2. The trial Court is directed to recall PW2 and permit the petitioner to cross-examine her on the same day of her appearance.

7. In the result, this Criminal Original Petition is partly-allowed.
Consequently, connected miscellaneous petition is closed.

21-04-2026

Neutral Citation: Yes/No
AT

To:

1.The Special Court for Exclusive Trial of Cases under POCSO Act,
Tiruvannamalai.

2. The Inspector of Police
Vandavasi - AWPS,
Tiruvannamalai.

3.The Public Prosecutor
High Court of Madras



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M.NIRMAL KUMAR, J.

AT

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