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CRL OP No. 10788 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-04-2026

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THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

CRL OP Nos.10788 & 10793 of 2026

Crl.M.P.No.7641 of 2026

Sukumar

..Petitioner(s)
in Crl.O.P.No.10788 of
2026

Baskaran

..Petitioner(s)
in Crl.O.P.No.10793 of 2026

Vs

State Rep.by,
The Inspector of Police,
Vanapuram Police Station,
Cr.No.147 of 2022.

..Respondent(s)

Prayer in Crl.O.P.No.10788 of 2026:- Criminal Original Petition is filed under Section 528 of BNSS Act, 2023, pleaded to call for the records and set aside the order dated 04.03.2026 made in Crl.M.P.No.942/2025 in Spl.SC.No.44 of 2023 on the file of the Special Court for Exclusive Trial of Cases under Pocso Act, Thiruvannamalai and consequently, permit the petitioner to cross examine PW1/Victim and pass such further or other orders.

Prayer in Crl.O.P.No.10793 of 2026:- Criminal Original Petition is filed under Section 528 of BNSS Act, 2023, pleaded to call for the records and set aside the order dated 04.03.2026 made in Crl.M.P.No.1315/2025 in Spl.SC.No.44 of 2023 on the file of the Special Court for Exclusive Trial of Cases under Pocso Act, Thiruvannamalai and consequently, permit the petitioner to cross examine PW1/Victim and pass such further or other orders.



In Both cases:-

For Petitioner(s):	Mr.R.P.Ruban Chackravarthi
For Respondent(s):	Mr.Leonard Arul Joseph Selvam
	Additional Public Prosecutor

COMMON ORDER

These petitions are filed challenging the orders passed by the Special Court for Exclusive Trial of Cases under the POCSO Act, Thiruvannamalai, in Crl.M.P.Nos.942 & 1315 of 2025 in Spl.S.C.No.44 of 2023.

2.The petitioners, arrayed as A1 and A3, are facing trial in Spl.S.C.No.44 of 2023 for the offences under Sections 450, 376 (2) (n), 366 and 506 (1) of I.P.C, and Sections 5 (l), 6(1), 5 (j) (ii) of POCSO Act, 2012. In this case, P.W.1 was examined on 22.08.2025. Although, the First Information Report was registered on 04.07.2022 and the charge sheet was filed on 21.03.2023, the case was only taken on file on 11.06.2025 and remained pending at the stage of framing charges for more than one and half years. The primary contention of the petitioners is that P.W.1 was chief-examined on 22.08.2025, however, DNA report was made ready on 18.12.2025, and received by the Court on 21.12.2025. Consequently, the Section 207 of Cr.P.C. proceedings incomplete and the petitioners were handicapped to cross-examine without DNA report. Further, the previous counsel failed to take necessary steps to defend the petitioner, leading to a change of counsel. These vital facts have not been considered by the trial Court and dismissed the petitions by relying on the *Vinoth Kumar* case, Section 33 (5) of the POCSO Act and the order in HCP (MD) No.147 of 2025.



3.The learned Additional Public Prosecutor for respondent fairly submitted that the case was kept pending for framing of charges from 01.09.2023 to 11.06.2025. He confirmed that DNA report which forms part under Section 207 was only ready on 18.12.2025 and received by the trial Court on 21.12.2025, after P.W.1 was examined on 22.08.2025. The copy of the DNA report was served on the petitioners.

4.Considered the rival submissions and perused the materials available on record.

5.This Court is of the view that *Vinoth Kumar* case pertains to the Prevention of Corruption Act. While Section 33 (5) of the POCSO Act, states that a child witness should not be frequently recalled, it is subject to the compliance of 207 proceedings. Since, DNA report was furnished only after 21.12.2025, the petitioners were handicapped when P.W.1 was examined on 22.08.2025. Since, A1 / Sugumar charged for penetrative sexual assault and rape, he cannot establish his defence. It is also seen that, P.W.1 has not yet been cross-examined by any of the accused. The evidence of a witness must be tested through cross-examination which would be beneficial for both the accused and the prosecution, thereby enabling the trial Court to reach a just decision. Accordingly, the order passed by the Special Court for Exclusive



Trial of Cases under Pocso Act, Thiruvannamalai in Crl.M.P.Nos.942 & 1315 of 2025 in Spl.SC.No.44 of 2023 on 04.03.2026 are set aside. The trial Court is directed to recall P.W.1 for cross-examination. On the date of the appearance of the P.W.1, the petitioners shall complete the cross-examination on payment of costs of Rs.2500/- each to P.W.1. It is made clear that P.W.1 shall be recalled on only one occasion and the cross-examination must be completed without any delay.

6. Accordingly, these Criminal Original Petitions are allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

28-04-2026

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To

1. Special Court for Exclusive Trial
of Cases under Pocso Act, Thiruvannamalai.

2. The Inspector of Police,
Vanapuram Police Station.

3. The Public Prosecutor
High Court of Madras.

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M.NIRMAL KUMAR, J.

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