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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-11-2026

Case QR

CORAM

THE HON'BLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL OP No. 34389 of 2026

CNR: {HCMA012623892026}

Pakkirisamy
S/o.Pethan,
Colony Theru,
Therkku Pidagai,
Melmaruthur,
Thiruthuraipoondi,
Tiruvarur.

..Petitioner(s)

Vs

State Through, The Inspector of Police
All Women Police Station,
Thiruthuraipoondi,
Cr.14 of 2021.

..Respondent(s)

Prayer: This petition is filed under section 528 of BNS to set aside the partly dismissed order dated 05.03.2026 passed by the learned Sessions Judge Fast Track Mahila Court, Tiruvarur, in M.P.No.11 of 2026 in Spl.S.C.No.19 of 2022 and consequently direct the trial court to proceed with re-cross examine the PW2 in accordance with law and pass such further or other orders.

For Petitioner(s): P.A.Manikandan, Legal Aid Counsel

For Respondent(s): Mr.R.Ganesh Kumar,
Additional Public Prosecutor

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ORDER

This petition has been filed to set aside the order dated 05.03.2026 passed in M.P.No.11 of 2026 in Spl.S.C.No.19 of 2022 on the file of the learned Sessions Judge, Fast Track Mahila Court, Tiruvarur, thereby dismissing the petition to recall P.W.2. for cross examination and partly allowed the same with regard to recall of P.W.1 and P.W.3.

2. The petitioner is an accused and he is facing charges for the offence under sections 366(A) of I.P.C. r/w Section 3 and 4 of POCSO Act,2012. On the side of the prosecution, they had examined P.W.1 to P.W.16 . After closing the prosecution witnesses the accused had examined D.W.1, at that juncture the accused had filed a petition to re-call P.W.1 to 3 for cross examination on the ground that during the Chief examination of P.W. 1 to 3, the accused was in prison and he was not able to cross examine P.W.1 to P.W.3. After engaging the learned counsel from the District Legal Service Authority to defend the case he filed the recall petition.

3. Considering the above facts the Trial Court dismissed the recall petition with regard to P.W.2 citing Section 33(5) of POCSO Act and partly allowed the petition with regard to P.W.1 and P.W.3.

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4. On perusal of records reveals that on the date of occurrence, the Victim girl was aged about 7 years and the accused was aged about 78 years. On the complaint lodged by the mother of the victim the respondent registered the FIR in Crime No.14 of 2021. Thereafter, the victim girl was taken to hospital for medical examination. Further the victim girl refused for medical examination and also her mother refused to subject the victim girl for medical examination. Thereafter, statement was recorded under Section 164 of Cr.P.C was recorded before the Judicial Magistrate, Thiruthurai Poondi. According to her the statement after removing the victim dress the accused laid on the victim girl and while one GiriShanth came into his house immediately after seeing him, the accused relieved her and she went to her house and informed about the occurrence to her parents.

5. However, the respondent recorded her statement as if the accused had committed aggravated sexual assault on the victim. Thereafter the victim statement was recorded as per the same verbatim under Section 164 of CR.P.C which is completely contradictory to the statement recorded under section 161 of CR.P.C. Therefore, for that reason the victim girl refused to undergo medical examination. The mother of the victim is not interested to subject the victim for medical examination. That apart according to the victim girl one Girishanth came to the house of the accused and after seeing him, the accused left her.

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Thereafter the victim girl went to her house. However, the prosecution did not even examine the said Girishanth and failed to array him as one of the witnesses. These circumstances would clearly demonstrate that there is no absolute material to attract the offence under Sections 3 and 4 of POCSO Act at the least the accused can be tried for the offence under section 11 (2) of the POCSO Act. Therefore, the accused must be given an opportunity to cross examine P.W.2.

6. Considering the above circumstances and in order to give one more opportunity to the petitioner to put forth his defence, the order dated 05.03.2026 passed in M.P.No.11 of 2026 in Spl.S.C.No.19 of 2022 on the file of the learned Sessions Judge, Fast Track Mahila Court, Tiruvarur is hereby set aside. The accused is permitted to cross examine P.W.2. on the date fixed by the Trial Court.

7. In the result, this Criminal Original Petition is allowed.

24-11-2026

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

SMN
Note: The Registry is directed to issue order copy on 26.11.2026

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To.

1. The Judicial Magistrate, Thiruthurai poondi.

2. The Sessions Judge, Fast Track Mahila Court, Tiruvarur

3. The Inspector of Police
All Women Police Station,Thiruthuraipoondi,

4. The Public Prosecutor, High Court, Madras

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G.K.ILANTHIRAIYAN, J.

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