



Crl.O.P.No.36051 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2026

CORAM:

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

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Santhosh @ Santhoshkumar

... Petitioner

Vs.

The Station House Officer,
Neyveli All Women Police Station,
Cuddalore District.

(Crime No.16 of 2021)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita/Section 482 Cr.P.C., to set aside the order passed in Crl.M.P.No.1329 of 2024 dated 26.09.2024 in Spl.S.C.No.25 of 2022, pending on the file of the learned Sessions Judge, Mahila Court, Cuddalore.

For Petitioner : Mr.N.Arun Kumar

For Respondent : Mr.S.Santhosh
Government Advocate (Criminal Side)

ORDER

The present Criminal Original Petition has been filed seeking to set aside the order passed by the learned Sessions Judge, Mahila Court, Cuddalore, dated 26.09.2024, in Crl.M.P.No.1329 of 2024 in Spl.S.C.No.25



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of 2022, dismissing the petition filed by the petitioner under Section 311

Cr.P.C., seeking to recall PW1 to PW3.

2. The brief facts of the case are as follows:-

2.1. The petitioner is an accused facing trial in Spl.S.C.No.25 of 2022 before the Mahila Court, Cuddalore, for the offences punishable under Sections 366, 506(i) of IPC r/w Sections 5(l) r/w 6 of POCSO Act and Section 9 of the Prohibition of Child Marriage Act, in Crime No.16 of 2021, on the file of the respondent Police.

2.2. In the said case, the petitioner/accused filed a petition in CrI.M.P.No.1329 of 2024 under Section 311 of Cr.P.C., seeking recall of witnesses PW1 to PW3. The learned Sessions Judge allowed the petition in respect of cross-examination of PW2 and PW3 alone, subject to payment of costs of Rs.2,500/- each within three days. Since the petitioner failed to comply with the said condition, the petition came to be dismissed. Aggrieved by the same, the present petition has been filed.

3. The submissions of the learned counsel appearing for the petitioner are as follows:-

3.1. Due to want of proper legal advice, the petitioner did not cross-examine PW1 to PW3 on the date of their examination in chief.



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Therefore, the petitioner filed a petition under Section 311 Cr.P.C. seeking recall of the said witnesses and the petition was allowed with a condition to pay costs.

3.2. Since the petitioner was unable to raise funds to pay the costs within the stipulated time, the petition was dismissed.

3.3. PW1 is the victim and PW2 and PW3 are the mother and maternal aunt respectively of the victim, and they are crucial witnesses. If the petitioner is not given a chance to recall and cross-examine the said witnesses, he would be put to a great predicament.

3.4. Though there is a bar under Section 33(5) of the POCSO Act to recall the victim, as on date, the age of the victim/PW1 is 21 years. Hence, he prayed that the order passed in CrI.M.P.No.1329 of 2024 dated 26.09.2025 be set aside and that the petitioner be permitted to recall PW1 to PW3 for cross-examination, on terms as to costs.

4. Learned Government Advocate (Criminal Side) submitted that the petitioner failed to cross-examine the witnesses on the date of their examination in chief and despite an opportunity being granted by the trial Court to cross-examine PW2 and PW3, the petitioner failed to comply with the conditional order. He further submitted that the victim/PW1 was 16 years old at the time of occurrence and is now aged 21 years. He also

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submitted that there are 25 witnesses in this case and the matter now stands posted for examination of three more witnesses on 23.01.2026.

5. On the enquiry made by this Court as to whether the respondent police would be able to produce the witnesses on a date to be fixed by the trial Court, the learned Government Advocate (Criminal Side), on instructions, submitted in the affirmative.

6. Having heard the learned counsel appearing on either side and upon perusal of the materials available on record, this Court is of the view that the trial Court, having found that no valid reasons were stated by the petitioner for his failure to cross-examine the witnesses, dismissed the petition insofar as PW1 is concerned. However, it fairly permitted the petitioner to recall PW2 and PW3. Therefore, this Court does not find any infirmity in the said order. Nevertheless, taking into consideration the fact that PW1 to PW3 are essential witnesses to arrive at a just decision of the case and that PW1/victim has now attained majority, this Court is inclined to grant one opportunity to the petitioner to cross-examine PW1 to PW3, subject to payment of costs.



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7. Accordingly, this Criminal Original Petition is allowed and the order passed by the learned Sessions Judge, Mahila Court, Cuddalore, in Crl.M.P.No.1329 of 2024 in Spl.S.C.No.25 of 2022, dated 26.09.2024, is set aside, on condition that the petitioner deposits a sum of **Rs.7,500/-** (Rs.2,500×3 witnesses) before the trial Court **on or before 23.01.2026**.

8. On such deposit made by the petitioner, the learned trial Judge shall recall PW1 to PW3 and fix a date for their cross-examination. It is made clear that the petitioner shall cross-examine the said witnesses on the very same day of their appearance. In the event of failure to do so, the petitioner will lose the opportunity to cross-examine the said witnesses.

9. The trial Court shall disburse a sum of Rs.2,500/- to each of the witnesses, namely PW1 to PW3, on the date of their appearance.

07.01.2026

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Neutral Citation: Yes/No

Note: Issue order copy by 09.01.2026



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WEB COPY

To

1. The Sessions Judge,
Mahila Court, Cuddalore.
2. The Station House Officer,
Neyveli All Women Police Station,
Cuddalore District.
3. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA, J.

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