



CRL OP(MD). No.404 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 09/01/2026

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THE HONOURABLE MRS. JUSTICE L. VICTORIA GOWRI

CRL OP(MD). No.404 of 2026

and

CRL MP(MD). No.399 of 2026

Sulochana @ Brindha

... Petitioner

Vs

The State of Tamilnadu,
Rep by the Inspector of Police,
Musiri All Women Police Station,
Trichy District.
Crime No.03 of 2023.

... Respondent

PRAYER :-

To Call for the records and set aside order dated 21.11.2025 made in Crl MP No.2254/2025 in Spl SC No.37/2023 on the file of Learned Sessions Judge, Mahila Court, Tiruchirappalli and allow the above petition.

For Petitioner : Mr. K. M.Karunakaran,
Advocate.

For Respondent : Mr.S.Ravi
Additional Public Prosecutor



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ORDER

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This Criminal Original Petition is filed to call for the records and set aside order dated 21.11.2025 made in CrI MP No.2254/2025 in Spl SC No.37/2023 on the file of Learned Sessions Judge, Mahila Court, Tiruchirappalli and allow the above petition.

2. The learned counsel for the petitioner submitted that the petitioner is the first accused in Spl.S.C.No.37 of 2023, for the alleged offences punishable under Sections 366(A) of IPC, Section 3 and 4 read with Sections 16 and 17 of POCSO Act, before the learned Sessions Judge, Mahila Court, Tiruchirappalli. That the petitioner had filed an application in CrI.M.P.No.2254 of 2025, under Section 311 Cr.P.C., to recall P.W.1 to P.W.3 for cross examination on the side of the first accused. However, the learned trial Court had rejected the same and therefore the petitioner sought for indulgence of this Court for the ends of fair trial.

3. Mr.S.Ravi, learned Additional Public Prosecutor categorically contended that already the victim was examined twice, earlier at the instance of the second accused. It is a settled proposition of law in



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POCSO Act cases that the victim should not be time and again, called to appear before the court in the name of giving evidence and sought for dismissal of this case.

4. Learned counsel for the petitioner submitted that he had engaged a counsel before the trial Court, who had failed to cross examine the witnesses and therefore, he had engaged a new counsel who filed a petition under Section 311 of Cr.P.C., to recall PW1 to PW3 for cross examination.

5. Learned Additional Public Prosecutor, in reply, submitted that change of counsel is not a ground for allowing the recall petition.

6. Heard either sides and carefully perused the materials available on record.

7. A careful reading of the impugned order would make it clear that there is no infirmity in the same and the learned trial Court had dismissed the petitioner's application after observing as follows:

" 8. On perusal of records, it is noted that P.W.1 and P.W.2 were examined-in-chief on 14.09.2023. The PW3 was examined



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in chief on 04.08.2025. The said witnesses were not cross examined by the Petitioner / 2nd accused on the dte of Chief examination. Sufficient opportunity was given to the petitioner / 2nd accused to cross examine the witnesses on the day of chief examination. The petitioner / 2nd accused has not stated any reason for not cross examine the P.W.1 to P.W.3 at the time of chief examination. Even though the petitioner / 2nd accused counsel present at the time of chief examination of P.W.1 to P.W. 3, they fail to cross examine the PW1 to PW3. PW1 is the victim in this case, who is aged about 13 years. The victim cannot be traumatized again and again. P.W.2 is the mother of the victim and the PW3 is the father of the victim. Already the 2nd accused cross examined the P.W1 and PW2 on petition. At that time also this petitioner 2nd accused did not choose to cross examine the witnesses. This petitioner / 2nd accused kept silent for more than two years, now came forward with this petition. The learned counsel for the petitioner / 2nd accused stated that he filed change of Vakalath for the petitioner/2nd accused so he wants to cross examine P.W1 to PW3. But no such grounds were raised by the petitioner / 2nd accused in this petition. Even then the change of counsel is not a valid ground to recall PW1 to PW3. The Hon'ble Supreme Court in the judgment reported in 2015(1)MLJ (Crl) 288 [Vinod Kumar Vs State of Punja] categorically held that witnesses will have to be cross examined on the very same day of examination-in-chief and the witness



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could not be recalled at the whims and facies of the defence.

There are catena of judgments where in it has been held that the power under Section 311 of Cr.P.C., must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection.

8. From the observations made by the learned trial court as extracted above, I don't find any necessity to. show any indulgence in interfering with the impugned order thereby causing great hardship to the victim. Accordingly, this Criminal Original Petition fails and the same is dismissed. Consequently, connected miscellaneous petition stands closed.

09.01.2026

NCC : yes / no
Index : yes / no
Internet : yes / no

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L. VICTORIA GOWRI, J

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To

1. The Sessions Judge, Mahila Court, Tiruchirappalli.
2. The Inspector of Police, Musiri All Women Police Station,
Trichy District. Crime No.03 of 2023.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER

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