



CRL OP(MD). No.2240 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : 05/02/2026

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THE HONOURABLE MRS. JUSTICE L. VICTORIA GOWRI

CRL OP(MD). No.2240 of 2026

Gurusamy

... Petitioner

Vs

State of Tamilnadu Rep by
Inspector of Police, Awps-Andipatti,
Theni District.
Cr.No.35/2023.

... Respondent

PRAYER :-

To call for the records and set aside the order dated 06.01.2026 passed in Cr.MP.No.01/2026 in Spl.SC No.03/2024 on the file of the learned court of Principal Special Court for Exclusive Trial of Cases under POCSO Act, Theni, Theni District.

For Petitioner : Mr. P.Senguttuarasan,
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 the order dated 06.01.2026 passed in Cr.MP.No.01/2026 in Spl.SC No.03/2024 on the file of the learned court of Principal Special Court for Exclusive Trial of Cases under POCSO Act, Theni, Theni District.

2. Learned counsel for the petitioner submitted that the petitioner is the sole accused in the case which is pending trial in Spl.S.C.No.3 of 2024. He had filed a petition under Section 348 of BNS seeking to recall PW.2 and PW.12 for cross examination. However, the same was negatived and rejected by the learned trial court. Seeking indulgence of this Court, the present petition came to be filed.

3. Learned Additional Public Prosecutor appearing for the respondent, on instructions, submitted that P.W.2, who is sought to be recalled for cross examination is the Victim and P.W.12 is the investigating officer. Both the witnesses were examined in chief before the trial Court on 24.02.2025. But the learned counsel appeared for the



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petitioner before the trial Court, failed to cross examine them on the same day. Having not preferred to cross examine both the witnesses on the same day of examination in chief, now they preferred a petition to recall the witnesses. Under Section 348 of BNS, it is a settled proposition of law that in POCSO matters, the victim should not be subjected to appear before the trial court for deposing evidence again and again and pointed out that there is no infirmity in the impugned order and pressed for dismissal of this Criminal Original Petition.

4. Heard the learned counsel on either side and perused the materials available on record.

5. A plain reading of the impugned order would make it clear that PW-2, the victim child was examined in chief on 24.02.2025. She has clearly deposed that the petitioner had committed penetrative sexual assault. But she was not cross examined by the petitioner on the same day, whereas PW-12, one Veeramma who is the mother of PW-2 victim child, was cross examined on 24.02.2025 that is on the date when the victim was examined in chief. This shows that the learned trial Court had



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properly conducted the trial and that sufficient opportunity was availed by the defense to cross examine PW-2, but he had preferred not to cross PW-2 on the said date. Further, the learned trial court has also observed that the present petition has been filed after a prolonged gap of 10 months from the date of chief examination and only to protract the proceedings the present application has been filed and the same was promptly dismissed by the trial Court.

6. It is needless to state that as per the mandate of Section 33(5) of the POCSO Act 2012, a victim child cannot be repeatedly called before the court, as it would amount to second victimization. Accordingly, I donot find any demerits in the trial court decision to negate the petitioner's application seeking permission to recall PW-2 for cross examination.

7. However, to ensure fair trial, the petitioner's application seeking to recall PW 10 should not be negatived since no reasons has been given by the trial court for rejecting the said claim.



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8. Accordingly, the impugned order dated 06.01.2026 passed in Cr.MP.No.01/2026 in Spl.SC No.03/2024 on the file of the learned court of Principal Special Court for Exclusive Trial of Cases under POCSO Act, Theni, Theni District, is partly set aside, directing the trial Court to permit the petitioner to recall PW 12, on payment of batta for Rs.10,000/- (Rupees Ten Thousand only) to the witness. However, it is made clear that the trial Court will ensure that the the petitioner concludes the cross examination of P.W.12, on the same day of recalling the witness and the petitioner is not permitted to seek for any adjournments.

9. With the above direction, this Criminal Original Petition is partly allowed.

05.02.2026

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

Note: Issue order copy on **05.02.2026**

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L. VICTORIA GOWRI, J

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To

1. The Principal Special Court for Exclusive Trial of Cases under POCSO Act, Theni, Theni District.
2. The Inspector of Police, Awps-Andipatti, Theni District. Cr.No.35/2023.
3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

ORDER

IN

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Date : 05/02/2026