



Crl.OP.(MD).No.6446 of 2026

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2026

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

Crl.OP.(MD)No.6446 of 2026

1. Esakki Muthu

2. Suganthi

...Petitioners/Accused Nos.3 & 4

Vs

The State of Tamilnadu,
Rep by the Inspector of Police,
AWPS Kanniyakumari Police Station,
Kanniyakumari District.
Crime No.36/2021.

...Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS Act, 2023, to call for the records and set aside the order dt. 24.02.2026 passed in Crl.M.P. No.50 of 2026 in Spl.S.C.No.82 of 2022 on the file of the Learned Special Judge of POCSO Act Cases, Nagercoil and pass such further or other orders.

For Petitioners : M/s.C.Muthusaravanan

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



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ORDER

The present petition has been filed by the Accused Nos.3 & 4 in Spl.S.C.No.82 of 2022, on the file of the learned Special Judge for POCSO Act Cases, Nagercoil, seeking to set aside the order passed in Crl.M.P.No.50 of 2026, wherein, the application filed by the petitioners under Section 311 of Cr.P.C. has been rejected.

2. The P.W.1 to P.W.4 were cross examined on 07.01.2026 and it was posted on 27.01.2026 for examination of further witnesses. On the said date, 311 application was filed on the ground that on 07.01.2026 due to the absence of the learned Counsel for the accused persons, P.W.1 to PW.4 could not be cross examined. However, the said petition has been dismissed under the impugned order dated 24.02.2026.

3. A perusal of the impugned order reveals that the learned Judge has invoked Section 33(5) of the POCSO Act and has rejected the application on the ground that the child has repeatedly called to testify before the Court.

4. The learned Counsel appearing for the petitioners submitted that the victim girl has attained majority and therefore, the bar under Section 33(5) cannot be invoked. That apart, he further submitted that on the next date of hearing itself, 311 application has been filed and therefore, there was no delay on the part of the accused persons. He also relied upon the decision of this



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Court in ***S.Ganeshan Vs. State represented by the Inspector of Police***, reported in **2022 LiveLaw (Mad) 116**. Paragraph No.11 has held as follows:-

“In view of the above, a heavy burden is caused on the petitioner to rebut the presumption which operates against him. As stated above, P.W.2, P.W.7 & P.W.8 are crucial witnesses. If the witnesses are not cross examined, the evidence stands unrebutted and it would amount to a case of no defence resulting in grave prejudice to the petitioner. However, in this case, the victim is now aged about 21 years and she will not fall within the definition of “child” so as to Section 33(5) of the POCSO Act, 2012.”

5. Considering the above said facts, the order impugned in Crl.M.P.No.50 of 2026 in Spl.S.C.No.82 of 2022, is hereby set aside and the Criminal Original Petition stands allowed. The petitioners are directed to file the process memo within a period of three days from the date of receipt of a copy of this order. It is further directed that the cross-examination shall be completed on the same day on which the witnesses appear. It is made clear that no further chance will be granted to the accused persons.

01.04.2026

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
gvn

Note:
Issue Order copy on 06.04.2026



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R.VIJAYAKUMAR, J.

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To:

1. The learned Special Judge of POCSO Act cases,
Nagercoil.
2. The Inspector of Police,
All Women Police Station,
Kanyakumari Police Station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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