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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2026

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

Crl.OP.(MD)No.7444 of 2026

and

Crl.M.P(MD)No.8037 of 2026

Vigneshwaran

...Petitioner

Vs

State of Tamilnadu,
Rep by the Inspector of Police,
G.Vilakku Police Station,
Theni District.
Crime No.189/2024.

...Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS Act, to allow this petition and set aside the order passed by the Special Court for exclusive trial of cases under POCSO Act, Theni in Crl.MP.No.533/2025 in Spl.SC.No.35/2025 dated 02.12.2025 and Recall PWs 1 and 2 for the purpose of cross examination.

For Petitioner : M/s.S.G.L.Rishwanth

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



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ORDER

The present petition has been filed by the sole accused in Spl.S.C.No.35 of 2025, on the file of the Special Court for exclusive trial of cases under POCSO Act, Theni, seeking to set aside the order passed under Section 348 of BNSS, wherein the request of the petitioner to recall PW1 and PW2 have been rejected.

2. A perusal of the records reveal that the petitioner is accused of offences under the POCSO Act. P.W.1 and P.W.2 were chief examined on 06.10.2025 and on the said date, they were not cross examined. The present application has been filed on 15.10.2025(on the next date of hearing) seeking to recall P.W.1 and P.W.2. This application has been rejected primarily by the trial Court on the ground that the Counsel being engaged before a different Court is not a ground for entertaining an application under Section 348 of BNSS.

3. The Court has further pointed out that there is a bar under Section 33(5) of the POCSO Act. Therefore, the victim girl cannot be called again and again for cross examination. Challenging the same, the present petition has been filed.



4. According to the learned Counsel appearing for the petitioner, only due to inconvenience of the Counsel on the said date, P.W.1 and P.W.2 could not be cross examined. According to him, PW.1 is the father of the victim. P.W.2 is the victim child. He further submitted that they are ready to complete the cross examination on the date of appearance of P.W.1 and P.W.2.

5. I have considered the submissions made on either side and perused the materials available on record.

6. Considering the fact that P.W.1 and P.W.2 were chief examined on 06.10.2025 and the next date of hearing, namely, on 15.11.2025. The present application has been filed, in order to meet the ends of justice, the petitioner may be granted one more chance to cross examine P.W.1 and P.W.2.

7. In view of the above said facts, the order in Cr.M.P.No.533 of 2025 dated 02.12.2025 is hereby set aside and the petition stands allowed. The petitioner is directed to file the Batta within a period of three days from the date of receipt of a copy of this order. The petitioner is further directed to complete the cross examination on the date of appearance of P.W.1 and P.W.2 and complete the cross examination on a single day. It is made clear that no further opportunity would be granted to the petitioner.



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8. With the above said observations, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is also closed.

16.04.2026

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
RJR

Note: Issue order copy on 17.04.2026

To

1. The Special Court for exclusive trial of cases under POCSO Act, Theni.
2. The Inspector of Police,
G.Vilakku Police Station,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

RJR

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