

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-07-2026

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL OP No. 28664 of 2025

and

Crl.M.P.No.19361 of 2025

Paulpandiyan

..Petitioner(s)

Vs

State rep by
The Inspector of Police,
Redhills All Women Police Station,
Tiruvallur District.

..Respondent(s)

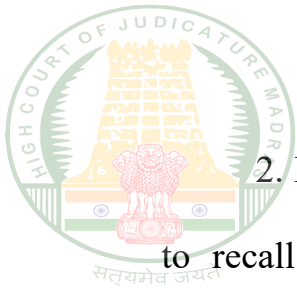
Prayer: This Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the order in M.P.No.01 of 2025 in Spl.S.C.NO.65 of 2020 dated 29.09.2025 on the file of Special Court for POCSO Act, Tiruvallur.

For Petitioner(s): Mr.R.Muthukumar

For Respondent(s): Mr.M.Mohamed Riyaz
Government Advocate (Criminal Side)
for R1

ORDER

This Criminal Original Petition has been filed to set aside the order dated 29.09.2025 in M.P.No. 01 of 2025, in Spl.S.C. No. 65 of 2020, on the file of the Special Court for the POCSO Act, Tiruvallur.



2. By the said order, the Trial Court allowed the prosecution's application to recall PW2, the victim child, for examination. Aggrieved thereby, the petitioner, who is the accused in this case, is before this Court.

3. The learned counsel for the petitioner would submit that the petitioner was the driver of the school where the child studied LKG in the year 2018. Merely because there was a dispute with the management and the petitioner/driver is a relative of the trustee, he was implicated in the case.

4. Be that as it may, after the child was comforted by the learned Presiding Officer in the child witness examination room, in the absence of the accused and his counsel, the learned Presiding Officer proceeded to record the child's evidence in full. Even though the learned Presiding Officer noted that the child was deposing with a frightened expression, there was no intervention by the Public Prosecutor to stop the child's deposition on the ground that the child was not in a proper frame of mind, nor did the Court record any finding to discard whatever the child had spoken or direct the child to appear on some other day. When everything had been duly and correctly recorded, there is no question of recalling the child once again. The said petition would only enable the other witnesses to tutor the child. The petitioner is the accused, and his valuable right to rely upon the testimony of PW2 cannot be taken away in this



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5. Per contra, the learned Government Advocate (Criminal Side) for the respondent would submit that, as rightly noted by the Trial Court, it is the duty of the prosecution to elicit the truth. In the instant case, the child appears to have been in fear, and therefore the prosecution had a duty to examine the child once again so that the truth would come out.

6. I have considered the rival submissions from both sides and perused the materials on record.

7. In this case, the FIR was registered on 28.08.2018 (almost eight years ago) for the alleged offences under Section 376 of the IPC and Sections 3, 4, 5 and 6 of the POCSO Act, 2012. The complaint was lodged by PW1. She stated that her daughter, the victim child, was studying LKG in the particular school. She picked up the child at about 4.00 p.m., and when she removed the child's uniform, the child cried profusely and stated that she felt acute pain. The child pointed to her genital organ and stated that she was experiencing pain in that place. The child further disclosed to her mother that the school driver had pinched her at that place while she was in the bathroom. Thereafter, the mother



went to the school and made enquiries. The driver was not there. The child continued to cry. PW-1 took the child to the nearest private hospital. The doctor confirmed that someone had misbehaved with the child. Immediately, the complaint was lodged. Thereafter, child was then taken to the Government Hospital, Ponneri. LW-18 treated her and issued the certificate. She noted redness over the child's private part and a mild white discharge. The fact that the child was experiencing pain in her genital area was also recorded, and it was further recorded as a case of sexual assault by an unknown person, and that the child had disclosed the incident to her mother after returning from school.

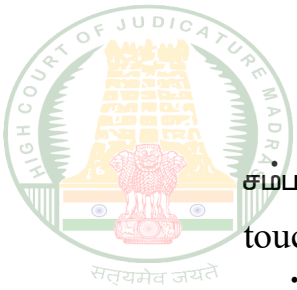
8. Under these circumstances, the child was taken before the learned Judicial Magistrate on the same day. When the learned Judicial Magistrate attempted to record the statement under Section 164, the attempt was abandoned, as the child was continuously crying and was not in a position to give a statement.

9. It is seen that after investigation, the final report was filed in the year 2020. The case was taken on file as Spl. S.C.No.65 of 2020. However, it is seen that only on 11.08.2025, the victim child was examined before the Court as PW2. The victim child was about three years old when the incident occurred in the year 2018, and she is now ten years old.



10. Upon perusal of the evidence recorded by the Special Court, it is evident that the Special Court has recorded in detail that, since the case is under the POCSO Act and in view of the directions of the Hon'ble Supreme Court of India and this Court, all necessary precautions were taken while recording the evidence. It is stated that the child witness was kept in a glass enclosure and screened in such a manner that she could not see the accused or his counsel. The learned Public Prosecutor and the learned counsel for the accused were also present. It was agreed that they would first mention their questions to the learned Presiding Officer, who would reframe the questions and put them to the child witness in a manner that she could understand and answer. All the precautions taken have been recorded. Thereafter, the learned Presiding Officer put preliminary questions with reference to the name of the child, the school in which she was studying, whether she understood that she had come to the Court, whether she understood the difference between truth and lies, and with whom she had come, etc. Thereafter, the chief examination was continued relating to the relevant incident, and the victim child answered as follows:

“நான் தற்போது மீன்குரில் குடியிருக்கிறேன். எதற்காக கோர்ட்டுக்கு வந்தேன் என்று எனக்கு தெரியாது. ஆஜர் எதிரியை தெரியாது. என அம்மா எதற்காக புகார் கொடுத்தார் என்ற விவரமும் எனக்கு தெரியாது ஞாபகமில்லை. பள்ளிக்கூடத்திற்கு தினமும் என அம்மா தான் LKG படிக்கும்போது அழைத்து செல்வார். LKG மீன்குரில் தான் படித்தேன். வீடு குரியா நகரில் இருந்தது. School பக்கத்தில் தான் இருந்தது. பள்ளியில் என்ன நடந்தது என்று தினமும் என அம்மாவிடம் சொல்வேனா என்றால் சொல்வேன். இந்த



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சம்பவம் பற்றி என் அம்மாவிடம் சொன்னேன். நீதிமன்ற கேள்வி good touch, bad touch என்றால் என்ன என்று தெரியும். நான் LKG படிக்கும் போது bad touch பண்ணிய விவரம் பற்றி என் அம்மாவிடம் சொன்னேனா என்றால் ஞாபகமில்லை. பள்ளிக்கு என்னை என் அம்மா அழைத்து சென்றாரா என்றால் ஆமாம். அழைத்து சென்றார்கள். அங்கு போட்டோவை காட்டினார்களா என்றால் இல்லை. (சாட்சி இறுக்கமான முகத்துடன் சாட்சியம் அளிக்கிறார்) போலீஸ் aunty என்னை விசாரிக்கவில்லை."

11. Thus, it can be seen that on the one hand the questions were put by the learned Presiding Officer in a comforting manner, and the child answered them. But on the other hand, still, the learned Presiding Officer fairly recorded that the child was answering with a grim face. However, it must also be noted that neither did the learned Presiding Officer abort the examination and enquire whether the child was still under fear, nor did the learned Public Prosecutor intervene and request that the examination be continued on some other day, nor did any of them think of any further expert help.

12. Under the said circumstances, the chief examination was completed, and the accused reported "No Cross". Thereafter, the present application was filed by the prosecution to recall the child merely on the ground that the child was in fear at the time of her chief examination.

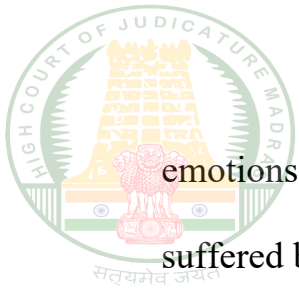


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13. This case also presents a grave dilemma between the monstrosity of the offence and the necessity to prosecute on the one hand and the trauma undergone by children, the need to protect and heal them and help them have a normal childhood/life after the offence on the other. Earlier, when the child was taken before the learned Magistrate for recording a statement under Section 164 of the Cr.P.C., the child cried profusely, and therefore no statement under Section 164 of the Cr.P.C. could be recorded. It took two years for the police to investigate and file the final report, which itself is a huge delay. Thereafter, citing the COVID-19 pandemic and other developments, the case has been kept pending till date. The matter was taken up for examination only in the year 2025.

14. A consideration of the factual aspects of the case, that it is not as if everything depends only on the deposition of the child. It is true that ensuring safety of the children through the prosecution of the offender is extremely crucial for society. But it must be seen that the POCSO Act, 2012, takes the prosecution of the offender and the well-being of the child hand in hand. It is not as if the interests of the child can be sacrificed for the sake of the trial.

15. The trauma a child undergoes on account of such an incident is grave, and only the child herself can truly understand it. The offence evokes various



emotions in the child. The literature on the subject confirms the grave trauma suffered by child victims and the Post Trauma Disorders in them.

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16. First and foremost, it is the system's failure that the child has been brought before the Court after seven years to relive the trauma.

17. Secondly, the prosecution now seeks to recall the child witness once again. Even assuming that the child had deposed in a state of fear, this Court is not willing to risk permitting the child to relive the trauma and face the same atmosphere. It is for the prosecution to establish its case through the available witnesses. The mother has already been examined, and the child's testimony is already on record. With the available evidence, the prosecution can proceed with the trial. I am of the view that there is neither any legal basis nor justification for recalling the child witness. More specifically, the very purpose of protecting the child would be defeated if the child witness is recalled. Recalling a child witness, particularly the victim of a sexual offence, either at the instance of the prosecution or at the instance of the accused, cannot be permitted by this Court.

18. The POCSO Act, is with the primary aim of protection of children



from sexual offences and it is enacted pursuant to the Government of India's accession on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the child. Article 3 of the Convention reads as under:

“Article:3:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

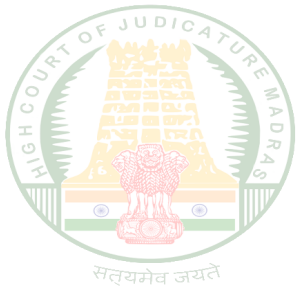
19. In tune with this, while Chapters I to IV of the Act deal with sexual offences against children and punishment, Chapter V onwards addresses the various interests of children. Chapter V contains provisions that make reporting of offences mandatory, prescribe the obligations of the media, etc., and treat violations as offences. Chapter VI contains safeguards and procedures at the investigation stage, including the recording of statements by the investigating officers and the recording of 164 Cr.P.C./183 BNSS statements by the Magistrates and Medical examination.

20. It moves on to create ‘special courts’ for children in Chapter -VII, and



Chapter -VIII confers the powers. While Section 33(1) relates to taking cognizance without committal, from 33(2) onwards, the special provisions are made in the best interests of the child. Section 33(4) ensures a child-friendly atmosphere during the examination and that a person whom the child trusts is present. Section 33(2) mandates that the prosecution and the defence shall communicate their questions to the victim child to the pressing officer, enabling the presiding officer, in turn, to put the questions. Section 33(6) expressly prevents any aggressive questioning of the child. Section 33(3) enjoins the Court to give such necessary breaks to the child during the examination. Section 33(5) mandates that the child is not repeatedly called for examination before the Courts. Section 35 directs the recording of evidence within one month from the taking cognisance of the offence. Section 36 enjoins that the child should not again encounter or see the accused during testimony. Section 39 mandates the state governments to prepare guidelines to take the help of experts, including persons with knowledge of psychology, social work, physical and mental health, and child health, to be associated with the pre-trial and trial stages to assist the child.

21. The Hon'ble Supreme Court of India in *Shankar Kisanrao Khade v. State of Maharashtra* (2013) 5 SCC 546 held as follows:



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“In my view, whenever we deal with an issue of child abuse, we must apply the best interest child standard, since best interest of the child is paramount and not the interest of perpetrator of the crime. Our approach must be child centric.”

22. The prosecutor’s objective is to bring on record every offending ingredient in the act against the child and establish the accused’s guilt. The defence will be interested in showing the prosecution to be wrong and establishing the innocence of the accused. However, the Presiding Officer shall bear in mind the overarching best interests of the child over the above-mentioned objects. The role of the Presiding Officer in the entire exercise is like the dispersion of light through a prism that takes in the sharp ray of light but emits a pleasant *vibgyor*. In the process, the prism does not emit any of its own but only truly reflects what is fed into it. Similarly, the Presiding Officer’s position is to reframe the questions in a child-friendly manner, keeping the best interests of the child in mind, and put them to the child.

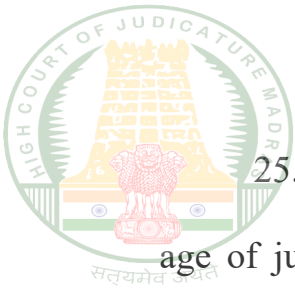
23. The initial questions posed by the Presiding Officer in a friendly manner, asking for the child's name, etc., are not merely formal questions to gauge the child’s competency and understanding alone. They are also a rapport-building exercise. By the end of these friendly questions, the Presiding Officer



ought to have built a rapport with the child, and the child should feel comfortable speaking with the Presiding Officer.

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24. Dr. Shekar Seshadri and Dr. Shiela Ramasamy, of the Department of Child & Adolescent Psychiatry, National Institute of Mental Health & Neurosciences (NIMHANS), Bengaluru, in their work, *Clinical Practice Guidelines for Child Sexual Abuse* (https://indianpsychiatricsociety.org/wp-content/uploads/2020/01/CSA_childadol.pdf), have succinctly set out practice directions on introduction and rapport-building, ensuring accurate reporting by the child, training in episodic memory, abuse enquiry, techniques for inquiry, and the nature of questions to be put to the child. A detailed training manual for the Judicial Personnel has also been developed and published by them in association with the Karnataka Judicial Academy (<https://nimhanschildprotect.in/wp-content/uploads/2021/04/The-Child-as-a-witness-Developmental-Mental-Health-Implications-for-Eliciting-Evidence-under-Protection-of-Children-from-Sexual-Offences-Act-2012.pdf>), which, in great detail, deals with abuse, its effects, and eliciting the truth from child victims, their age and competency, and developing empathy and listening to their inner voices. Every magistrate having the onerous task of recording 164 statements of these young victims, and every Special Court, shall bear in mind these practice directions.



25. In the present case, the child first underwent an isolated incident at the age of just above 3. Whether the child had developed enough at that age to recollect it as a distinct episode is a question. Especially, the likelihood of the child recollecting it after 8 long years is absolutely questionable. The above-referred manual provides great insight in Chapter 4. To quote the relevant portion,

“Preschoolers are just developing abilities of sequencing and organising. Thus it may be difficult for them to provide coherent statements or narratives of the events. They may find it especially difficult to withstand cross-examination where they are likely to be questioned about time (of day) and sequence of events. Also, the development of memory is still at its early stages, for this age group, their long-term memories may not be as developed as in older children, making it hard for them to recall the details of events clearly/on in the type of specificity of sequence that the prosecutors or the defence may require.”

26. There is absolutely no justification for the stakeholders expecting the child to narrate the episode after 8 years, when the child was not even able to narrate immediately. The Learned Magistrate at the relevant time failed to understand that the child would not make coherent statements. Instead, the child could have been asked to indicate where it was painful, etc. Now, during the trial, if the Learned Presiding Officer believed that the child was not in its free state, again no expert was summoned at that stage; however, the entire statement was recorded. And after the statement had come on record, once again permission was granted to re-examine.



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27. Every Judicial Officer or a Judge are not an expert in analysing child development, its ability to retain the details of the incident, the kind of trauma, post-incident disorder, etc., but all of us have to keep in mind the heavy burden of eliciting relevant evidence without pain/trauma to the child. The law rests on the ‘good sense and discretion of the judge’ with reference to the competency of these witnesses, and the POCSO Act places heavy reliance on the Presiding Officer in questioning and eliciting the relevant information from the child. In the present application or order of recalling the witness in this case, sadly, the relevant aspects are not even argued or discussed. Thus, it can be seen that we have a long way to go in understanding the victim children, their inner voice, and the art of empathising with them. Our job is akin to that of a mother, who feeds the infant by making it focus on the moon. Like the gentle hand that makes the baby ultimately see the moon without feeling any pressure or pain, the entire exercise has to be carried on with a great deal of empathy and care.

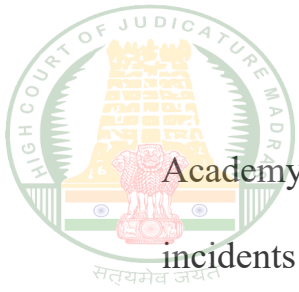
28. A vast majority of the Bar refuse to even acknowledge/understand the importance of healing and the child's right to move on after deposing. Cross-examinations are skipped, and recall petitions are thereafter filed very casually, often citing the usual stereotypical reasons, such as the senior advocate who is to cross-examine not being present on that day, etc. Unless the Bar comes out of this apathy shown towards children involved, the dilemma between subjecting



children to secondary victimisation and the valuable right of defence of the accused would continue. But the time has come to focus on the paramount - that is - the best interests of the child.

29. It is true that as on date in the State of Tamil Nadu a huge number of cases under the POCSO Act are pending. The Special Courts are also flooded with more love affair cases between 16 and 18. But in these types of cases involving perpetrating sexual assault/penetrative sexual assault on tender children, utmost care shall be taken to examine the victim child immediately after taking cognizance of the offence and framing charges. In every POSCO Court, it shall be displayed that under no circumstances the victim child will be recalled and the Bar should be specifically put on notice that they have to cross-examine on the same day.

30. The Tamil Nadu State Judicial Academy, which has already been conducting workshops in this regard, shall further endeavour to supply copies of this manual and related materials, preferably a Tamil version as well, to every Special Court and to the Learned Magistrates. The subject, especially the practical art of dealing with child witnesses, can also be imparted at the



Academy. Many of our judicial officers who have practical experience of such incidents have to share their experiences. Practical exercises and discussions on interviewing/examining child victims shall be part of the curriculum. The services of field experts shall be utilised.

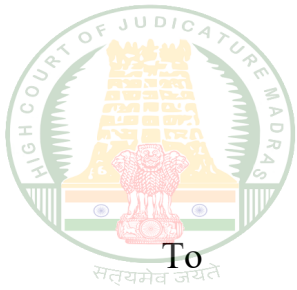
31. In the result, the impugned order calls for interference. This Criminal Original Petition stands disposed of on the following terms:

(i) The impugned order dated 29.09.2025 passed in M.P. No. 1 of 2025 in Spl. S. C. No. 65 of 2020 shall stand set aside.

(ii) However, it is open to the prosecution to proceed with the trial and prove the offence in the manner known to law by adducing such other evidence as it may deem fit. Consequently, the connected Miscellaneous Petition stands closed.

07-07-2026

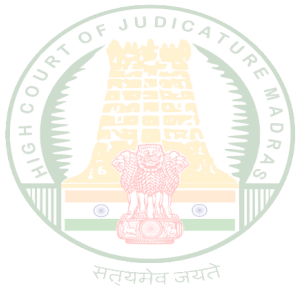
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To

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- 1.The Inspector of Police,
Redhills All Women Police Station,
Tiruvallur District.
- 2.The Special Court for POCSO Act, Tiruvalluar.
- 3.The Public Prosecutor,
Madras High Court.



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D.BHARATHA CHAKRAVARTHY, J.

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