

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-07-2026

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL OP No. 16742 of 2026

Ramesh
S/o.Veerassamy,
Pillaiyar Kovil Street,
So.Kuppam Village,
Gingee Taluk,
Villupuram District.

..Petitioner(s)

Vs

The State of Tamilnadu Rep by.
The Inspector of Police,
AWPS Gingee,
Villupuram District.
Crime no.26 of 2025.

..Respondent(s)

PRAYER: Criminal Original Petition filed under Section 528 of BNSS, to call for the records pertaining to the order dated 05.05.2026 in Crl.M.P.No.57 of 2026 in Spl.S.C.No.254 of 2025 on the file of Sessions Judge, Special Court for exclusive trial of Cases, Under POCSO Act, Villupuram and set aside the same so far as dismissal in Respect of PW-1 is concerned by allowing this Criminal Original Petition pass such other or further order as this Honourable Court deems fit and proper to the circumstances of the case.

For Petitioner(s): Mr.T.Maha Vishnu

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

ORDER

This Criminal Original Petition is filed to call for the records pertaining to the order dated 05.05.2026 in CrI.M.P.No.57 of 2026 in Spl.S.C.No.254 of 2025 on the file of the Sessions Judge, Special Court for exclusive trial of Cases, under the POCSO Act, Villupuram, and to set aside the same.

2. The petition was filed to recall the P.W.1 – victim girl for cross-examination, and the same has now been refused by the Trial Court. The gravamen of the allegation is that the victim children were rearing goats and the petitioner – accused was present there with his cattle. While so, he called the victim children near. The elder one wriggled out of the accused's hold and ran away. The accused caught hold of the younger one and committed sexual assault. As per the statement of the victim child, he was even preparing to sit on her, and she pushed the accused and ran away. Statements were already recorded under Section 164 of the Cr.P.C. After the commencement of the trial, the child was once again subjected to the same ordeal for examination-in-chief, and the same was recorded on 05.01.2026. On that day, the Trial Court recorded that the accused was present and had not cross-examined P.W.1 – the victim girl.

3. The learned counsel for the petitioner would submit that the counsel appearing before the Trial Court did not attend the Court on that day. Due to the

counsel's default, the accused's valuable right to cross-examine the crucial witness – P.W.1 – should not be taken away. He would further submit that the accused has now changed counsel and that the trial is being properly conducted.

4. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) and perused the material records of the case.

5. With reference to the elder child that wriggled out of the hold and ran away, the examination is not yet over, and the accused can cross-examine that child. The accused can also cross-examine the other witnesses. It is the contention of the learned counsel for the petitioner that there was a property dispute between the petitioner and the de facto complainant, about which the accused can cross-examine the other witnesses and also examine witnesses on his behalf. The very purpose of the enactment of the Protection of Children from Sexual Offences Act, 2012 (POCSO) is to protect children from sexual abuse. Many people in our society do not understand the mental trauma children experience when subjected to sexual harassment. Even though stringent punishments are provided, and steps are being taken to prevent offences against children, the implementation of the law should not, by itself, become a further source of trauma to the child. The child cannot be repeatedly called to relive the ordeal. As soon as possible, the child has to be healed.

6. It is casually argued that the counsel was not present or that new counsel is now engaged. The lack of understanding is very clear. The child cannot be made to relive the said incident over and again. It is not about granting an opportunity to the accused alone. But, it is about the right to life of the child itself. Therefore, whenever the child witness, especially a tender child such as the one aged only about 10 years, is examined, the parties cannot casually take it for granted that they can recall the witness and cross-examine her on yet another day. The same is against the very purpose of the POCSO Act, that is, the protection of children. In a case of this nature, though it is not an aggravated penetrative sexual assault, still the child undergoes the ordeal of reliving the trauma :

- (i) when it is disclosed to the parents or a close relative, etc;
- (ii) when interviewed by the Child Welfare Committee member;
- (iii) when it interacted with to the Physicians/Experts on medical examination;
- (iv) when the Investigation Officer records the statement;
- (v) when it is taken before the Magistrate to record a statement under Section 164;
- (vi) And again when it is examined before the Court.

That, by itself, is enough to cause trauma to the child.

7. Therefore, there is no way Courts can permit any further reliving of the ordeal by recalling the child victims on applications for recall for cross-examination, which would amount to secondary victimisation. Section 33(5) of the POCSO Act specifically imposes a duty on the Special Court to ensure that the child is not called repeatedly to testify in Court and is extracted hereunder for ready reference:

“33. Procedure and powers of Special Court.—(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.

(5) **The Special Court shall ensure that the child is not called repeatedly to testify in the court.**

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial: Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child. Explanation.—For the purposes of this subsection, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

(9) Subject to the provisions of this Act, a Special Court shall for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session and as far as maybe in accordance with the procedure specified

in the Code of Criminal Procedure, 1973 (2 of 1974) for trial before a Court of Session.”

(Emphasis supplied)

8. The Hon’ble Supreme Court of India in ***Shankar Kisanrao Khade Vs. State of Maharashtra***, (2013) 5 SCC 546 held as follows:

“73. In my view, whenever we deal with an issue of child abuse, we must apply the best interest of 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. Complaints received from any quarter, of course, have to be kept confidential without casting any stigma on the child and the family members. But, if the tormentor is the family member himself, he shall not go scot-free. Proper and sufficient safeguards also have to be given to the persons who come forward to report such incidents to the police or to the Juvenile Justice Board.”

9. Therefore, approach has to be victim centric and in the best interest of the child. In the guise of fair opportunity and the routine and stereotypic allegations of counsel not being present on the particular day etc., the child’s right to life itself cannot be violated. Secondary victimisation in a sexual abuse case would invade the very right to life of the victim child. The petitioner cannot be permitted to recall the witness and cross-examine P.W.1 – the victim child once again. The Trial Court has rightly rejected the petition. The petitioner has to be content with the other opportunity and he has to establish his case by cross-examining the other witnesses.

10. Accordingly, this Criminal Original Petition fails and stands dismissed.

01-07-2026

Neutral Citation: Yes/No

JER

To

1. The Sessions Judge, Special Court for exclusive trial of Cases, Under POCSO Act, Villupuram.
2. The Inspector of Police,
AWPS Gingee,
Villupuram District.
Crime no.26 of 2025.
3. The Public Prosecutor
High Court of Madras.

D.BHARATHA CHAKRAVARTHY, J.

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