

Crl.OP(MD).No.1465 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 12.08.2026

ORDER PRONOUNCED ON : 18.08.2026

CORAM

THE HONOURABLE MR JUSTICE R.VIJAYAKUMAR

Crl.OP.(MD)No.1465 of 2026
and Crl.MP(MD).Nos.1595 & 1596 of 2026

Maheshkumar

....Petitioner/Sole Accused

Vs

1.The State of Tamil Nadu
Rep.by the Inspector of Police
AWPS-Puliangudi
Tenkasi District
Crime No.29 of 2025

...1st Respondent/Complainant

2.

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records in Spl.S.C.No.577 of 2025 on the file of the Principal District Court, Tenkasi and quash the same as against the petitioner.

For Petitioner : Mr.R.Pon Karthikeyan

For Respondents : Mr.P.Samuel Gunasingh
Government Advocate (Crl.side) for R1

:Mr.N.Gurusamy for R2



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ORDER

This Criminal Original Petition has been preferred by the sole accused in Spl.S.C.No.577 of 2025, pending on the file of the Principal District Court, Tenkasi, praying for the quashment of the final report laid against him for offences punishable under Sections 7, 8, 9(b)(iii) and 10 of the Protection of Children from Sexual Offences Act, 2012.

(A).Factual Matrix:

2. The petitioner is serving as a Grade-II Constable attached to Battalion-III, Armed Reserve, Tirunelveli District. The victim girl, aged 17 years and then a student of the 11th standard, is stated to hail from the same locality as the petitioner. The prosecution case, as unfolded in the final report, is that an acquaintance ripened into a romantic association between the two over a period of two years; that upon the parents coming to learn of the same, the girl was admonished; that on her birthday the petitioner took her on his two-wheeler, presented her with chocolates and placed his hand upon her shoulder while consoling her; that in January 2025 he procured a basic mobile handset to facilitate communication between them, which led to a complaint being lodged and a Community Service Register entry being made in C.S.R.No.11 of 2025; and that on 10.09.2025 at about 8.30 a.m., while the



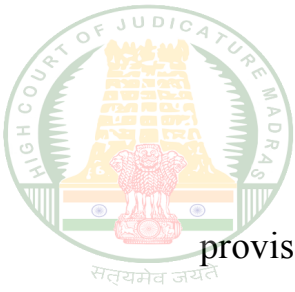
girl was proceeding to school, the petitioner arrived in a white car, requested five minutes of her time, and upon her entering the rear seat and breaking down in tears, halted the vehicle at a short distance from the school, held her hand, sought her forgiveness for the difficulties she had suffered on his account, assured her that he would marry her upon her completing Class XII and attaining majority, and wiped away the tears from her cheek.

(B).Submissions of the learned counsel appearing on either side:

3. Learned counsel for the petitioner would contend that the sum and substance of the accusation is confined to an assurance of marriage upon attainment of majority and the wiping away of tears, and that such conduct, however viewed, does not answer the description of any offence under the Act.

4. It is his further submission that although the act of wiping away tears did entail bodily contact, the surrounding circumstances narrated in the final report itself negate the existence of sexual intent, and that Sections 7 and 8 are therefore not attracted.

5. Building upon the above, learned counsel would urge that once Section 7 stands unattracted, Section 9(b) — which deals with aggravated sexual assault committed by a member of the armed forces — cannot be pressed into service, and consequently Section 10, being merely the penal



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provision therefor, must also fall. He accordingly prays that the final report be quashed in its entirety.

6. Per contra, learned counsel for the de facto complainant submitted that the petitioner having touched the cheek of the child, Sections 7, 8, 9 and 10 stand squarely attracted, more so as the victim resides within the very area of the petitioner's deployment. He would further point out that notwithstanding the earlier admonition and the registration of C.S.R.No.11 of 2025, the petitioner persisted in following the victim, which necessitated the registration of the First Information Report culminating in the present final report. He accordingly seeks dismissal of the petition.

7. The learned Government Advocate (Criminal Side) appearing for the respondent police submitted that the presence or absence of sexual intent at the time of physical contact is essentially a question of fact, which can be resolved only in the course of trial, and placed reliance upon the Explanation to Section 11 of the Act.

8. Heard the learned counsel appearing on either side and perused the entire material records placed before this Court.



(C).Discussion:

WEB COPY 9. A reading of the final report discloses that the petitioner and the victim were in a relationship for about two years; that upon the parents coming to know of it, the girl was reprimanded and a complaint was lodged, resulting in the C.S.R. entry; and that on 10.09.2025 the petitioner took the victim in a car for a brief conversation, tendered an apology when she wept, wiped away her tears, and held out an assurance of marriage upon her attaining majority.

10. The gravamen of the accusation must be tested against the statutory ingredients, and it is therefore necessary to advert to the scheme of Sections 7, 9(b)(iii) and 10 of the Act.

11. Section 7 of the Act is in two limbs. The first limb deals with touching of the vagina, penis, anus or breast of the child, or the causing of such touching by the child; the second limb is a residuary one, embracing any other act involving physical contact without penetration. What is common to and indispensable in both limbs is the opening expression — “whoever, with sexual intent”. The provision does not penalise physical contact simpliciter. Sexual intent is not an incidental feature of the offence but its very foundation, and in the absence of that mental element the actus reus, however established, remains legally inert.



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12.The expression “sexual intent” has been left undefined by the Legislature, and deliberately so, for it is incapable of exhaustive enumeration.

The Explanation to Section 11, upon which the learned Government Advocate places reliance, provides that the question of intent shall not depend upon any implied assumption but shall be a matter to be determined from the attendant circumstances. That Explanation is, by its own terms, appended to Section 11; but the principle it embodies is one of general application and this Court is content to proceed upon it. Its significance, however, cuts both ways. If the surrounding circumstances may fasten sexual intent upon an act outwardly innocuous, they may with equal legitimacy negate sexual intent in an act outwardly ambiguous. The Explanation is a rule of inference; it is not a presumption of guilt, and it does not relieve the prosecution of the burden of pointing to circumstances from which the requisite intent may reasonably be drawn.

13.In this connection it is useful to bear in mind the distinction between contact which is intrinsically sexual and contact which is, at best, equivocal. Where the part of the body touched is one specified in the first limb of Section 7, the act ordinarily speaks for itself and intent may readily be inferred from the nature of the contact alone. Where, on the other hand, the contact is of a kind that occurs in the ordinary course of human dealings —



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the taking of a hand, a touch upon the shoulder, the wiping of a tear — the act carries no inherent sexual character, and the intent behind it must be gathered from something beyond the contact itself. It is precisely in such cases that the surrounding circumstances assume decisive importance: the part of the body, the manner and duration of the contact, the place and hour, the words spoken, the conduct preceding and following the act, and the presence or absence of any attempt at anything further.

14. Applying these considerations to the material on record, the solitary act of physical contact laid at the door of the petitioner in respect of the occurrence of 10.09.2025 is the wiping away of the victim's tears, accompanied by the holding of her hand. The setting is not without significance. The occurrence is at about 8.30 a.m., upon a public road in the vicinity of the victim's school; the victim entered the vehicle of her own volition, as she herself asserts; the petitioner remained seated in the front while the victim occupied the rear seat; the contact was momentary; the words attributed to the petitioner are words of apology and of assurance; and there is not a whisper in the final report of any attempt, gesture or utterance of a sexual character, either preceding or following the contact. The contact thus arose out of, and was wholly explicable by, an act of contrition and consolation. To read sexual intent into such an act would be to supply, by



assumption, the very ingredient which the Explanation to Section 11 forbids this Court from assuming.

15.It is no doubt correct, as urged for the respondent police, that the existence or otherwise of sexual intent is ordinarily a question of fact reserved for the trial. That proposition, however, is not an absolute one. Where the material collected during investigation, taken at its highest and accepted at face value without demur, does not disclose the ingredients of the offence alleged, it would be an idle formality to compel an accused to undergo the rigour and stigma of a trial in the hope that evidence may at some future point supply what the investigation has not. The power of this Court is not to be exercised to weigh the sufficiency of evidence, but it is undoubtedly to be exercised to ascertain whether the allegations, on their own showing, constitute the offence charged. The present case falls squarely within the latter category.

16.Once it is held that the ingredients of Section 7 are not made out, the remaining charges cannot survive independently. Section 9(b)(iii) does not create a distinct offence; it aggravates a sexual assault by reason of the status of the offender as a member of an armed force or security force. The status of the petitioner as a Grade-II Constable may aggravate an offence; it cannot supply the intent whose absence prevents an offence from arising at



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all. The aggravating circumstance attaches to the act, and there being no act answering the description of sexual assault, there is nothing to which Section 9(b)(iii) may attach. Sections 8 and 10, being purely penal provisions consequential upon Sections 7 and 9 respectively, must fall along with them.

17. In her statement recorded under Section 180(3) of the BNSS, the victim has categorically stated that she entered the vehicle voluntarily at the petitioner's request and was in no manner coerced into doing so. Her statement recorded under Section 164 Cr.P.C. before the learned Judicial Magistrate is to the same effect, namely that the petitioner tendered an apology and assured her of marriage after she completed her 12th standard, and that while the petitioner remained seated in the front, she occupied the rear seat. It is further disclosed therein that a member of the School Committee, having noticed the victim being dropped from a car, brought it to the notice of her uncle, whereupon the police complaint came to be lodged.

18. Read as a whole, and tested against the statements of the victim child under Sections 161 and 164 Cr.P.C., the final report does not disclose any contact whatsoever between the petitioner and the victim child attended by sexual intent at any stage.



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(D).Conclusion:

WEB COPY 19. In the result, the ingredients of Sections 7, 8, 9 and 10 of the POCSO Act are not made out, and permitting the prosecution to proceed further would amount to nothing short of an abuse of the process of law. Accordingly, the charge sheet in Spl.S.C.No.577 of 2025 on the file of the Principal District Court, Tenkasi is quashed. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

18.08.2026.

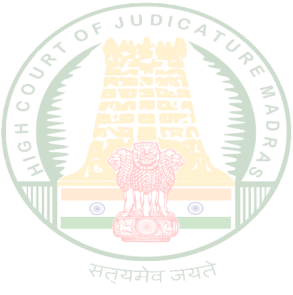
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To

1.The Principal District Judge, Tenkasi

2.The Inspector of Police
AWPS-Puliangudi
Tenkasi District
Crime No.29 of 2025

3.The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR, J.

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