



CrI. O.P.(MD) No.6408 of 2026

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2026

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

CrI.O.P.(MD) No.6408 of 2026

B.Thatchinamoorthi,
S/o.Packiyam,

... Petitioner/sole Accused

Vs

The State rep. by the
Inspector of Police,
Abiramam Police Station,
Ramanathapuram District.
(In Crime No.55/2017).

... Respondent

PRAYER: Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, to call for the records relating to the order dated 10.05.2024 made in CrI.MP.No.705/2024 in Spl.SC.No.03/2018 on the file of the Sessions Judge (Fast Track Mahila Court), Ramanathapuram and set aside the same as illegal and thus render justice.

For petitioner : Mr.R.Ramanujam
(Legal Aid Counsel)

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



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ORDER

This Criminal Original Petition has been filed challenging the order dated 10.05.2024 in CrI.M.P.No.705 of 2024 in Spl.S.C.No.03 of 2018 on the file of learned Sessions Judge (Fast Track Mahila Court), Ramanathapuram, wherein petition filed under Section 311 Cr.P.C. to recall the P.W.11 for the purpose of cross-examination on behalf of the accused was dismissed.

2. A perusal of the records reveals that the petitioner herein is charged with offences punishable under Section 366 of the IPC and Section 6 of the POCSO Act, 2012. The date of the alleged occurrence is 20.03.2017, and the victim girl had attained the age of majority on 13.05.2017. Thereafter, the charge sheet was filed on 30.08.2017. The trial commenced on 13.08.2019, and P.W.11 (the victim girl) was chief-examined on 14.11.2019. However, she was not cross-examined on that date, as the petitioner was not represented by counsel at the relevant point of time. Subsequently, he was represented by a legal aid counsel. The petition under Section 311 Cr.P.C. was filed on 01.04.2024, seeking permission to cross-examine P.W.11. The trial Court dismissed the same by relying upon Section 33(5) of the POCSO Act. Challenging the same, the present petition has been filed.



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3. According to the learned counsel for the petitioner, the accused was represented through legal aid counsel. He further submits that, due to inadvertence, the victim girl was not cross-examined. He also submits that the victim girl had attained majority on the date of her chief-examination and she is now 27 years old. Therefore, Section 33(5) of the POCSO Act would not get attracted.

4. Heard both sides and perused the materials available on record.

5. Section 33(5) of the POCSO Act is concerned, this Court already dealt with the issue in the case of ***S.Ganeshan vs State represented by the Inspector of Police***, reported in ***2022 Live law (Mad) 116***. The relevant portion of the said judgement is extracted hereunder:

"11. In view of the above, a heavy burden is caused on the petitioner to rebut the presumption which operates against him. As stated above, PW2, PW7 & PW8 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."



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6. The victim girl had attained majority on the date of her chief-examination and she is now 27 years old, and that the accused is represented through legal aid Counsel.

7. In such circumstances, in order to afford one more opportunity to the petitioner, the order made in Crl.M.P.No.705 of 2024 in Spl.S.C. No.03 of 2018 is set aside, and the petitioner is 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 witness appear. It is made clear that no further opportunity would be granted to the petitioner.

8. With the above said observations, this Criminal Original Petition stands allowed.

Index : Yes / No
Internet : Yes / No
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01.04.2026

Note :
Issue order copy on 06.04.2026.

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To

1. The Sessions Judge (Fast Track Court Mahila Court),
Ramanthapuram.
2. The Inspector of Police,
Abiramam Police Station,
Ramanathapuram District.
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai



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R.VIJAYAKUMAR, J.

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