

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.04.2026

PRONOUNCED ON : 19.08.2026

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CrI.MP(MD) Nos.5823 & 6941 of 2025

in

CrI.A(MD) No.778 of 2023

Nambu Kaleeswaran

... Petitioner in
CrI.MP(MD) No.5823/2025

Selvaraj

... Petitioner in
CrI.MP(MD) No.6941/2025

Vs

1.The State of Tamilnadu,
Rep. by the Inspector of Police,
Rameswaram Town Police Station,
Ramanathapuram District.
Crime No.232/2021

... Respondent
in both petitions

Common Prayer:- Criminal Miscellaneous Petitions filed under Section 430 of BNSS, 2023 to suspend the sentence imposed on the petitioners in Spl.SC.No.16 of 2022, dated 23.03.2023 passed by the learned Judge, Fast Track Mahila Court, Ramanathapuram District and enlarge them on bail pending disposal of the appeal.



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CrI.MP(MD) Nos.5823 & 6941 of 2025

For Petitioner(s) : Mr.J.Vivek
in CrI.MP(MD)No.5823/2025

: Mr.G.Karuppasamy Pandian
in CrI.MP(MD)No.6941/2025

For Respondent : Mr.A.S.Abul Kalaam Azad
Government Advocate (CrI.side)
(in both petitions)

COMMON ORDER

The petitioners are Accused Nos.1 & 2 in Spl.SC.No.16 of 2022, on the file of the Fast Track Mahila Court, Ramanathapuram. They were charged for the offences under the Protection of Children from Sexual Offences (POCSO) Act, 2012 [hereinafter referred to as 'POCSO Act'] that they have sexually abused the victim boy aged about 8 years, by compelling him to do oral sex and by inserting their private parts into his anal rectum. The trial Court has found the petitioners guilty, convicted and sentenced them to undergo rigorous imprisonment for a period of twenty years, each, for the offence punishable u/s.6 r/w 5(m) & 5(l) of POCSO Act and to pay a fine of Rs.5000/- each, in default, to undergo simple imprisonment for one year each. As against the conviction and sentence, the petitioners have filed a Criminal Appeal in CrI.A(MD)No.778 of 2023 and the same was admitted by this Court.



Along with the appeal, the petitioners have moved an application to suspend the sentence imposed on them by the trial Court and the same was dismissed by this Court, by order, dated 21.08.2024. These are the second applications filed by them seeking suspension of sentence.

2.Learned Counsel for the petitioners by relying upon the evidence of the Doctor [PW6], who treated the victim boy, submitted that the Doctor has stated in his cross examination that there was no injury in the anal rectum and the mouth of the victim boy. As such, the case of the prosecution has not been proved medically and therefore, prayed for suspending the sentence.

3.Learned Government Advocate (CrI.side) appearing for the respondent disputed the same and submitted that though the Doctor has deposed in his cross examination that there was no injury in the mouth and anal rectum of the victim boy, he has clearly deposed in his chief examination that he found injuries in the mouth and anal rectum of the victim boy.



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4. Heard the submissions made by the respective learned Counsel and also perused the materials placed on record.

5. The petitioners have been convicted for the offences under Section 6 r/w 5(m) and 5(1) of POCSO Act, 2012, for sexually abusing the victim boy, aged about 8 years, by compelling him to have oral sex and by inserting their private parts into the child's anal rectum. The victim boy has given a statement under Section 164 CrPC before the learned Magistrate as to the manner in which he was subjected to sexual assault, and has reiterated the same before the trial Court in his evidence.

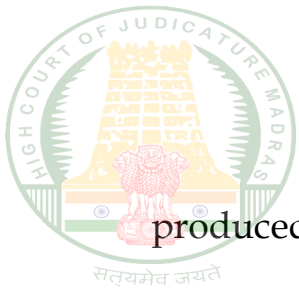
6. While considering these applications for suspension of sentence, this Court noticed an apparent inconsistency in the evidence of PW6, the Doctor who examined the victim. In his chief examination, PW6 deposed that the victim had sustained injuries. However, during cross-examination, he stated that no such injuries were found. The Wound Certificate [Ex.P6], though recording that "there was evidence



suggestive of sexual act", did not describe the nature of injuries. Since

this contradiction was taken as a ground by the petitioners for suspending their sentence, this Court found it appropriate to call upon the concerned Doctor, one Dr.Feroz Khan, Assistant Surgeon, Government Medical College Hospital, Ramanathapuram, to appear and clarify the position before considering the request for suspension of sentence.

7.Pursuant to the directions issued by this Court, Dr.Feroz Khan appeared before this Court along with the original medical records. On examining the case sheet and the Accident Register, this Court found that the injuries in the anal rectum of the victim had in fact been noticed at the time of examination and duly recorded. The Doctor explained that the initial examination had been conducted by another medical officer, and that all the injuries were entered in the hospital records. It thus became evident that while the original medical records reflected the relevant findings, the same had not found a proper place in the Wound Certificate [Ex.P6], giving rise to the inconsistency noticed by this Court. In view of this explanation and the medical records



produced, the grounds canvassed by the petitioners for suspending the sentence lack merit, and these petitions are accordingly dismissed.

8.The matter, however, does not rest there. Considering the manner in which the inconsistency had surfaced, this Court afforded the Doctor an opportunity to explain the circumstances under which such contradiction had arisen.

9.Accordingly, the Doctor has filed an affidavit placing on record his explanation. He has stated that on the date of his deposition before the trial Court, he was required to depose in two other criminal cases and was attending to an emergency surgery at the hospital. According to him, during cross-examination, he inadvertently gave an incorrect answer to a question and, owing to the pressure of his official duties, failed to notice the error when his deposition was recorded. He has further stated that the hospital medical records correctly reflect the injuries noticed during the examination of the victim and that the inconsistency in his oral evidence was wholly unintentional and has tendered his unconditional apology to this Court.



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10. In the light of this explanation offered by the Doctor, this Court finds it appropriate to reiterate the importance of medical evidence, particularly in offences under the POCSO Act and the vital role played by medical professionals testifying in such cases as experts.

11. Medical evidence is of two kinds, viz., (1) documentary evidence, in the form of medical certificates and medico-legal reports, and (2) oral evidence, in the form of the expert's testimony before the Court. Such evidence carries great corroborative value in criminal trials as it shows that the injuries could have been caused in the manner alleged, so that the prosecution case being consistent with matters verifiable by medical science, the evidence of the witnesses need not be disbelieved. It also has great value for the defence, which can make use of the same to prove that the injuries could not possibly have been caused in the manner alleged by the prosecution and by doing so, the case of the prosecution can be discredited. Therefore, it is the key evidence that could determine the guilt or innocence of the accused person.



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12.The medical practitioner / Doctor is an expert under Section 45 of the Indian Evidence Act. In *Madan Gopal Kakkad v. Naval Dubey and Another* [(1992) SCC (3) 204], the Hon'ble Supreme Court has held that the expert witness is expected to enlighten the Court on the technical aspects of the case and that once the expert's opinion is accepted, it is not only the opinion of the medical officer but also of the Court.

13.A Division Bench of this Court in *RM.Arun Swaminathan v. The Principal Secretary to the Government, Health and Family Welfare Department* [WP.(MD)No.78 of 2019, dated 28.09.2020] has observed that the evidence given by Doctors based on medical documents, such as, post-mortem reports, plays a vital role in deciding criminal cases as they are the experts in the field. The relevant portions are extracted hereunder for reference:

"15. The post-mortem certificate is very important to decide the cause of death, the injuries found on the body and whether any poisoning is there or not. It is very important for criminal justice delivery system. The evidence of doctors based on post-mortem certificates play a vital role



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in deciding criminal cases, especially murder cases, suicides and assaults. The Courts usually take the Doctors' opinion / evidence as gospel truth as they are the best persons or experts in the field and based on their evidence only, the cases are decided ..."

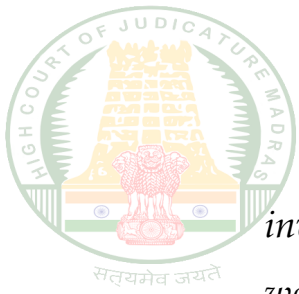
14.Insofar as cases under the POCSO Act is concerned, the medical evidence assumes even greater significance, since child victims may struggle to report facts accurately or to withstand hostile cross-examination, and the possibility of tutoring cannot be ruled out. Considering the importance of medical evidence in such cases, Section 27 of the POCSO Act mandates medical examination of a child, in respect of whom any offence is alleged to have been committed under the POCSO Act, irrespective of whether an FIR or complaint has been registered. The Doctor's opinion thus plays a crucial role in explaining the injuries, if any, found on the child; whether such injuries are consistent with the history furnished; whether they are suggestive of sexual assault; the relevance of biological and forensic samples collected during examination and the interpretation of laboratory reports, including DNA and serological findings. In fact, the testimony provided by the medical



experts play a significant role in determining the guilt or innocence of the accused in such cases.

15.In *State of Maharashtra v. Maroti* [(2023) 4 SCC 298], the Hon'ble Supreme Court has observed that medical examination of the victim provides many vital clues in cases under the POCSO Act and that medical evidence has much corroborative value in cases relating to sexual offences. The relevant portions are extracted hereunder for reference:-

“15.Prompt and proper reporting of the commission of offence under the POCSO Act is of utmost importance and we have no hesitation to state that its failure on coming to know about the commission of any offence thereunder would defeat the very purpose and object of the Act. We say so taking into account the various provisions thereunder. Medical examination of the victim as also the accused would give many important clues in a case that falls under the POCSO Act. We refer to the aforesaid provisions only to stress upon the fact that a prompt reporting of the commission of an offence under POCSO Act would enable immediate examination of the victim concerned and at the same time, if it was committed by an unknown person, it would also enable the



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investigating agency to commence investigation without wasting time and ultimately to secure the arrest and medical examination of the culprit. There can be no two views that in relation to sexual offences medical evidence has much corroborative value.

16.As provided in *Modi's Textbook on Medical Jurisprudence and Toxicology*, the objective of medical evidence is to assist the Court in discovering the truth. A medical expert is expected to state the truth, the whole truth and nothing but the truth, irrespective of whether such evidence ultimately supports the prosecution or the defence. The evidence tendered by an expert must be relevant, reliable, clear, honest and impartial. As far as possible, they should provide a definite opinion with reasons and should avoid sitting on the fence.

17.An expert witness occupies a position of trust. The privilege of assisting the Court carries with it a corresponding responsibility to provide objective, accurate and consistent testimony before the Court. Even an inadvertent lapse by the medical expert while testifying creates avoidable confusion, prolong judicial proceedings and also affects the



rights of either the victim or the accused. Therefore, the medical professionals who appear before Courts as expert witnesses must exercise a high degree of care while giving evidence.

18. Equally important is the duty to carefully read and verify the deposition before affixing their signature so as to ensure that it correctly records the evidence actually tendered before the Court. In fact, as per *Modi's Textbook on Medical Jurisprudence and Toxicology*, before attending the Court to be subjected to examination-in-chief and cross-examination, the medical witness must go through the medico legal reports etc, prepared by him so that he may not commit mistakes during his cross examination. Even during his examination in chief or cross examination, the medical expert, as a witness of the Court, has a right to refresh his memory under Section 159 of the Indian Evidence Act and wherever required, the medical witness must refresh his memory by perusing the relevant reports etc. prepared by him.

19. It is relevant to note that, under the provisions of the Indian Medical Council Act, only the registered medical practitioners are



entitled to render medical opinion before a Court of law. Medical professionals must, therefore, recognise that their professional responsibilities do not end with the treatment of patients or the performance of medical procedures. The duty to assist the Court is an integral part of their professional obligations. Such assistance is not a matter of discretion or favour, but a statutory and professional duty.

20.The criminal justice system functions on the basis that expert witnesses discharge their responsibility with due care and diligence and that their testimony faithfully reflects the findings recorded by them. Had the concerned Doctor exercised the care expected of a medical expert while giving evidence and verified the correctness of the deposition before affirming it, the discrepancy as noted supra would never have arisen in this case. The manner in which the evidence was provided and the explanation provided by the concerned Doctor reflects a lack of diligence and carelessness in the discharge of an important professional obligation.



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21.This Court also notices that the Wound Certificate in the present case falls short of what is required. It does not specify the extent or nature of the injuries, the kind of examination conducted, or the manner in which the conclusion was arrived at. Clarity emerged only upon perusal of the Case Sheet and Accident Register, neither of which had been marked as exhibits before the trial Court. As stated in *Modi's Textbook on Medical Jurisprudence and Toxicology*, utmost care is expected in the preparation of such documents, which must record both the facts observed and the conclusions drawn therefrom.

22.It is relevant to note that the Ministry of Health and Family Welfare, as a part of the Guidelines and Protocols for Medico-Legal Care for Survivors of Sexual Violence, has issued a revised *proforma* for Medico-Legal Examination of Survivors / Victims of Sexual Violence in the year 2014 itself. The same was issued, in order to standardize the medical examination protocols for the survivors / victims of Sexual violence. There is a checklist provided in this *proforma*, according to which, the type of examination carried out and the nature of injuries has



to be specified by the medical professional, before arriving at a medical opinion.

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23.As noted *supra*, the medical evidence serves as vital corroborative evidence, which would help in establishing the guilt or innocence of the Accused person. Therefore, the medico-legal documents, such as the Would Certificate and Accident Registers should be clear, legible and understandable. The possibility of issuing such documents in typed format can be considered, so that there is no ambiguity regarding the medical opinion in such documents. Further, this Court is of the opinion that the usage of the revised *proforma* issued by the Ministry of Health and Family Welfare should be made mandatory in cases involving sexual violence, including cases under the POCSO Act and the same must form a part of the Accident Register and should be marked as an exhibit before the trial Court. This would enable the trial Courts to fully understand and consider the medical evidence available in each case.



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24. Accordingly, the Secretary to Government, Health and Family Welfare Department, Government of Tamil Nadu; and the Director of Medical Education are directed to issue a comprehensive circular / guidelines to all Government Medical Colleges, Government Hospitals, District Headquarters Hospitals, Primary Health Centres and other Government health care institutions in the State. The circular shall comprehensively deal with the duties and responsibilities of Government medical professionals while acting as expert witnesses before Courts and shall include appropriate instructions regarding:

(i) the ethical standards expected of every expert witness, including the principles stated in *Modi's Textbook on Medical Jurisprudence and Toxicology* that medical evidence is intended to assist the Court in discovering the truth and that every medical witness is expected to depose objectively, honestly and impartially;

(ii) the necessity of ensuring that Accident Registers, Wound Certificates, Medico-Legal Reports and all other medico-legal records accurately record the clinical findings and professional opinion formed at the time of examination;

(iii) the importance of making entries in Accident Registers, Wound Certificates and all medico-legal records in a



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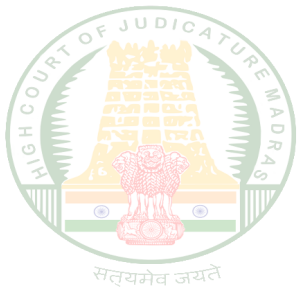
clear, legible and unambiguous manner, avoiding illegible handwriting, unexplained abbreviations and ambiguous expressions. Wherever the existing infrastructure permits, such records may be generated in a typed or computer-generated format so that they are readily comprehensible to investigating agencies, prosecutors, defence counsel and Courts alike;

(iv) the necessity of preparing the revised *proforma* for Medico-Legal Examination of Survivors/ Victims of Sexual Violence issued by the Ministry of Health and Family Welfare, in cases involving sexual violence, including cases under the POCSO Act;

(v) the necessity of familiarising themselves with the relevant medical records before entering the witness box and of deposing strictly in accordance with those records and their professional opinion;

(vi) the need to carefully understand every question put during examination and cross-examination and, wherever any ambiguity exists, to seek appropriate clarification before answering and

(vii) the importance of carefully reading and verifying the deposition before signing the same and immediately bringing to the notice of the Court any omission or inadvertent error noticed therein;



25.The directions issued herein are intended to strengthen the quality of medical evidence provided before Courts, reinforce the confidence reposed by Courts in expert witnesses and minimise the possibility of recurrence of situations such as the one encountered in the present case. The efficacy of the justice delivery system depends, to a considerable extent, upon the credibility of expert evidence. It is, therefore, imperative that every medical professional entrusted with this responsibility discharges it with the highest standards of competence, objectivity and professional integrity.

With the above directions, these criminal miscellaneous petitions stand dismissed.

Index : Yes / No

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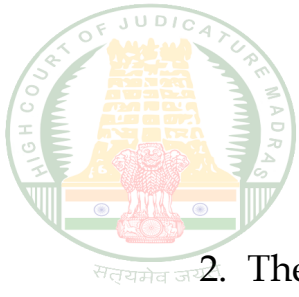
NCC : Yes / No

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Note:

Mark a copy of this order to

1. The Secretary to Government,
Health and Family Welfare Department,
State of Tamil Nadu,
Secretariat, Chennai.

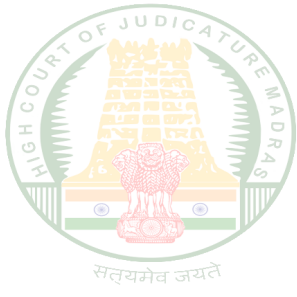


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2. The Director of Medical Education,
Directorate of Medical Education,
Chennai.

To

1. The Judge,
Fast Track Mahila Court,
Ramanathapuram.
2. The Inspector of Police,
Rameswaram Town Police Station,
Ramanathapuram District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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