

Crl.A(MD) No.656 of

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01.09.2026

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CORAM

THE HONOURABLE MR. JUSTICE A. D. JAGADISH CHANDIRA
and
THE HONOURABLE MR. JUSTICE B.MURUGESAN

Crl.A(MD) No.656 of 2024

Parthiban

... Appellant

vs.

The Inspector of Police,
All Women Police Station,
Pattukottai,
Thanjavur District
(Crime No.16 of 2018)

... Respondent

Prayer:- Criminal Appeal filed under Section 415(2) of BNSS., to set aside the judgment dated 07.07.2023 made in Spl.S.C.No.30 of 2019 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur and allow the above criminal appeal.

For Appellant : Dr.R.Alagumani

For Respondent :G.Karuppasamy Pandian
Counsel for State of Tamil Nadu (Crl.Side)

J U D G M E N T

A.D.JAGADISH CHANDIRA,J.

The instant criminal appeal is filed by the accused (hereinafter referred to as “the appellant”) seeking to set aside the judgment of conviction and sentence dated



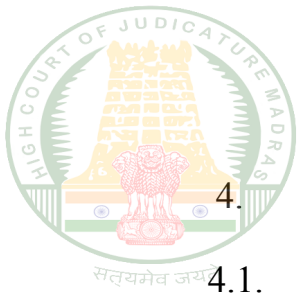
07.07.2023 passed by the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur (hereinafter referred to as “the Trial Court”) in Spl.S.C.No. 30 of 2019 (hereinafter referred to as “the impugned judgment”).

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2. *Vide* the impugned judgment, the Trial Court convicted the appellant and sentenced him as tabulated below:

Penal Provision	Imprisonment	Fine amount
Section 6 of Protection of Children from Sexual Offences Act, 2012	Life Imprisonment for the remainder of the natural life without commutation	Rs. 10,000/- in default of which to undergo one year rigorous imprisonment
506(i) of IPC	Two years rigorous imprisonment	Rs. 5,000/- in default of which to undergo six months rigorous imprisonment
The sentence awarded in both the offences shall run concurrently. Period of detention already undergone by the appellant was ordered to be set off		

3. In so far as the award of victim compensation to the victim child (P.W.1) is concerned, the Trial Court had awarded a compensation of Rs. 3,00,000/- (Rupees Three Lakhs Only) to the victim child (P.W.1) and further directed the Tamil Nadu Government to disburse the same from the "Tamil Nadu Child Victim Compensation Fund under the Protection of Children from Sexual Offences Act, 2012" after adjusting the interim compensation of Rs. 1,00,000/- already awarded to the victim child (P.W.1) as per its order in Cr. M.P. No. 745 of 2019 dated 10.12.2019.



4. The case of the prosecution, in a nutshell, is as follows:

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4.1. The case of the prosecution is that the victim child (P.W.1) and the victim child's brother (P.W.7) are the children of one Bakiyalakshmi and Murugandhan. Due to a misunderstanding Bakiyalakshmi left her husband i.e. Murugandhan and was living alone at Maravakadu. During such time, Bakiyalakshmi got acquainted to the appellant and started living with him along with her children. After some time, the Bakiyalakshmi passed away due to a kidney failure and the victim child (P.W.1) and the victim child's brother (P.W.7) who were minors came under the care and custody of the appellant. While so, the appellant being a drunkard, taking advantage of the destitution of the children for the past four years, used to send victim child's brother (P.W.7) outside the house and during his absence used to remove the victim child's panties and committed repetitive penetrative sexual assault. The appellant further had threatened the victim child (P.W.1) and the victim child's brother (P.W.7) not to disclose the same to any one and thereby conveniently continued to commit penetrative sexual assault for a period spanning nearly as long as four years.

4.2. One day, Manivannan (P.W.3), a neighbour of the victim child (P.W.1) noticing that the victim child (P.W.1) was sad and depressed instructed his wife, Masilamani (P.W.4) to enquire the victim child (P.W.1). On enquiry the victim child (P.W.1) informed about the crime committed on her, by her step father i.e. the



appellant, Manivannan (P.W.3) feeling that it was not safe for the victim child (P.W.1) to continue under the care of the appellant arranged for the victim child (P.W.1) to be admitted in a children's home i.e. TELC Bethalegam in Pudukottai. While, the victim child (P.W.1) was at the said home, Suganthavalli (P.W.2), a social worker observing that the victim child (P.W.1) was depressed, informed the child protection officer, Ashok (not examined). On his instructions, she along with Sheeba Helen (P.W.5), another social worker/child counsellor, enquired the victim child (P.W.1) and on coming to know of the sexual assault on the victim child (P.W.1) gave a complaint (Ex.P.3) on 13.06.2019 to the Inspector of Police (P.W.16), who took the same on file and registered a FIR (Ex.P13) in Crime No.16 of 2019 for the offences under Sections 5(l) & 5(n) r/w. 6 of the POCSO Act on the file of the AWPS, Pattukottai.

4.3. On the same day, the Inspector of Police (P.W.16) took up the case for investigation and went to the place of occurrence and prepared an observation mahazhar (Ex.P.5) and a rough sketch (Ex.P.14) in the presence of the independent witnesses [i.e. Anandh (PW.9) and Muniyandi (not examined)]. Further, the Inspector of Police (P.W.16) examined the victim child (PW1), Suganthavalli (P.W.2), Manivannan (P.W.3), Masilamani (P.W.4), Sheeba Helan (P.W.5), Panchalan (P.W.6), the victim child's brother (P.W.7) and Anandh (PW.9) and recorded their respective statements.



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4.4. After examining the witnesses, the Inspector of Police (P.W.16) sent the victim child (PW.1) for medical examination to the Pattukottai Government Hospital.

At the Pattukottai Government Hospital, Dr. Lakshmi (PW.13) examined the victim child (P.W.1) and while being examined, the victim child (P.W.1) pointed to her genitals and informed Dr. Lakshmi (PW.13) of the occurrence and the pain she was experiencing thereof. On examination, Dr. Lakshmi (PW.13) issued an accident register (Ex.P8) and confidential medical report (Ex.P.9) noting that the victim child (P.W.1) had not attained menarche and further observing that there were no external injuries on the genitals of the victim child (P.W.1), her perineum was intact and that her vagina admitted one finger.

4.5. Based on the investigation, at about 4.00 pm. on the same day, the Inspector of Police (P.W.16) arrested the appellant near the Adirampattinam market street and recorded his voluntary confession statement (Ex.P.4) in the presence of the independent witnesses [i.e. Govindarajan (PW.8) and Sakthivel(not examined)] and thereafter brought the appellant to the police station and sent him to the Judicial Magistrate Court, Pattukottai for judicial remand. Following which, the victim child (P.W.1) was also sent to the Judicial Magistrate Court, Pattukottai through the Head Constable (PW.11) for recording her statement (Ex.P.2) under Section 164(5) of Cr.P.C. After recording her statement, the Inspector of Police (P.W.16) sent the appellant for medical examination to the Government Hospital, Pattukottai, wherein



Dr. Rajachandrasekar (PW.14) examined the appellant and issued a medical certificate (Ex.P.10) opining that it could not be conclusively said that the appellant was either impotent or was incapable of having sexual intercourse nothing to suggest that the appellant is impotent.

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4.6. The Inspector of Police (PW.16) enquired the Headmistress (PW.15) of the Government Girls Higher Secondary School, Adiramapattinam, recorded her statement and therewith obtained a Bonafide Certificate (Ex.P11) of the victim child (P.W.1) wherein it was reflected from the school admission register (Ex.P12) that the victim child (P.W.1) was studying 9th standard and that her date of birth was 05.10.2005 and hence, she was aged 13 years. Lastly, the Inspector of Police (PW. 16) examined and recorded the statement of the various witnesses including the police officials involved and prepared and filed a final report for the offences under Section 5(l) & 5(n) r/w. 6 (2 Counts) of the POCSO Act, 2012 and Section 506(I) of IPC before the Judicial Magistrate Court, Pattukottai.

5. The Judicial Magistrate Court, Pattukottai took cognisance of the said final report and on appearance of the appellants, after complying with the provisions of 207 CrPC, the learned Judicial Magistrate committed the case to the Court of Sessions. The case was taken up as Spl. S.C. No. 30 of 2019 and made over to the trial Court. After hearing the appellants, the Trial Court framed charges against the



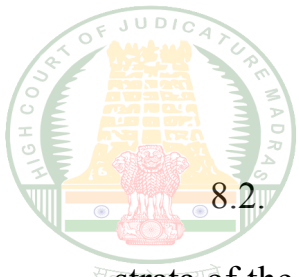
appellants for having committed the offences under Section 5(l) & 5(n) r/w. 6 (2 Counts) of the POCSO Act, 2012 and Section 506(I) of IPC. When the charges were read over and explained to the appellants, they pleaded not guilty and sought to be tried.

6. In order to prove the prosecution case, the prosecution examined 16 witnesses as P.W.1 to P.W.16 and marked 14 exhibits as Ex.P1 to Ex.P14. After examination of the prosecution witnesses, when the appellant was questioned under Section 313 of Cr.P.C. on the incriminating circumstances appearing against him, he denied the same as false without offering any explanation whatsoever and no witnesses were examined or marked any documents on his side.

7. The Trial Court, after hearing the arguments on both sides, found the appellant guilty and convicted and sentenced him as tabulated at paragraph 2, *supra*, *vide* the impugned judgment and challenging his conviction and sentence, the instant criminal appeal has been filed by the accused i.e. appellant.

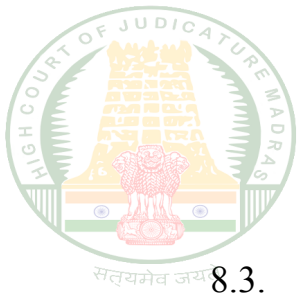
8. The learned counsel for the appellant submitted as follows:

8.1. The appellant was denied the opportunity to a fair trial and thereby his fundamental rights under Article 21 of the Constitution of India stood infringed.



8.2.

The appellant is an underprivileged person hailing from the lower strata of the society without proper education. Due to his poor financial situation, he was unable to pay legal fees to his counsel. Hence, the counsel engaged by him did not effectively defend his case and thereby failed to cross examine the prosecution witnesses. When the case, was posted for questioning under Section 313 of CrPC, the counsel engaged by the appellant had withdrawn his vakalat and thereafter, at the request of the appellant a legal aid counsel was appointed by the court. The legal aid counsel appointed had later expressed his unwillingness to represent the appellant to the court and thereby the appellant was constrained to appoint another private counsel. He had filed a petition to recall the prosecution witnesses and the same came to be allowed subject to the condition of payment of cost of Rs. 500/- per each witness to be recalled. Since, the appellant was in jail, there was nobody, to support him financially and the counsel appointed by the appellant also refused to appear for him. Subsequently though another legal aid counsel was appointed by the court, the trial court had not permitted recall and cross examination of the prosecution witnesses holding that the conditional order to recall the witnesses had not been complied with. Hence, the illusory presence of the private counsel as well as the appointment of legal aid counsel without permission to recall and cross examine the crucial prosecution witnesses has resulted in a denial of a fair trial which has ultimately infringed the appellant's right to legal aid under under Article 21 & 39A of the Constitution of India.

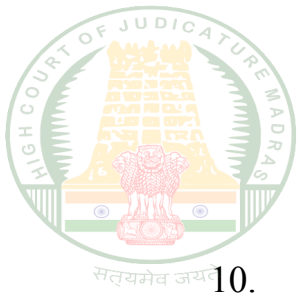


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8.3. When the appellant who is poor and uneducated and in judicial custody was not effectively represented before the Trial Court, it was the bounden duty of the public prosecutor to point out the same to the Trial Court and further it was the bounden duty of the Trial Court to take into consideration the same and to ensure that the appellant receives an effective legal representation while being tried for the charged offences. Failure of the Trial Court to ensure effective legal representation during the examination of the prosecution witnesses and failure to afford opportunity of cross examining the witnesses has occasioned in injustice to the appellant thereby leading to him being convicted and sentenced.

8.4. Hence, the impugned judgment, which is a resultant of the lack of proper legal representation during the trial, is liable to be set aside as violative of the fundamental right to a fair trial under Article 21 of the Constitution of India.

9. Notwithstanding the above said, learned counsel for the appellant submitted that the trial Court while sentencing the appellant has imposed a sentence of imprisonment for the remainder of the appellant's natural life without any commutation. According to him, such a sentence was passed in exercise of powers beyond that of the Trial Court and hence, the learned counsel for the appellant urged that in any instance, the impugned judgment is liable to be modified.



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10. The learned Government counsel appearing for the respondent submitted that though the appellant was represented by a counsel, he has not cross examined the prosecution witnesses in the present case. The legal aid counsel initially appointed by the Court has expressed his unwillingness to represent the appellant and thereafter, another counsel was engaged by the appellant, who filed Crl. M.P. No. 904 of 2022 seeking to recall the prosecution witnesses, which in turn came to be allowed by the trial Court *vide* its order dated 22.09.2022 subject to the condition to deposit cost to the tune of Rs.500/- per each witness to be recalled on or before 29.09.2022. However, in spite of several adjournments being granted to the said counsel, the condition was not complied with. Thereafter, another legal aid counsel has been appointed, however the trial Court had not permitted the said legal aid counsel to recall the prosecution witnesses citing that the condition to deposit cost of Rs. 500/- per witness to be recalled was not complied with.

11. Therefore, the learned counsel for the respondent fairly conceded that, when the appellant was not effectively represented by his counsel during the examination of the prosecution witnesses, it was the duty of the Trial Court to have appointed an effective legal aid counsel. Although, a legal aid counsel was appointed by the trial Court, he has also not taken any effective steps to ensure the cross examination of the prosecution witnesses. Therefore, the failure to provide effective



legal aid to the appellant has occasioned in injustice to the appellant. Lastly, the learned counsel for the respondent agreed with the learned counsel for the appellant that the trial Court has exceeded its powers in restraining the opportunity of commutation while imposing a sentence of imprisonment for the remainder of the appellant's natural life.

12. This Court has given its careful and anxious consideration to the rival contentions put forth by the counsel on either side and has thoroughly scanned through the entire evidence available on record and has also perused the impugned judgment of conviction and sentence.

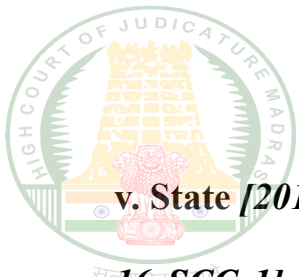
13. From the perusal of the records, this Court finds that none of the prosecution witnesses have been cross examined, either by the private counsel engaged by the appellant or by the legal aid counsel appointed by the trial court. During the questioning of the appellant under Section 313 of CrPC, the counsel who had appeared for the appellant withdrew his vakalat and thereafter, on the representation of the appellant that he had no means to engage a counsel, the trial Court had appointed Thiru. L. Netaji as a legal aid counsel to represent the appellant. However, he had also expressed his unwillingness to represent the appellant and hence, the appellant had himself engaged a private counsel, who had filed Crl. M.P. No. 904 of 2022 to recall all the prosecution witnesses i.e P.W.1 to P.W.16. The same



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came to be allowed subject to the condition to deposit cost of Rs. 500/- per each witness to be recalled on or before 29.09.2022. Since, the appellant was in prison, through out the trial, he was unable to raise the funds to pay the costs of Rs.8000/- and therefore, the conditional order was not complied with. Thereafter, the private counsel stopped appearing for the appellant and thereby, another legal aid counsel was appointed. Though, another legal aid counsel was appointed, the trial Court however citing that the conditional order was not complied with, had denied him the opportunity of recalling the prosecution witnesses for the purpose of cross examining them and thereby proceeded with the case thereof. In this regard, it is notable that the appellant was languishing in prison through out the trial and there was no one to support him financially during that time, and it was therefore that he was unable to raise the funds to pay the cost of Rs. 8000/-. Hence, in the opinion of this Court, the procedure adopted by the trial Court in appointing a free legal aid counsel but however, not permitting the appellant to recall of the prosecution witnesses for the purpose of cross examination by citing his failure to comply with the conditional order to pay costs is nothing but a denial of fair trial to the appellant.

14. On an earlier occasion, this Court had in **Jahangir v. Inspector of Police [Crl.A.(MD).No.499 of 2024 decided on 03.08.2024]** authored by one of us sitting in this Bench, has relied on **Ramanand v. State of U.P. [(2023) 16 SCC 510]**, **Mohd. Hussain v. State (Govt. of NCT of Delhi) [(2012) 2 SCC 584]**, **M. Kannan**



v. State [2017 SCC OnLine Mad 10874], Suhas Chakma v. Union of India [(2024)

16 SCC 1] & Ashok v. State of Uttar Pradesh [(2025) 2 SCC 381] and thereby

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reiterated that simply proceeding with the examination of the prosecution witnesses without ensuring a fair opportunity of cross examination to the appellant would infringe his fundamental right to a fair trial under Article 21 of the Constitution of India and that the infringement thereof was sufficient prejudice to vitiate the trial thereby warranting the conviction and sentence thereof to be set aside. The relevant extract of **Jahangir, Supra** is as follows:

15. In light of the above discussion, we find it incumbent to resort to Suhas Chakma v. Union of India, [(2024) 16 SCC 1] and Ashok v. State of Uttar Pradesh [(2025) 2 SCC 381] wherein the Apex Court has laid emphasis on the need to appoint a legal aid counsel at all material stages of the trial to ensure a fair trial to the accused. The relevant extract of Ashok, supra, is as follows;

38.1. It is the duty of the Court to ensure that proper legal aid is provided to an accused;

38.2. When an accused is not represented by an advocate, it is the duty of every Public Prosecutor to point out to the Court the requirement of providing him free legal aid. The reason is that it is the duty of the Public Prosecutor to ensure that the trial is conducted fairly and lawfully;

38.3. Even if the Court is inclined to frame charges or record examination-in-chief of the prosecution witnesses in a case where the accused has not engaged any advocate, it is incumbent upon the Public Prosecutor to request the Court not to proceed without offering legal aid to the accused;

38.4. It is the duty of the Public Prosecutor to assist the Trial Court in recording the statement of the accused under Section 313 of the CrPC. If the Court omits to put any material circumstance brought on record against the accused, the Public Prosecutor must bring it to the notice of the Court while the examination of the accused is being recorded. He must assist the Court in framing the questions to be put to the accused. As it is the duty of the Public Prosecutor to ensure that those who are guilty of the commission of offence must be punished, it is also his duty to ensure that there are no infirmities in the conduct of the trial which will cause prejudice to the accused;



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38.5. *An accused who is not represented by an advocate is entitled to free legal aid at all material stages starting from remand. Every accused has the right to get legal aid, even to file bail petitions;*

38.6. *At all material stages, including the stage of framing the charge, recording the evidence, etc., it is the duty of the Court to make the accused aware of his right to get free legal aid. If the accused expresses that he needs legal aid, the Trial Court must ensure that a legal aid advocate is appointed to represent the accused;*

...38.11. The right of the accused to defend himself in a criminal trial is guaranteed by Article 21 of the Constitution of India. He is entitled to a fair trial. But if effective legal aid is not made available to an accused who is unable to engage an advocate, it will amount to infringement of his fundamental rights guaranteed by Article 21;

16. Therefore, as stated in Ashok, supra, the Trial Court ought to have ensured that proper legal aid was provided to the appellant when the appellant's counsel failed to effectively represent the appellant during the examination of the aforesaid material witnesses. The Trial Court has erred in simply proceeding with the examination of the aforesaid material witnesses without ensuring a fair opportunity of cross examination to the appellant. Hence, we reiterate that the appellant has been denied a fair trial whereby his fundamental right under Article 21 of the Constitution of India has been infringed. The infringement of the appellant's right is sufficient prejudice to vitiate the trial thereby warranting the conviction and sentence thereof to be set aside. Therefore, in our considered view, in order to provide a fair opportunity of cross examination to the appellant, the matter ought to be remanded to the Trial Court to consider the matter afresh.

(emphasis supplied by this Court)

15. Therefore, as stated in **Jahangir, Supra**, the trial Court having simply proceeded with the examination of the prosecution witnesses without ensuring a fair opportunity of cross examination to the appellant has infringed his fundamental right to a fair trial under Article 21 of the Constitution of India. The infringement thereof is sufficient prejudice in the present case to vitiate the trial, thereby warranting the impugned judgment of conviction and sentence to be set aside. Hence, in our



considered view, in order to provide a fair opportunity of cross examination to the appellant, the matter ought to be remanded to the trial Court to consider the matter afresh.

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16. Before parting, this Court, finds it necessary to spare its attention to the sentence passed by the trial Court in the impugned judgment. As urged by both the counsel on either side, the power to pass any modified punishment within the punishment provided for in the penal statute for a specified offence can only be exercised by the High Court or in the event of a further appeal can only be exercised by the Supreme Court. This view has been asserted as early as in **Union of India v. Sriharan [(2016) 7 SCC 1]** and has further been reiterated in **Shivakumar alias Shiva v. State of Karnataka [(2023) 9 SCC 817]** and recently in **Kiren vs. State of Karnataka[2025 SCC Online SC 2863]**. Therefore, when Section 6 of the POCSO Act, provides for a punishment of rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, the trial Court was not entitled pass the impugned judgment sentencing the appellant to imprisonment for the remainder of the appellant's natural life by denying him the opportunity of having his sentence commuted. Hence, the impugned judgment of conviction and sentence is liable to be set aside in this regard also.



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17. In the result, the Criminal appeal stands partly allowed. The impugned judgment of conviction and sentence dated 07.07.2023 passed by the Principal Special Court for Exclusive trial of cases under POCSO Act, Thanjavur in Spl. S.C. No. 30 of 2019 is set aside and the case in Spl. S.C. No. 30 of 2019 is remanded to the Principal Special Court for Exclusive trial of cases under POCSO Act, Thanjavur to consider and decide the case afresh, after providing an opportunity to the appellant for cross examination of prosecution witnesses. The Principal Special Court for Exclusive trial of cases under POCSO Act, Thanjavur shall proceed with the trial in Spl. S.C. No. 30 of 2019 by retaining the available chief examination of the prosecution witnesses and by providing an opportunity to the appellant to cross examine the prosecution witnesses without insisting on the payment of cost/batta as ordered vide order dated 22.09.2022 in Crl. M.P. No. 904 of 2022. The Principal Special Court for Exclusive trial of cases under POCSO Act, Thanjavur shall appoint the Senior most Legal Aid Defence Counsel, who shall effectively represent the appellant. If any incriminating circumstances appear in the evidence as against the appellant during the cross examination, the procedure as per Section 313 of CrPC is to be followed. Since, the appellant is still in custody, he shall be produced before the Principal Special Court for Exclusive trial of cases under POCSO Act, Thanjavur, for further remand and the trial shall be concluded as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this



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Judgment. It is made clear that the trial Court shall ensure that the witnesses recalled shall be cross examined on the same day of their presence.

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[A.D.J.C.,J.] [B.M.,J]
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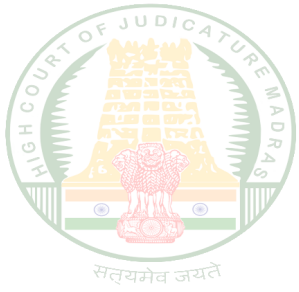
1.The Principal Special Court for
Exclusive trial of cases
under POCSO Act, Thanjavur

2.The Inspector of Police
All Women Police Station,
Pattukottai,
Thanjavur District

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

4.The Section Officer
Criminal Section (Records)
Madurai Bench of Madras High Court
Madurai.

5.The District Legal Services Authority,
Madurai



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