

IN THE COURT OF THE SPECIAL JUDGE, FAST TRACK
SPECIAL COURT, NADAPURAM
(SESSIONS DIVISION KOZHIKODE)

Present:- **Sri.Devan K.Menon, Special Judge**

Wednesday, the 4th day of April, 2026

CMP 03/2026 in SC 1432/2023

(Cr.No. 464/2023 of Vadakara Police Station)

<u>Between</u> Roshith, S/o.Rajeevan, aged 29/23, "Amma" House, Kurikkilad, By Adv.Santhosh Kurian	:	Petitioner/ accused
<u>And</u> State of Kerala, rep by S.H.O Vadakara Police Station, Vadakara, By Special Public Prosecutor Sri.Manoj Aroor	:	Respondent/Complainant

This petition, having been finally heard on 01.04.2026, the Court on 04.04.2026 delivered the following:

ORDER

1. This is an application filed on behalf of the accused under Section 311 of the Code of Criminal Procedure seeking recall of PW2 (survivor). As per the Petitioner/ the accused, at the time PW2 was examined before this Court, she was a major and unmarried. It is contended that PW2 had deposed before the Court under the compulsion of her mother, who was examined as PW1. At present, PW2 is married and residing under the care and protection of her husband. It is further

submitted that certain relevant questions in this regard were omitted to be put to PW2 during her earlier examination. Hence, it is contended that recalling PW2 is highly necessary. Accordingly, this application has been filed.

2. The prosecution has filed its objection. Heard both sides.
3. The learned Special Public Prosecutor submitted that PW2 was examined long back and was thoroughly cross-examined by the defence. Thereafter, the defence had filed CMP No. 296 of 2025 seeking recall of PW1 and PW2, which was dismissed by this Court. It is further submitted that the present petition is filed again on vague grounds, stating that certain questions were omitted earlier. It is argued that a witness cannot be recalled merely because the defence now feels that some more questions ought to have been asked. Hence, it is prayed that the application be dismissed.
4. Per contra, the learned counsel for the accused submitted that it is necessary to establish that PW2 had given her statement under the compulsion of PW1, and therefore, recalling PW2 is essential.
5. On consideration of the rival submissions, it is apposite to note that the accused is facing trial for offences punishable under Sections 376(1), 376(2)(n), 376(3), 363, and 354D(1)(i) of the Indian Penal Code, Sections 506 and 67 of the Information Technology Act, and Sections 5(l) read with 6, 11(iv) read with 12, 11(v) read with 12, and 13 read with 14 of the POCSO Act. In the present case, PW2 was examined on 28.12.2023. The entire prosecution evidence has been completed, and the questioning of the accused has also been concluded. At the stage of defence evidence, the accused has come forward with the present

application. It is also pertinent to note that an earlier application, CMP No. 296 of 2025, filed seeking recall of PW1 and PW2, was dismissed by the learned predecessor-in-office on 05.11.2025.

6. On perusal of the present application, it is seen that except for a bald assertion that certain questions are required to be put to PW2, no specific grounds or change in circumstances have been shown since the dismissal of the earlier application. In such circumstances, it can reasonably be presumed that the present attempt is only to influence the witness. The contention of the petitioner that PW2 is presently under the care and protection of her husband, whereas earlier she was under the influence of her mother, is not sufficient to justify recall. Further, the nature of the present application appears to be contrary to the statutory mandate under Section 33(5) of the POCSO Act, which envisages that a child shall not be called repeatedly to testify in Court. Though it is argued that PW2 is no longer a child, it is to be noted that the relevant consideration is her age at the time of the offence, which governs the applicability of the provisions of the POCSO Act. Any interpretation to the contrary would defeat the very object of the enactment. In the absence of any valid or sufficient grounds for recalling PW2, this Court finds no merit in the present application. Accordingly, the application is dismissed.

(Dictated to the C.A., transcribed by him, corrected and pronounced by me in open court, on this the 4th day of April, 2026).

Sd/-
DEVAN K. MENON
SPECIAL JUDGE

Copy Order in
CMP No.3/2026
in SC 1432/2023
DATED: 04.04.2026