



2025:DHC:3633



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 13.05.2025*+ **CRL.M.C. 1375/2025**

PC

.....Petitioner

Through: Ms. Jyoti Nambiar & Mr.  
Kunal Narwal, Advs.

versus

STATE OF NCT OF DELHI &amp; ANR. ....Respondents

Through: Mr. Rajkumar, APP for the  
State along with SI Ekta  
Yadav.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of the present petition, the petitioner seeks setting aside of the order dated 13.12.2024 [hereafter '*impugned order*'], passed by the learned Additional Sessions Judge (FTSC) (POCSO)-03, South West, Dwarka Courts, Delhi, [hereafter '*Trial Court*'] in SC No. 682/2022, titled as '*State of NCT of Delhi v. Vinay Malhotra*', by way of which the learned Trial Court was pleased to close the evidence of the petitioner-victim.

2. Briefly stated, the petitioner-victim had filed a complaint on the basis of which FIR No. 290/2022, dated 28.06.2022 at Police



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Station Dwarka, Delhi, for offence punishable under Sections 328/376/384/506 of Indian Penal Code, 1860 [hereafter ‘IPC’], with later addition of Sections 379/384/506 of IPC and Section 8 of the Protection of Children from Sexual Offences Act, 2012 [hereafter ‘POCSO Act’]. The learned Trial Court had passed an order on charge on 01.12.2023, directing framing of charge. The victim’s examination-in-chief was recorded on 03.02.2024 and she was partly cross-examined on 24.02.2024. On 20.03.2024, charges under Sections 5(1) and 5(p) read with Section 6 of the POCSO Act were added under Section 216 of Cr.P.C. against the accused, based on specific allegations of penetrative sexual assault made by the victim during her examination-in-chief. Despite multiple adjournments, no reply had been filed to the application under Sections 437(5)/439(2) of Cr.P.C. Cross-examination of the victim resumed on 04.10.2024, but the same was adjourned again due to the victim’s absence and counsel’s non-compliance with his undertaking. On 13.12.2024, during the recording of cross-examination, the counsel for the accused had put a question to the victim regarding whether her maid, Siya Pardesia, used to stay at her house. This question had been objected to by the counsel for the victim on the ground that it was repetitive. The victim replied that she had already answered the question and that it was being repeated. At this stage, the learned Trial Court had closed the cross-examination of the victim with the observation that “*the victim has repeated verbatim response from her counsel.*”



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3. The learned counsel for the petitioner submits that the closure of the victim's evidence by the learned Trial Court *vide* order dated 13.12.2024 is wholly unjustified, without any factual or legal basis, and it causes serious prejudice to the petitioner who is the child victim in this case. It was argued that the prolonged pendency of the petitioner's application under Sections 437(5)/439(2) of Cr.P.C., and repeated unwarranted adjournments have led to inordinate delay in the trial, in violation of the timelines prescribed under the POCSO Act. The learned counsel pointed out that the child victim was compelled to attend court on multiple dates despite the mandate under Section 33 of the POCSO Act that a child should not be called repeatedly, and that the trial proceedings lacked the required child-friendly atmosphere due to adverse remarks and aggressive questioning, contrary to Sections 33(4) and (6) of the POCSO Act. It was further contended that counsel for the accused conducted cross-examination without a valid *vakalatnama*, rendering the proceedings procedurally flawed. In the absence of any efficacious alternative remedy, the petitioner has approached this Court seeking setting aside of the impugned order and to ensure fair trial in accordance with law.

4. The learned APP for the State argues that the closure of the victim's cross-examination on 13.12.2024 was not justified in the facts and circumstances of the case, especially when the victim had only objected to a repeated and irrelevant question and was awaiting the Court's ruling on the objection raised by her counsel. It was submitted that the learned Trial Court ought to have adjudicated upon



the objection, instead of abruptly closing the evidence, particularly in a case involving a child victim under the POCSO Act, where heightened sensitivity and adherence to procedural safeguards are mandated. The learned APP further points out that the record shows consistent delays caused by the defence, including the change of counsel, repeated adjournments, and failure to comply with directions of the Court, all contributing to the hardship faced by the victim. The learned APP emphasizes that the object of a fair trial includes a fair opportunity for the victim to be heard fully and that the premature closure of her evidence defeats the spirit of the POCSO Act. Hence, the State supports the petitioner's plea for recalling the witness and setting aside the order dated 13.12.2024.

5. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

6. At the outset, it shall be relevant to take note of the impugned order dated 13.12.2024, which reads as under:

“ PW-1 Child victim is further cross-examined.

During cross-examination, it has been observed that despite repeated verbal and written warnings, the witness is showing reluctance and giving vague answers to the questions put by Ld. Counsel for the accused. It has also been observed that Ld. Counsel for the complainant has frequently interjected in the ongoing cross-examination of the witness. Considering the conduct of the witness, her cross-examination is stopped. She is discharged. The conduct of the witness and inference thereon shall be considered at the appropriate stage of the trial.

Let summons be issued to other witnesses cited at sl. no. 6, 7 & 8 for NDOH.

Put up for PE on 07.03.2025. At request of Ld. Counsel for



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complainant, the date is changed to 28.02.2025. Earlier date given stands cancelled.”

7. This Court notes that the examination-in-chief of the child victim was recorded on 03.02.2024, and she was partly cross-examined on 24.02.2024. Thereafter, on 20.03.2024, based on specific allegations of penetrative sexual assault made during the examination-in-chief, the learned Trial Court had invoked Section 216 of Cr.P.C. and added charges under **Sections 5(1) and 5(p)** read with Section 6 of the POCSO Act. On 09.05.2024, the learned counsel for the accused withdrew his *vakalatnama*, and the newly engaged counsel sought an adjournment, resulting in discharge of the victim from cross-examination, with costs of Rs.10,000/- imposed on the accused. Despite noting delays and the need for expeditious trial, and granting last opportunity for cross-examination, further delays occurred in the case. Adjournments were sought on medical and other grounds on 05.08.2024 and 20.09.2024. Although the matter was fixed for cross-examination on 22.10.2024 at 12:30 PM, the absence of the victim was recorded prematurely at 10:00 AM and the matter was adjourned to 13.12.2024.

8. As mentioned in detail above, several adjournments had been sought and granted even after imposing costs by the learned Trial Court. The child victim had been called repeatedly due to above mentioned adjournments, sought and granted, though, at times with a warning and imposing of cost on the accused.



9. This Court notes that Section 33 of the POCSO Act lays down specific procedural safeguards to protect the rights and well-being of child victims during trial, including the requirement that questions during examination-in-chief, cross-examination, or re-examination be routed through the Special Court, which reads as under:

“(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.

(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

Explanation.--For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.



(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

(9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974) for trial before a Court of Session.”

10. Thus, Section 33 of POCSO Act lays down special procedures to ensure the protection, dignity, and welfare of child victims during trial. The provision mandates that during examination or cross-examination, the questions for the child must be routed through the Special Court, which then puts them to the child, ensuring a sensitive and controlled communication process. The section emphasizes the need for a child-friendly atmosphere, allowing the presence of a trusted individual with the child and permitting frequent breaks if necessary. It also puts a bar on repeated summoning of the child to testify and bars any form of aggressive questioning or character assassination, ensuring the child’s dignity is preserved throughout the trial. The law also safeguards the child's identity from being disclosed, except in limited situations where such disclosure is deemed to be in the child’s interest and recorded with reasons.

11. In the background of the mandate of law as on child-friendly procedures under the POCSO Act, this Court notes that on 03.02.2024, the examination-in-chief of the victim was deferred on



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the ground that it was already lunch time. Later, on 13.12.2024, during the course of her cross-examination, the learned Trial Court abruptly closed the victim's evidence. This was despite the fact that the victim had merely indicated that the question being asked had already been answered earlier, was repetitive, and that she was awaiting the Court's ruling on the objection raised by her counsel. In this regard, it is useful to refer to the relevant portion of the victim's statement, which reads as under:

“PW-1 Statement of 'PC' (recalled for further cross-examination since deferred on 04.10.2024)

On SA

xxxxxxxxx By Sh. Nishant Sharma, Ld. Counsel for accused

Q. I put it to you as your examination in chief you have mentioned accused Vinay raped you many times when he stayed at your home in Rajouri Garden. Could you please tell the date, year and month?

Ans. I cannot tell the day, date, year and month.

It is wrong to suggest that I cannot tell the day, date, year and month as I was never been raped by the accused. Q. I put it to you that in your examination in chief you have mentioned that accused threaten you by saying that he had guns and he would kill me and my mother. Could you please tell me the day, date, year and month of the said incident?

Ans. I do not remember the day, date, year and month of the said incident. (Voltd. He had shown me gun in my school van when he raped me).

At this stage, witness has shown her handwritten complaint Ex. PW 1/A and also her statement u/s 164 Cr.P.C. dated 29.06.2022.

After seeing both the statements, It is correct that (Interjected by Ld. Counsel for the complainant)

**Court observation:**

**At this stage, ld. Counsel for the complainant had**



**interjected in the cross-examination stating that the question as put to the witness is not clear, also suggesting Id. Counsel for the accused to first dictate his question and then seek answer from the witness. The cross-examination so far recorded reveals that the relevant documents were shown to the witness followed by the question when the witness has also adverted to give vague response without saying that she did not understand the question properly. It seems that the interjection/objection by Ld. Counsel for the complainant is uncalled for. Witness is also warned to give specific answers to the questions put to her. Ld. Counsel for the complainant is also requested not to advise Id. Counsel for the accused the manner in which he required to cross-examine the witness.**

Continued after the interjection.

It is correct that neither in my handwritten complaint nor in my statement u/s 164 CrPC. I have mentioned regarding the gun shown by the accused to me.

At this stage, witness is shown her supplementary statement dated 30.06.2022 and dated 01.07.2022 u/s 161 CrPC. I put it to you that regarding the gun and accused raped you by showing gun to you is not mentioned in any of your statements. What do you have to say?

**Court observation:**

**It is observed that witness is trying to avoid the question by giving vague answers. She is again warned to give answers to the questions put to her.**

Ans. It is correct that I have not made any such allegations in any of my statement during investigation (Vold. I have stated so in my examination-in-chief),

Q. Could you please describe me about the gun what was the colour, size, length of gun and the type of bullet?

Ans. Accused has shown me photograph of gun in his phone which appears to be genuine. Accused was holding the gun in his hand in the photograph and also shown me photograph of other gun which was not in the hand of accused. I cannot show the photograph of the gun.

Further cross-examination is paused at the request of the witness.



Further cross-examination of the witness is resumed after 10 minutes.

Q. As you have mentioned in your examination-in-chief that accused had hit you once or twice on your face, could you tell me the date and time of the incident?

Ans. I do not remember the date and time of the incident. Do you have any photograph of face injury or medical done by doctor as you must have received injury on your face? Ans. I do not have any photograph or medical of the said incident.

It is correct that I have not made any complaint regarding the said incident to PS Rajouri Garden or PS Dwarka. It is correct that I was having mobile phone prior to job given to

accused. It is also correct that I had never made any only complaint or call to 100 number from my personal mobile phone regarding the said incident of beating. (Voltd. I was scared at that time.) It is wrong to suggest that accused had never beaten me and always used to treat me like younger sister. It is correct that in November 2021 when we shifted to Dwarka, accused used to pick and drop our maid namely, Shanti from Rajouri to Dwarka. It is also correct that accused used to work as driver. I do not know whatever me and my mom wants to purchase article like AC, furniture etc., accused used to purchase and bring the same home for which payment was made to him online.

Q. I put it to you that your maid Siya Pardesia used to stay at your house as she was your maid and she used to cook and serve food and tea for you and your mother?

Objected by Le. Counsel for the complainant stating that same question has already been asked.

Answer by the witness: Mein iska jawab de chuki huen. Court observation:

**Before the court could decide as to the objection raised, the witness has repeated verbatim response of her counsel. It seems that witness do not intend to answer the question put to her during cross-examination despite repeated warnings. Further proceeding with the cross-examination does not seem to be possible for the conduct of the witness.**

The cross examination is therefore, closed at this stage.”



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12. The learned Trial Court, while closing the further cross-examination of the victim, observed that the witness, by waiting for her counsel's response before replying to the question, was exhibiting a conduct indicative of unwillingness to answer. Taking into account this conduct, the learned Trial Court had concluded that it would not be feasible to proceed further with the cross-examination and accordingly closed it.

13. In this regard, this Court is of the opinion that while the record does reveal that the learned Judge, while recording the cross-examination and having warned the victim, observed that "*the witness has repeated verbatim response of her counsel. It seems that witness do not intend to answer the question put to her during cross-examination despite repeated warnings. Further proceeding with the cross-examination does not seem to be possible for the conduct of the witness.*", – it was for the learned Trial Court to have averred the evidentiary value of such cross-examination, considering her demeanour and conduct. However, to note that due to her conduct, further cross-examination was being closed in a case of sexual assault would definitely cause prejudice to her. Nonetheless, this Court also notes that the victim was issued warnings by the learned Trial Court for not answering the questions.

14. In a case of sexual assault, closing the cross-examination on the ground of the victim's conduct may result in prejudice both to the victim and the accused – particularly since the examination-in-chief



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stands recorded, and denial of cross-examination may later be held against the accused, depriving him of a fair opportunity to challenge those statements.

15. Therefore, considering the overall facts and circumstances of the case, this Court directs that the learned Trial Court shall grant one final opportunity for the further cross-examination of the victim. The learned counsel for the petitioner has undertaken that no adjournment shall be sought, the victim shall not avoid answering any question, and there shall be no unnecessary interjections during the cross-examination, which shall be concluded on a single date.

16. With these directions, the present petition stands disposed of.

17. A copy of this order be sent to the learned Trial Court for information and necessary compliance.

18. The judgment be uploaded on the website forthwith.

**DR. SWARANA KANTA SHARMA, J**

**MAY 13, 2025/vc**