



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 3RD DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKAR

CRIMINAL PETITION NO.201853 OF 2023 (482)

BETWEEN:

...PETITIONER

(BY SRI MARTHANDAPPA MALLESHAPPA ALLUR, ADVOCATE)

AND:

1. THE STATE THROUGH MUDHOL P.S.,
TQ. SEDAM, DIST. KALABURGI,
REPRESENTED BY ADDL. SPP,
HIGH COURT OF KARNATAKA,
KALABURAGI BENCH-585107.



...RESPONDENTS

(BY SRI JAMADAR SHAHABUDDIN, HCGP FOR R1;
R2 IS SERVED)



THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO ALLOW THE CRIMINAL PETITION U/S 482 OF CR.P.C. FILED BY THE PETITIONER AND QUASH THE ORDER DATED 04.09.2023 PASSED BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-I (SPL.POCSO) AT KLABURAGI IN SPL. CASE (POCSO) NO.72/2022, WHEREIN THE APPLICATION UNDER SECTION 311 OF CR.P.C. FILED BY THE ACCUSED/PETITIONER WAS REJECTED AND PERMIT THE PETITIONER TO RECALL P.W.1 FOR FURTHER CROSS - EXAMINATION.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed under Section 482 of Cr.P.C. challenging the order passed by the Additional District and Sessions Judge, FTSC-I (Spl. POCSO), Kalaburagi in Special Case (POCSO) No.72/2022 dated 04.09.2023, whereby the learned Sessions Judge has dismissed the application filed by the petitioner for recalling P.W.1 for further cross-examination.

2. The brief facts leading to the case are that:



The petitioner alleged to have committed offences punishable under Sections 363, 376(2) (n), 354-D, 344 and 376(3) of IPC as well as Sections 6 and 12 of the POCSO Act, 2012. In this regard, a complaint was filed by respondent No.2 and on the basis of the complaint, crime came to be registered. Subsequently, the investigating officer after completing the investigation, submitted charge-sheet against the accused for the offences punishable under Sections 354-D, 344, 363, 376(2) (n) and 376(3) of IPC as well as Sections 6 and 12 of the POCSO Act, 2012.

3. Thereafter, the learned Special Judge has taken cognizance and the petitioner was arrested and was produced before the Court and thereafter, remanded to the judicial custody. The charge was framed and read over to the petitioner and he pleaded not guilty.

4. Thereafter, the trial has begun and the victim/C.W.2/P.W.1 was examined on 07.10.2022 and she was fully cross-examined. Thereafter, other witnesses



were also examined and cross-examined. Almost after 1 year i.e., on 11.08.2023, the petitioner moved an application under Section 311 of Cr.P.C. for recalling P.W.1 for further cross-examination. The same was objected by the learned Special Public Prosecutor and by impugned order dated 04.09.2023, the Special Judge has rejected said application. This order is being challenged before this Court in this petition.

5. Heard the learned counsel for the petitioner and learned High Court Government Pleader for respondent No.1. Perused the records.

6. Learned counsel for the petitioner would contend that some material questions are not put to witness, as there are certain omissions and improvements in her evidence and they are required to be posed to the witness. Hence, he would contend that the Trial Court ought to have given him an opportunity to cross-examine the victim. He would further assert that the evidence of the victim may lead to conviction of the petitioner though



other witnesses have turned hostile. Hence, he would seek for allowing the petition by setting aside the impugned order by recalling P.W.1 for further cross-examination.

7. *Per contra*, learned High Court Government Pleader would seriously oppose the petition contending that the victim was fully cross-examined and no grounds are forthcoming for moving such an application and the application is moved at a belated stage and not maintainable. Hence, he would seek for rejection of the petition.

8. The records disclose that the petitioner was prosecuted for the offence of kidnap, rape and illegal confinement of the minor girl. The victim was examined as P.W.1 and her evidence was recorded on 07.10.2022. She was fully cross-examined on the same day and it appears that she has supported the case of the prosecution. Subsequently, other witnesses were also examined and after examination of 13 witnesses, on



11.08.2023, an application was filed under Section 311 of Cr.P.C. for recalling P.W.1/victim. The said application came to be rejected by Trial Court on 04.09.2023.

9. Though the application was rejected on 04.09.2023 itself, the certified copy was applied on 11.12.2023 and was obtained on 13.12.2023. Why there is delay in applying certified copy is not at all explained by the petitioner. Further, though the witness was fully examined and the cross-examined on 07.10.2022, the recalling application was filed after nearly one year. Now it is urged that the material questions regarding improvements and omissions were not put to the witness, but these issues can even be urged before the concerned Special Court, as it is based on records available including the evidence and 161 Cr.P.C. statement recorded.

10. The learned counsel for the petitioner has placed reliance on a decision of this Court in ***Criminal Petition No.4449/2022*** in the case of ***Mahammad Ali***



Akbar Vs. State of Karnataka¹. The facts are entirely different in the above cited case, as it is alleged that the victim is a member of the family and she was in love with the petitioner and that was required to be elicited in the said case from the mouth of the witness and hence, a recall was sought, but in the instance case, no such evidence is forthcoming. It is submitted that all other witnesses have turned hostile, but the records disclose that the victim has supported the case of the prosecution. It is further submitted that the medical evidence is also not supported the case of the prosecution. In that event, nothing prevents the defence from availing the benefit of the same. The victim was already humiliated by kidnap, rape and illegal confinement and she was elaborately cross-examined in the Court. After one year, again the witness was being sought to be recalled without disclosing before the learned Special Judge as to what questions are required to be posed. Since this is a sensitive matter, humiliation going to be suffered by the victim cannot be

¹**(2022) 2 Crimes 512 (Karnt.)**



ignored and merely because, the petitioner wants to recall the victim or a witness, the Court is not bound to recall a witness. The reasonable ground is required to be shown and certain omissions and improvements itself is not a reasonable ground and delay of one year in not filing such an application is not at all explained. It appears that after hostility of all material witnesses, there is an attempt to break the witness and for that purpose, the witness is being recalled which is not permissible and Court cannot be the party to such an activity. The conduct of the petitioner in moving such an application after one year and then applying the certified copy of order after two months disclose that it is only the tactics used to protract the proceedings or otherwise. The principles enunciated in the above cited decision relied by the learned counsel for the petitioner cannot be made applicable to the facts and circumstances of the case considering the peculiar circumstances of the case. Further, in the said case, the evidence was recorded during the inset of pandemic and that was also the ground considered for recalling a



witness. But in the instant case, everything has taken place subsequent to 2022. As such, the said principles cannot be made applicable to the facts and circumstances of the case in hand. It is also submitted that the trial is concluded and the matter is set down for hearing the arguments. When the matter is at the fag end of the trial, again the victim cannot be humiliated considering the conduct of the petitioner. Hence, the petition is devoid of any merits and does not survive for consideration. Accordingly, it stands rejected.

Sd/-
JUDGE

RSP
List No.: 1 Sl No.: 28