

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 3RD DAY OF AUGUST 2018

BEFORE

THE HON'BLE MR. JUSTICE K. SOMASHEKAR

CRIMINAL PETITION NO.101153/2018

BETWEEN

HUSENSAB S/O. BASHASAB NADAF
AGE:61 YEARS, OCC:BUSINESS,
R/O. HUVINAHALLI, TQ:HUNAGUND,
DIST:BAGALKOT.

... PETITIONER

(BY SRI.V.G. BHAT, ADV.)

AND

THE STATE OF KARNATAKA
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH, AT:DAHRWAD,
AMINGAD POLICE STATION, DIST. BAGALKOT.

... RESPONDENT

(BY SRI.PRAVEEN K. UPPAR, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., SEEKING TO QUASH THE ORDER DATED 21.06.2018 PASSED BY THE II ADDL. DISTRICT AND SESSIONS JUDGE, BAGALKOT IN SPL.C.NO.31/2016, OFFENCE PUNISHABLE UNDER SECTIONS 8 AND 18 OF POCSO ACT 2012 READ WITH SECTIONS 354A, 506, 354 AND 511 OF IPC AND THE APPLICATION FILED ON BEHALF OF PETITIONER UNDER SECTION 311 OF CR.P.C. DATED 21.06.2018 BEFORE THE II ADDL. DISTRICT & SESSION JUDGE, BAGALKOT IN SPL.C.NO.31/2016 BE ALLOWED.

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

ORDER

This petition is filed by the petitioner under Section 482 of Cr.P.C. seeking to quash the order dated 21.06.2018 passed by the II Additional District and Sessions Judge, Bagalkot in Special Case No.31/2016 for the offences punishable under Sections 8 and 18 of the POCSO Act, 2012 read with Section 354A, 506, 354 and 511 of IPC.

2. It is submitted that the prosecution has taken the cross-examination of PWs.14 and 15 as nil while proving the guilt of the accused and the Court below has also taken as nil for cross-examination of these witnesses. Same has been seen in the deposition of P.Ws.14 and 15 which is placed by the learned counsel for the petitioner seeking to quash the order passed by the Court below. Whereas, the petitioner had filed an application under Section 311 of Cr.P.C. for recalling witnesses namely PWs- 14 & 15 and permit him to cross-examine them, which came to be rejected by an order dated 21.06.2018 and the same is challenged in this petition under Section 482 of Cr.P.C.

3. However, the prosecution ought to have proved the guilt of the accused beyond all reasonable doubt for the offences which is charged against them and P.Ws.14 and 15 are required to be cross-examined by the defence counsel. Therefore, learned counsel for the petitioner submitted that intervention of this Court is required and the petition be allowed by quashing the order passed by the Court below.

4. Learned HCGP submitted that though P.Ws.14 and 15 have been examined by the prosecution, but the Trial Court has taken the cross-examination as nil and proceeded with the case in further. He further submitted that the order passed by the Court below may be recalled and a date be fixed for cross-examination of the witnesses i.e., P.Ws.14 and 15, as the matter is of the year 2016 which is pending for trial.

5. Having regard to the contentions taken by the learned counsel for the petitioner as well as the learned HCGP for the State, it is just and appropriate to allow the petition filed by the petitioner by quashing the order

passed by the II Additional District and Sessions Judge, Bagalkot in Special Case No.31/2016 in respect of cross-examination of P.Ws.14 and 15 is taken as nil, by keeping in view the audi alteram partem.

Accordingly, the petition filed by the petitioner under Section 482 of Cr.P.C. is hereby allowed. Consequently, the order dated 21.06.2018 passed by the II Additional District and Sessions Judge, Bagalkot in Special Case No.31/2016 is hereby set aside and the application filed under Section 311 of Cr.P.C. is hereby allowed. P.Ws.14 and 15 are recalled for further cross-examination in accordance with law.

However, learned counsel for the petitioner in further submitted that the matter is set down for incriminating statement under Section 313 of Cr.P.C. and prayed to fix the date as early as possible for the cross-examination of P.Ws.14 and 15.

Therefore, P.Ws.14 and 15 be secured by the Trial Court within a period of 15 days from the date of receipt of a copy of this order by issuing summons to them and

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proceed with the case for cross-examination of the above
said witnesses, in accordance with law.

SD
JUDGE

Rsh