



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 6855 OF 2026 (GM-RES)

BETWEEN:

1. SMT. PUSHPALATHA S.,
AGED ABOUT 37 YEARS
W/O ADARSH GOWDA B. A.,
RESIDING AT NO. 07,
RENUKA NILAYA BAICHAPUR ROAD
DEVANAHALLI TOWN
BENGALURU DISTRICT – 562 110.

2. XXXXXX
XXXXXX
XXXXXX
XXXXXX.

Digitally
signed by
SANJEEVINI J
KARISHETTY
Location:
High Court of
Karnataka

...PETITIONERS

(BY SRI ABHAY R. S., ADVOCATE FOR
MS. ANANDITHA REDDY., ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY DEVANAHALLI POLICE STATION
REPRESENTED BY
STATE PUBLIC PROSECUTOR



HIGH COURT BUILDING, BENGALURU.

2. MR. ADARSH GOWDA B. A.,
AGED ABOUT 40 YEARS
S/O CHIKKA ANJINAPPA
RESIDING AT NO. 07, RENUKA NILAYA
BAICHAPUR ROAD, DEVANAHALLI TOWN
BENGALURU DISTRICT – 562 110.

...RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL. SPP FOR R1)

THIS WP IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 528 OF THE BNSS, PRAYING TO-CALL FOR THE RECORDS IN SPL. C NO. 1188/2025 ARISING OUT OF CRIME NO. 0157/2025) PENDING ON THE FILE OF THE HON'BLE ADDL. DISTRICT AND SESSIONS JUDGE FTSC-III BENGALURU RURAL; SET ASIDE THE PROCEDURAL ACTIONS TAKEN BY THE LEARNED MAGISTRATE DEVANAHALLI DURING THE RECORDING OF THE STATEMENT UNDER SECTION 183 OF THE BNSS IN VIEW OF THE GROSS VIOLATION OF THE MANDATORY PROVISIONS OF SECTION 2691) OF THE POCSO ACT, 2012 IN IMPUGNED ANNEX-A DATED 05.11.2025 IN CRIME NO.157/2025.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



CORAM: HON'BLE MR. JUSTICE M.NAGAPRASANNA

ORAL ORDER

The petitioner - complainant is before this Court calling in question an act of the learned Magistrate while recording the statement of the victim – child, aged 2 years and 10 months, contrary to the mandatory provisions of Section 26(1) of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the Act'), in Spl.C.No.1188/2025 (arising out of crime No.157/2025), registered for the offences under Sections 65(2) of the BNS and Sections 3(b), 4(2), 5(n), 5(l) and 6 of the Act.

2. Heard Sri Abhay R.S., learned counsel along with Ms.Ananditha Reddy, learned counsel for petitioners and Sri B.N.Jagadeesha, learned Additional State Public Prosecutor for respondent No.1.

3. Facts in brief, germane, are as follows:

The first petitioner is the mother – complainant and the second respondent is the accused. Respondent No.2 and petitioner No.1 get married on 26.05.2022. A girl child is born



from the wedlock. On 26.10.2025, the child is traumatized and is said to have narrated to her mother that while changing the diaper, the father has indulged in acts which would become the ingredients of the offences under the Act. In pursuance of the said narration by the child, a crime in crime No.157/2025 comes to be registered by the first petitioner - mother on 28.10.2025, for the afore-quoted offences. The trial is on.

4. The issue is not with regard to the merit of the matter. The concerned Court examines the child and the statement of the child under Section 183 of the BNSS is recorded on 05.11.2025. The statement recorded is as follows:

ಕಲಂ 183 ಬಿ.ಎನ್. ಎಸ್. ಎಸ್. ರೀತ್ಯಾ ನೊಂದ ಬಾಲಕಿಯ ಸ್ವಯಿಚ್ಛಾ ಹೇಳಿಕೆ

ದಿ: 05-11-2025 ರ ನೊಂದ ಬಾಲಕಿ xxxxx ರವರ ಹೇಳಿಕೆಯನ್ನು ನ್ಯಾಯಾಧೀಶರ ಜೇಂಬರಲ್ಲಿ, ನ್ಯಾಯಾಧೀಶರು ಹಾಗೂ ಬೆರಳಚ್ಚುಗಾರ್ತಿಯನ್ನು ಹೊರತು ಪಡಿಸಿ ಬೇರೆ ಯಾರು ಇಲ್ಲ ಹಾಗೂ ಬಾಲಕಿ ಹೇಳಿಕೆ ನೀಡುತ್ತಿರುವ ಕೊಠಡಿಯಲ್ಲಿ ಆಕೆಯನ್ನು ಹೊರತುಪಡಿಸಿ ಬೇರೆ ಯಾರೂ ಇಲ್ಲ ಎಂಬುದನ್ನು ಖಾತ್ರಿಪಡಿಸಿಕೊಳ್ಳಲಾಯಿತು. ಬಾಲಕಿ ತಾನು ಹೇಳಿಕೆ ನೀಡುತ್ತೇನೆ ಎಂದು ಹೇಳಿದ್ದರಿಂದ ಅಕೆಯ ಸ್ವಯಿಚ್ಛಾ ಹೇಳಿಕೆಯನ್ನು ಪಡೆದಿರುತ್ತೇನೆ.

ನನಗೆ ಏನೂ ಆಗಿಲ್ಲ. ಈ ಹಂತದಲ್ಲಿ ಬಾಲಕಿ, ತಾಯಿ ಬೇಕೆಂದು ತಾಯಿಯ ಹಿಂದೆ ಹೋದ ಕಾರಣ, ತಾಯಿಯ ಸಮಕ್ಷಮ ಹೇಳಿಕೆಯನ್ನು ಪಡೆದುಕೊಳ್ಳಲಾಯಿತು. ಮಗುವಿಗೆ ಅರ್ಥವಾಗುವ ಬಾಲ ಭಾಷೆಯಲ್ಲಿ ಬಾಲಕಿಯ ತಾಯಿಯೇ ಏನಾಯಿತು ಎಂದು ಕೇಳಲಾಗಿ ಬಾಲಕಿ ಯಾವುದೇ ಉತ್ತರ ನೀಡಿರುವುದಿಲ್ಲ.



(ನ್ಯಾಯಾಧೀಶರ ಚೇಂಬರಲ್ಲಿ ನನ್ನ ಉಖ್ತಲೇಖನದಂತೆ ಗಣಕ ಯಂತ್ರದಲ್ಲಿ ಬೆರಳ್ಳಚ್ಚು
ಮಾಡಲಾಯಿತು)

ಓ.ಹೇ.ಕೇ.ಸ.ಎ. ಒಪ್ಪಲಾಗಿದೆ

ಸಹಿ/-

15/11/25

ಅಪರ ಸಿವಿಲ್ ಜಡ್ಜ್ ಮತ್ತು ಜೆ.ಎಂ.ಎಫ್.ಸಿ.,
ದೇವನಹಳ್ಳಿ.”

(Emphasis added)

5. Learned counsel for the petitioners submits that the examination of the child is contrary to Subsection (1) of Section 26 of the Act, which mandates that the statement of the child should be recorded in the presence of the parents of the child or any other person in whom the child has trust or confidence. The afore-quoted statement of the child, who at the relevant point in time was 2 years and 10 months, is recorded contrary to the provisions of the Act. There is certain ambiguity in the second paragraph of the afore-quoted statement of the child, which indicates that the statement was recorded in the presence of the mother. However, there is ambiguity.

6. Learned counsel for the petitioners submits based upon this ambiguity, notwithstanding the fact that there was *prima facie* medical evidence against the father for having indulged in



such acts on the child of 2 years and 10 months, he was enlarged on bail, solely on the score that there is violation of Section 26(1) of the Act.

7. In that light, to avoid a future circumstance of projection of an illegality at the fag end of the trial, it is necessary to nip it in the bud. The statement must have been recorded by the learned Magistrate under Section 26(1) of the Act, in the presence of the parents of the child or any other person in whom the child has trust or confidence. Section 26(1) of the Act reads as follows:

"26. Additional provisions regarding statement to be recorded.—(1) The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence."

(Emphasis supplied)

In terms of the afore-quoted Section 26(1) of the Act, the statement of the child must be recorded in the presence of the mother. In the case at hand, the absence or presence of the mother is itself ambiguous, as the concerned Court has recorded the statement contradictory to each paragraphs.



8. It is apposite to refer the judgment of the High Court of Judicature at Madras, in the case of **MANIKANDAN v. STATE¹**, wherein it is held as follows:

"39. Though such a contention on the face of it looks attractive, however, a perusal of Section 26 (1) of POCSO Act reveals that while recording the statement of a child victim, the presence of the parents of the child or person in whom the child has trust or confidence is made mandatory. Thus there is a clear intent of the Parliament that the presence of parents or any other person alone would infuse trust or confidence in the child to speak about what had happened. Thus, the intent of the Parliament is very clear as is evident from the inclusion of the parents of the child or any other person in whom the child has trust or confidence to be present during recording of statement of the child, as acts which the child victim complains of, which has been spoken to by the child victim to its parents, based on which the criminal machinery had been set in motion is only within the knowledge of the child and, therefore, the child victim would be at ease if the parents of the child victim is present during the recording of the statement.

40. From the above, it transpires beyond a pale of doubt that the Parliament has visualised the scenario that sexual abuse is being perpetrated on a child in seclusion and not in front of any witnesses and, therefore, the child victim, which has spoken about the abuse caused to him/her to their parents, the necessity of the parents to be along with the child infuses confidence in the child victim to speak out freely and detail the happenings while its statement is recorded by the Magistrate. Therefore, where an offence has been perpetrated on a child victim in confines without any witness, there arises a necessity to record the statement of the child victim by the Magistrate, as the child alone

¹Crl. A. 181/2023, decided on 28-08-2024.



is the witness to the offence against him/her, in the presence of its parents or any other person in whom the child has trust or confidence, but where the offence is perpetrated on the child victim for which there is/are eye witness to the said offence, making the examination of child victim with regard to recording its statement would be nothing but causing mental trauma to the child victim once over, which has been the basis on which the Courts have held that the statement of the child victim, which is recorded by the Magistrate would be substantive piece of evidence and there is no necessity to examine the child witness at the time of trial and cross examination on the said statement would suffice."

(Emphasis supplied)

In the light of the afore-quoted judgment and since the child is now brought back for recording the statement, which is contrary to Section 33(5) of the Act, it is solely on the folly of the learned Magistrate. Therefore, to steer clear the controversy, notwithstanding the fact that the child will have to be brought back before the concerned Court as a one-off situation to a one-off problem, I deem it appropriate to permit such exercise to be done by the concerned Court, only for the folly of the concerned Court not acting in accordance with law or not recording the statement in tune with Section 26(1) of the Act.



9. For the aforesaid reasons, the following:

ORDER

- a. The writ petition stands allowed.
- b. The statement recorded by the learned Magistrate, Bengaluru, on 05.11.2025, stands quashed.
- c. The learned Magistrate shall record the statement of the victim - child in tune with Section 26(1) of the Act, on **28.03.2026**, in the presence of the mother, failing which, the matter would be viewed seriously, if any orders are passed prejudicial to the complainant and the victim – child.
- d. Till the recording of the statement of the child is completed, further evidence shall be deferred before the concerned Court.
- e. The concerned Court shall regulate its procedure after recording the statement of the child.

Ordered accordingly.

Sd/-
(M.NAGAPRASANNA)
JUDGE

NVJ

List No.: 2 Sl No.: 36