



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 15TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

CRIMINAL PETITION NO.201088 OF 2025

(482(Cr.PC)/528(BNSS))

BETWEEN:

GUNDAPPA
S/O GOVINDAPPA KUSHALKAR,
AGE: 26 YEARS, OCC: AUTO DRIVER,
R/O BELUR (J) - 585104,
TQ. AND DIST. KALABURAGI.

...PETITIONER

(BY SRI SURESH CHANDRASHEKAR TENGLI, ADVOCATE)

AND:

Digitally signed
by RENUKA
Location: HIGH
COURT OF
KARNATAKA

1. THE STATE OF KARNATAKA
THROUGH SUB URBAN P. S.-585101,
KALABURAGI,
TQ. AND DIST. KALABURAGI,
REPRESENTED BY ADDL. S.P.P.,
HIGH COURT OF KARNATAKA,
KALABURAGI.
2. SANJUKUMAR
S/O BASAVARAJA REEVANI,
AGE: 40 YEARS,
OCC: DRIVER AUTO RICKSHAW,
R/O KALLAHANGARAGA-585104,
TQ. AND DIST. KALABURAGI,
NOW AT KAMALANAGAR-585104,



KALABURAGI,
TQ. AND DIST. KALABURAGI,
(FATHER OF VICTIM)

...RESPONDENTS

(BY SRI GOPALKRISHNA B. YADAV, HCGP FOR R1;
NOTICE TO R2 SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. (OLD), UNDER SECTION 528 OF BNSS (NEW), PRAYING TO ALLOW THE PETITION AND QUASH THE ORDER DATED 28.04.2025 PASSED BY ADDL. DISTRICT AND SESSIONS JUDGE FTSC-1 (SPL.POCSO) AT KALABURAGI IN SPL.C. (POCSO) NO.53/2024 (CR.NO.108/2024) AND THEREBY KINDLY PASS AN ORDER FOR RECALLING THE PW1/VICTIM, AND ACCORD PERMISSION TO DEFENCE COUNSEL FOR FURTHER CROSS EXAMINE PW-1/VICTIM FOR THE JUST DECISION OF THE CASE.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

(PER: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM)

The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973, assailing the order



passed by the learned Sessions Judge whereby the application filed by the petitioner under Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023 came to be rejected. The petitioner-accused, on account of change of counsel, had sought leave of the trial Court to recall the victim, examined as P.W.1, for the limited purpose of further cross-examination, so as to confront her with the medical evidence on record in order to establish that she was a major on the alleged date of the incident.

2. The learned Sessions Judge, while rejecting the said application, has observed that the victim (P.W.1) had already been extensively cross-examined by the earlier defence counsel covering all material aspects of the prosecution case. The trial Court has further recorded that the cross-examination of the victim runs into nine pages, demonstrating that sufficient opportunity had already been afforded to the defence to test the veracity of her testimony. In this background, the learned Sessions Judge



declined to exercise discretion for recalling P.W.1 and consequently rejected the application.

3. This Court has heard the learned counsel appearing for the petitioner and the learned High Court Government Pleader appearing for the respondent-State. The records of the case have been carefully perused.

4. The petitioner herein is facing prosecution for the offences punishable under Sections 363, 366A, 376(2)(j) and (n) of the Indian Penal Code, 1860, and under Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012. During the course of trial, the prosecution, in order to substantiate the charge, examined the victim girl as P.W.1. Her evidence was recorded in-camera, in the presence of her mother and the learned defence counsel, thereby ensuring due compliance with the safeguards contemplated under the POCSO Act. The victim was extensively cross-examined by the defence counsel at length. Apart from the victim, all material



prosecution witnesses, including the investigating officer and the medical officer who examined the victim, have been examined. The medical officer has deposed as P.W.5.

5. The present petition is filed invoking the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, seeking to set aside the order of the learned trial Court rejecting the application filed by the accused under Section 311 Cr.P.C. for recall of P.W.1 for the purpose of further cross-examination. The sole ground urged by the petitioner is that during the earlier cross-examination, the defence counsel had not specifically put questions to the victim regarding her age, and therefore, in order to elicit clarification on this aspect, recall of the victim is sought.

6. Having given anxious consideration to the submissions advanced and upon perusal of the records, this Court is of the considered view that the present petition does not warrant interference under Section 482



Cr.P.C. The scope of the inherent powers of this Court under Section 482 is limited to preventing abuse of the process of law and to secure the ends of justice. It is well settled that such powers cannot be exercised to unsettle proceedings that have reached an advanced stage of trial, particularly when the defence has already been afforded a full and fair opportunity to cross-examine the prime witness.

7. In the instant case, the records reveal that P.W.1 was thoroughly cross-examined by the defence on 21.09.2024, and the proceedings were conducted in-camera with due procedural propriety. The grievance now projected is essentially attributable to an omission on the part of the earlier defence counsel to frame specific questions regarding the age of the victim. Such an omission, by itself, cannot constitute a valid ground for recalling the victim who has already been subjected to exhaustive cross-examination. To permit recall at this stage would amount to re-opening the entire evidence,



thereby defeating the very object of expeditious trial in cases under the POCSO Act.

8. It is also significant that the doctor (P.W.5), who medically examined the victim, has been cross-examined by the defence with respect to the determination of age. Hence, the issue sought to be re-agitated through the recall application already stands addressed through the testimony of P.W.5. In this background, this Court finds no manifest illegality or perversity in the order of the trial Court warranting interference in exercise of inherent powers.

9. Be that as it may, it is trite that the burden of proving that the victim was a minor on the date of the alleged incident lies squarely on the prosecution. The defence, as revealed from the tenor of cross-examination and the line of questioning, is not directed against the minority of the victim but is a categorical denial of the very occurrence of the alleged incident. Therefore, the



thrust of the cross-examination is consistent with the defence theory that no such act as alleged ever took place.

10. It is open to the petitioner-accused to, at the stage of final arguments, contend on the basis of the charge-sheet material, medical evidence, and other documentary records, that the prosecution has failed to establish the age of the victim beyond reasonable doubt, and consequently, to urge that the provisions of the Protection of Children from Sexual Offences Act, 2012 are inapplicable. Such submissions can effectively be addressed in the course of arguments without recalling the victim and subjecting her to further examination.

11. In the considered view of this Court, the present petition, invoking the inherent powers under Section 482 Cr.P.C., is misconceived and devoid of merit, as it seeks to indirectly re-open an evidentiary issue already concluded in the course of a fair trial. The order of the learned trial Judge declining to recall P.W.1 does not



suffer from any patent illegality or arbitrariness warranting interference. Accordingly, the petition stands dismissed.

12. All pending interlocutory applications, if any, stand disposed of.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

RSP
List No.: 1 SI No.: 7
CT:SI