



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

CRIMINAL PETITION NO.7669 OF 2023

BETWEEN:

SRI. MAHABOOB PASHA
S/O LATE BASHA SAB
AGED ABOUT 33 YEARS,
R/AT WARD NO.23,
RAHAMATH NAGARA,
VIJAYAPURA TOWN,
DEVANAHALLI TALUK,
BENGALURU RURAL DISTRICT - 562 135.

...PETITIONER

(BY SRI. G. MAHENDRA, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY VIJAYAPURA POLICE STATION,
BENGALURU RURAL DISTRICT - 562 135.
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
HIGH COURT BUILDING,
BENGALURU - 560 001.

2. NOORJAN
W/O MUNEER AHAMED
AGED ABOUT 38 YEARS,
R/AT BAYYAMMA LAYOUT,
WARD NO.09, MANDIBELE ROAD,
VIJAYAPURA TOWN, DEVANAHALLI TALUK,
BENGALURU RURAL DISTRICT - 562 135.

...RESPONDENTS

(BY SMT. K.P. YASHODHA, HCGP FOR R1)





THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CODE OF CRIMINAL PROCEDURE, PRAYING TO SET-ASIDE THE ORDER DATED 25TH MAY, 2023 PASSED BY THE C/C ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-II, BENGALURU RURAL DISTRICT AT BENGALURU IN SPL. C.C. NO.906 OF 2021 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 343, 376, 366(A), 323, 504 AND 506 OF THE INDIAN PENAL CODE AND SECTIONS 4 AND 6 OF PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

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

ORDER

The petitioner/accused, who is sought to be prosecuted for offences punishable under Sections 343, 376, 366(A), 323, 504 and 506 of Indian Penal Code and Sections 4 and 6 of Protection of Children From Sexual Offences Act filed an application under Section 311 of Code of Criminal Procedure to recall the PW1 to PW4 for Cross-examination. The said application came to dismissed in respect of PW1-Survivor on 25th May, 2023 by the C/C Additional District and Sessions Judge, FTSC-II, Bengaluru Rural District, Bengaluru. Being aggrieved by the same, the petitioner/accused filed this petition, seeking interference of this Court.

2. Heard Sri. G. Mahendra, learned counsel appearing for the petitioner and Smt. K.P. Yashodha, learned High Court Government Pleader appearing for the respondent No.1.



3. The application filed by the petitioner/accused under Section 311 of Code of Criminal Procedure would indicate that the present counsel has obtained NOC from the earlier counsel representing the petitioner/accused, and he intends to cross examine the PW1 to PW4, since the earlier counsel had not taken stand effectively. Except the said stand, the petitioner has not taken any other stand as to why the PW1 has to be summoned for cross-examination. The Survivor cannot be made repeatedly to appear before the Court to give testimony in the absence of any sufficient cause. Accordingly, I do not find any illegality in the impugned order dated 25th May, 2023 passed by the C/C Additional District and Sessions Judge, FTSC-II, Bengaluru Rural District, Bengaluru in Spl. C.C. No.906 of 2021, wherein the application in respect of recalling the PW1-Survivor for cross-examination was rejected. Accordingly, Criminal Petition is ***dismissed***.

Pending IA's if any, does not survive for consideration, accordingly, same stands disposed of.

**Sd/-
JUDGE**

ARK