



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 24TH DAY OF DECEMBER, 2024

**BEFORE
THE HON'BLE MR. JUSTICE C M JOSHI**

**CRIMINAL PETITION NO.103832 OF 2024
(482(Cr.PC)/528(BNSS))**

BETWEEN:

1. LAZARUS @ LAZRAS
S/O. ABRAHAM LUNJALA,
AGE ABOUT 47 YEARS,
R/AT 9-2, ST COLONY,
PORUMAMILLA,
PORUMAMILLA, CUDDAPAH,
ANDHRA PRADESH – 516 193.
2. SADIQ @ SADIQ KHAN @ SANNASADHIQ
S/O. AHAMADKHAN JALIJAMADAR,
AGED ABOUT 35 YEARS,
R/AT HALE THAKUR OFFICE ONI,
DHARWAD, KARNATAKA – 580 001.
3. SADIQ @ DODDA SADIQ
S/O. RAJESAB DHARWAD,
AGED ABOUT 38 YEARS,
R/AT C/O AHMED KHAN JALIJAMADAR,
GANDHI CHOWK,
NEAR 8TH NO. SCHOOL,
DHARWAD KARNATAKA – 580 001.
4. LEDRIC @ CEDRIC JACOB @ JACKOB
S/O. MUSALIAH MANNEKUNTA,
AGED ABOUT 51 YEARS,
R/AT PAPER MILL,
GOA ROAD,
KELGERI, DHARWAD
KARNATAKA – 580 007.

Digitally
signed by
MALLIKARJUN
RUDRAYYA
KALMATH

...PETITIONERS

(BY SRI A. A. PATHAN, ADVOCATE)



AND:

1. THE STATE OF KARNATAKA,
(THROUGH VIDYAGIRI POLICE
STATION, DHARWAD)
BY H.C.G.P. HIGH COURT BENCH,
DHARWAD HIGH COURT BUILDING
BENCH, DHARWAD – 580 001.
2. SUSHANT
S/O. RAJESHWARPRASAD AGARWAL,
AGE: ADULT,
R/O: SHIDARAMESHWAR COLONY,
H.NO. 49, RANI CHANNAMMA NAGAR,
DHARWAD – 580 001.

...RESPONDENTS

(BY SRI RAMESH CHIGARI, AGA FOR R1;
NOTICE TO R2 IS DISPENSED WITH)

THIS CRIMINAL PETITION IS FILED U/S 482 OF CR.P.C.
(528 OF BNSS), PRAYING TO QUASH THE IMPUGNED ORDER DATED
23.11.2024 IN C.C. NO.65/2017 ON THE FILE OF III ADDL. SENIOR
CIVIL JUDGE AND CJM, DHARWAD AND CONSEQUENTLY ALLOW THE
APPLICATION FILED BY THE PETITIONERS UNDER SECTION 311 OF
CR.P.C., AS PRAYED FOR IN THE INTEREST OF JUSTICE AND ETC.,

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

CORAM: THE HON'BLE MR. JUSTICE C M JOSHI



ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE C M JOSHI)

Heard the learned counsel appearing for the petitioners and learned AGA who has taken notice for the respondent No.1-State.

2. Notice to respondent No.2 is dispensed with.

3. Being aggrieved by the order dated 23.11.2024, whereby, the application filed under Section 311 of the Criminal Procedure Code, 1973 (for short, 'Cr.P.C.') to recall PW.8 for cross-examination was rejected, the petitioners are before this Court.

4. Learned counsel for the petitioners would submit that the III Addl. Senior Civil Judge and CJM, Dharwad (hereinafter referred to as the 'trial Court', for short) rejected the application filed under Section 311 of the Cr.P.C., seeking recall of the PW.8 for cross-examination. It is submitted that the PW.8 appeared before the trial Court after several non-bailable warrants were issued against him and when the learned counsel for the



petitioners had sought the adjournment for cross-examination, the trial Court rejected the same and even the application filed under Section 311 of the Cr.P.C., came to be rejected. The petitioners have sufficient reasons and grounds to cross-examine the PW.8 which would show their innocence.

5. *Per contra*, the learned AGA would submit that though the PW.8 was secured by the trial Court after much difficulty, the petitioners had failed to cross-examine him despite knowing that he is a public servant working elsewhere when the trial took place. It is submitted that recall of the public servant / Investigating Officer from other places would considerably affect the duties of the public servant and therefore, such application is to be shunned.

6. A careful examination of the records would show that the petitioners are charged for the offences punishable under Sections 143, 147, 451, 427, 506 read with Section 149 of the IPC and when the matter was slated for



examination of the Investigating Officer, he could not be secured readily but after difficulty, the trial Court had secured him. Even after such securing, the IO was not cross-examined by the learned counsel for the accused / petitioners. There is no sufficient reason which has been shown for failing to cross-examine the PW.8. Absence of instructions to the counsel who conducted the case for the petitioners could not be accepted since the counsel for the petitioners had cross-examined PW.1 to PW.7 earlier. Therefore, this lame excuse is only to scuttle the speedy disposal of the case. Such attempt has to be shunned by the Court. However, there being a contention that there was an encroachment of the portion of the property, it appears that the cross-examination of the IO would also throw some light in respect of the contentions and the allegations made in the complaint and in the charge sheet.

7. This Court also notices that there are some other connected matters. Therefore, in the interest of justice and equity, the PW.8 needs to be cross-examined



by the counsel for the defence. Hence, the petition deserves to be allowed, however, with stringent conditions.

Hence, the following:

ORDER

- (i) The petition is ***allowed***.
- (ii) The PW.8 is recalled for cross-examination by the defence counsel and it shall be subject to the following conditions:
 - (a) The petitioners shall pay a cost of Rs.5,000/- to the PW.8 on the date when he would be present himself for cross-examination and defence counsel shall not seek adjournment for cross-examination.
 - (b) Any prayer for adjournment for cross-examination before the trial Court would forfeit his right to cross-examine PW.8.



**NC: 2024:KHC-D:18587
CRL.P No. 103832 of 2024**

Send the copy of this order to the trial Court,
forthwith.

**Sd/-
(C M JOSHI)
JUDGE**

RH
CT-ASC
List No.: 1 SI No.: 9