



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH
DATED THIS THE 27TH DAY OF DECEMBER, 2024
BEFORE
THE HON'BLE MR. JUSTICE G BASAVARAJA
CRIMINAL PETITION NO. 103866 OF 2024
(482(Cr.PC)/528(BNSS))**

BETWEEN:

RAJU S/O. ALLAHBAKSH PENDRI @ JAMADAR
S/O. ALLAHBAKSH PENDRI,
AGED ABOUT 30 YEARS, OCC: MECHANIC,
R/O. SHIVYOGI NAGAR, ATHANI,
TAL ATHANI DIST: BELAGAVI-591304.

...PETITIONER

(BY SRI. Z.M.HATTARKI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY ATHANI POLICE STATION, BELAGAVI DISTRICT,
REPTD. BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA, DHARWAD-560001.
2. ANNAPPA S/O. SANGAPPA BADIGER
S/O. SANGAPPA BADIGER,
AGE: 53 YEARS, OCC: CARPENTER,
R/O. SHIVAYOGI NAGAR, ATHANI,
TAL: ATHANI, DIST: BELAGAVI-591304.

...RESPONDENTS

(BY SRI. ASHOK KATTIMANI,
ADDL. GOVT. ADV. FOR SOLE RESPONDENT)

THIS CRIMINAL PETITION IS FILED U/S 482 OF CR.P.C. (528 OF BNSS), SEEKING TO QUASH THE ORDER ON APPLICATION U/S 311 OF CR.P.C. DATED 30.11.2024 BY REJECTING THE SAID APPLICATION IN SC NO.17/2019 FOR OFFENCES PUNISHABLE U/S 363, 376(2) (N) OF IPC AND SECTION 4 AND 6 OF POCSO ACT, PENDING ON THE FILE OF ADDL.DISTRICT AND SESSION JUDGE, BELAGAVI AND FTSC-I.



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

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE G BASAVARAJA)

1. The petitioner/accused has preferred this petition to quash the order passed by the trial Court dated 30.11.2024 in S.C.No.17/2019 and allowed the application filed under Section 311 of Cr.P.C. on behalf of the accused for further cross- examination of CW-33/PW-19.

2. On behalf of the accused, the advocate had filed application under Section 311 of Cr.P.C. to confront omissions and contradictions as required under Sections 145 and 157 of IPC to prove material contradiction and omission.

3. The learned Magistrate has rejected this application filed under Section 311 of Cr.P.C., on the ground that CW-33/PW-19 was cross-examined at length and the matter is of more than 6 years. In the application, it is clearly stated that:

"The Investigation Officer PW-19/CW-33 was examined by this Hon'ble Court on 26.09.2024, on



the same day the witness was subject to cross examination, during the cross examination of this witnesses the statement of CW-11 who was examined as PW-7 has been confronted to prove material contradiction and omission but due to oversight the other contradiction which were arosed during the cross examination of CW-12 as exhibit-D2 and in the cross examination CW-13 as D3 and D4 which were not confronted to the IO due to over sight."

4. Learned counsel for the petitioner/accused would point out as to the omissions and contradictions marked as Exhibits D2 to D4, which is to be confronted to the Investigating Officer. By oversight, learned counsel appearing on behalf of the petitioner/accused has not confronted the same to the Investigating Officer. Learned counsel for the petitioner has relied on the following judgments in support of his case:

- i. Satbir Singh Vs.State of Haryana reported in 2023
SCC OnLine SC 1086*
- ii. State Vs. N.Seenivasagan reported in 2021 SCC
OnLine SC 212*

5. It is settle principal of law that fair trial has to be conducted as required under Article 21 of the



Constitution of India. Further cross-examination of PW19 appears to it to be essential to the just decision of the case. Learned Magistrate has not assigned any proper reasons to reject this application. Considering the arguments advanced on behalf of the petitioner, it is just and proper to allow this application. Accordingly, I pass the following:

ORDER

- i. Petition is allowed.
- ii. The order passed by the Additional District and Session Judge, FTSC-I, Belagavi, dated 30.11.2024 is quashed. Consequently, the application filed under Section 311 of Cr.P.C. filed on behalf of the petitioner/accused dated 30.11.2024 is allowed.
- iii. The trial Court is directed to provide an opportunity to the petitioner/accused for further cross-examination of CW-33/PW-19 as sought for in the application after providing opportunity



to the petitioner/accused for the cross-examination of CW-33/PW-19.

- iv. The trial Court is directed to dispose of the case in accordance with law.
- v. Registry is directed to send copy of the order to the trial Court.

**Sd/-
(G BASAVARAJA)
JUDGE**

KGK
Ct:vh
List No.: 2 Sl No.: 12