



CNR: KAHC010337822020

NC: 2026:KHC:44718
CRL.P No. 6224 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

CRIMINAL PETITION NO. 6224 OF 2020

BETWEEN:

SRI MANJUNATH
S/O NARASIMHAPPA,
AGED ABOUT 28 YEARS,
R/O ALAVATTA VILLAGE,
SRINIVASPURA TALUK,
DISTRICT KOLAR - 563 135.

...PETITIONER

(BY SRI R.V.ANAND, ADVOCATE)

AND:

1. SMT.NETHRAVATHI
W/O VENKATESH,
AGED ABOUT 35 YEARS,
AMEER JAN BUILDING,
N K EXTENSION,
CHINTAMANI TOWN,
CHIKKABALLAPUR DISTRICT - 562 101.
2. STATE OF KARNATAKA
REP BY SUB INSPECTOR OF POLICE,
SRINIVASPURA POLICE STATION,
SRINIVASPURA, KOLAR DISTRICT,
REP BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU - 560 001.

...RESPONDENTS

(BY R1 - SERVED & UNREPRESENTED
SRI MAHESHA P., HCGP FOR R2)

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



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THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO SETTING ASIDE THE IMPUGNED ORDERS DATED 14.11.2018 IN C.C.NO.889/2014 PASSED BY THE LEARNED PRINCIPAL CIVIL JUDGE AND JMFC, SRINIVASAPURA AND IMPUGNED ORDER DATED 24.07.2020 IN CRL.RP.NO.4/2019 PASSED BY THE LEARNED I ADDITIONAL SESSIONS JUDGE, KOLAR AND BY DISMISSING THE APPLICATION FILED BY THE PROSECUTION U/S 323 OF CODE OF CRIMINAL PROCEDURE.

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

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL ORDER

Challenging order dated 14.11.2018 passed by Prl. Civil Judge and JMFC, Srinivasapura in CC no.889/2014 and order dated 24.07.2020 passed by I Addl.Sessions Judge, Kolar in Crl.RP no.4/2019, this petition is filed.

2. Sri RV Anand, learned counsel for petitioner submitted that petitioner was accused in complaint filed by respondent no.1 herein on 31.02.2014, alleging that at 02.30 p.m. on same day that while she was attending nature's call, about 50 mtrs. from her house, accused came from behind, clasped on her chest from behind and when she tried to escape, pulled out her saree, tore off her petticoat and attempted to



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commit rape. Her cries for help went unheard. Accused caused injuries on her left thigh. When she went near her house, accused chased her and pushed her down and when she fell down, she sustained injuries on her left arm, forearm etc. At that time her mother, sisters and neighbours came there and accused left from scene. But by threatening abused her in foul language. Complaint was registered as Crime no.121/2014 by Srinivaspura Police Station for offences under Sections 354A, 323, 504, 506 of Indian Penal Code, 1860 (**IPC**).

3. It was submitted, on 02.04.2014, statement of victim was recorded under Section 164(5) of Code of Criminal Procedure, 1973 (**CrPC**). Subsequently, on filing of charge sheet, matter progressed to trial. In her examination-in-chief, she deposed in terms of her complaint and copy of her statement recorded under Section 164(5) of CrPC was got marked. Immediately thereafter on 11.08.2017, application was filed by Public Prosecutor under Section 323 of CrPC for committal of matter to Sessions Court for offence under punishable under Section 376 of IPC. Though application was opposed, by order dated 14.11.2018, application was allowed.



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Even revision filed against said order came to be dismissed. Aggrieved, this petition was filed.

4. It was firstly submitted that there was substantial improvement in her statement recorded under Section 164(5) of CrPC. And though such statement was recorded on 02.04.2014, filing of application for committal, after examination-in-chief of prosecutrix by marking her entire statement as Exhibit P2 would not be justified.

5. Relying upon decision of Hon'ble Supreme Court in ***Suo moto WP (Crl).no.1/2017*** reported in ***(2023) 12 SCC 683*** and ***Somasundaram alias Somu v. State represented by the Deputy Commissioner of Police*** reported in ***(2020) 7 SCC 722***, it was submitted, an order of conviction could not be passed solely on statement recorded under Section 164(5) of CrPC and it was also clarified that practice of marking of entire statement recorded under Section 164(5) of CrPC in examination-in-chief would be contrary to procedure. Thus, taking note of contents of statement while passing orders for committal would be illegal and sought for quashing.



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6. On other hand, Sri Mahesha P., learned HCGP for respondent no.2-State opposed petition. It was submitted, order of committal can be passed at any stage. It was submitted, though marking of statement recorded under Section 164(5) of CrPC in examination-in-chief may be an irregularity, same would not be fatal. It was submitted, in complaint as well as in her examination-in-chief, complainant had deposed about attempt to commit rape. Therefore, order of committal passed on said application cannot be stated to be delayed. It was alternatively submitted, since examination-in-chief of prosecutrix was not yet completed, there was scope for rectification of error in procedure. It was further submitted, order of committal as well as order passed by Revisional Court were in strict compliance with Section 323 of CrPC and sought for dismissal.

7. Respondent no.1 is served and unrepresented.

8. Heard learned counsel and perused impugned order and material on record.

9. This petition is by accused challenging order of committal passed by learned trial judge as well as order of



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dismissal of revision filed by accused against order of committal.

10. Main ground urged is that prosecutrix though had given particulars of incident in her complaint filed on same day and FIR was registered for offences punishable under Sections 354, 506, 504 and 323 of IPC, material particulars for invocation of Section 376 of IPC were added in her statement recorded under Section 164(5) of CrPC but omitted in her complaint and examination-in-chief.

11. Under such circumstances, by mere marking of entire statement recorded under Section 164(5) in examination-in-chief and consideration of contents while passing orders on application filed under Section 323 of CrPC would be irregularity of procedure. But, As rightly submitted by learned HCGP, power of Court for committal is unrestricted and can be passed at any stage, in case it appears to learned Trial Judge that case is one which ought to be tried by Court of Sessions. While offences under Sections 506, 504, 323 and 354 are triable by learned Magistrate, offence under Section 376 would be triable by Court of Sessions.



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12. In her complaint as well as in her examination-in-chief, prosecutrix stated about attempt to commit rape by accused. But specific overt-acts insofar as offence under Sections 375 and 376 of IPC were disclosed only in her statement recorded under Section 164(5) of CrPC and omitted in her examination-in-chief. Indeed, her entire statement recorded under Section 164(5) of CrPC is got marked as Exhibit P2 which as per ratio in **Soma Sundaram's** case (supra) would be contrary to law. Consequently, order passed by learned Trial Judge on 14.11.2018 on application filed under Section 323 of CrPC for committal to Sessions Court as also order passed dismissing revision petition filed against said order would not be justified and warrant interference.

13. At same time, as rightly pointed out by learned HCJP, examination-in-chief of prosecutrix is not yet complete. Therefore, it would only be appropriate to reserve liberty to invoke Section 323 of CrPC at appropriate stage, if found necessary in course of trial or thereafter. Insofar as present order, petition would succeed.



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14. Consequently, petition is ***allowed***. Order dated 14.11.2018 passed by Prl. Civil Judge and JMFC, Srinivasapura in CC no.889/2014 as well as order dated 24.07.2020 passed by I Addl.Sessions Judge, Kolar in Crl.RP no.4/2019 are set aside, reserving liberty to invoke Section 323 of CrPC, if situation so arises at later stage.

**Sd/-
(RAVI V HOSMANI)
JUDGE**

AV
List No.: 1 Sl No.: 22