

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
CRIMINAL PETITION NO. 117 OF 2015

ORDER:

The petitioners - accused filed this petition under Section 482 Cr.P.C., challenging the docket order dated 26.12.2014 in CrI.M.P.No. 66 of 2014 in S.C.No. 170 of 2014 on the file of II Additional Assistant Sessions Judge, Kakinada, East Godavari District. Under the impugned order, the learned Judge allowed the petition filed by the prosecution under Section 91 Cr.P.C and permitted to summon the school record of PW-1 from the MGM Corporation High School, Gandhi Nagar, Kakinada for proving the age of PW-1.

2. The learned counsel for the petitioners opposed the impugned order mainly on the submission that the age of the girl was well elicited by prosecution through the evidence of PW-11- the Doctor and his opinion was also not challenged but belatedly at the fag end of the trial, the prosecution has come up with the present petition to summon the school record, which is unwarranted. He argued, the trial Court ought not to have permitted the prosecution to summon the record, which causes prejudice to the interest of the defence.

3. Learned Public Prosecutor opposed the petition submitting that the order of the trial Court was perfectly right and the evidence of PW-11 being only an opinion, the prosecution rightly urged the trial Court to summon the

school record, which is an authenticated record for proving the age of the girl and the order of Trial Court does not infringe any rights of the accused.

4. In the light of the above arguments, the point for determination is whether the trial Court was right in allowing the petition of prosecution.

5. **POINT:** The observation of the trial Court was that PW-11 being an expert is not infallible and therefore, in the interest of justice, the prosecution could be given an opportunity to prove the age of PW-1 by summoning the school record. With the above observation, the trial Court allowed the petition.

6. I find no illegality or irregularity or prejudice to the right of the defence side in the above order. If at all the school record is summoned and produced before the trial Court, the defence side will have every right to cross-examine the concerned witness who produces the school record of PW-1 and have a right to challenge the veracity of school record. The defence side will have a further right to submit the arguments before the trial Court that the evidence of PW-11 is more reliable with regard to the age of the girl than the school record that is going to be marked. In such an event, the trial Court has to give the reasoned finding on the arguments to be addressed by the defence. So, in such a way, the right of the defence side is protected and by marking the school record, its right will not be affected in any manner.

7. Therefore, while dismissing this Criminal Petition, the trial Court is directed to give an opportunity to the defence side to cross-examine the witness who produces the school record of PW-1 and also permit the defence side to addresses arguments with regard to the age of the girl covered by the evidence of PW-11 as well as the school record and give a reasoned finding in its ultimate judgment.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

19.01.2015

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Note: (1) Furnish copy tomorrow.

(2) Registry to send a copy of this Order to the trial Court.