

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.3434 of 2018

ORDER:

This Criminal Petition is filed by the petitioners/accused aggrieved by the order dated 28.2.2018 passed by the Metropolitan Sessions Judge -cum- I Additional District Judge, Visakhapatnam in Criminal M.P.No. 601 of 2018 in S.C.No. 170/2016, summoning PW-1 to mark the study certificate of PW-1.

2. The submission of learned counsel for petitioner Smt.S.A.V.Ratnam, is that earlier the petitioners/accused filed Crl.M.P.No. 253 of 2018 seeking to recall PWs 1 and 3 for further cross examination on the ground that due to oversight the counsel for accused did not question PWs 1 and 3 regarding the age of the victim and the said petition was dismissed by the Court but however, for the same purpose when the prosecution filed a petition to recall PW-1 to mark the study certificate of PW-1, the same was allowed which would amount to discrimination and injustice towards petitioner/accused.

3. On perusal of the relevant orders, this Court finds no merit in the said argument. It is true that the petitioners/accused earlier filed Crl.M.P.No. 253/2018 to recall PWs 1 & 3 for the purpose of further

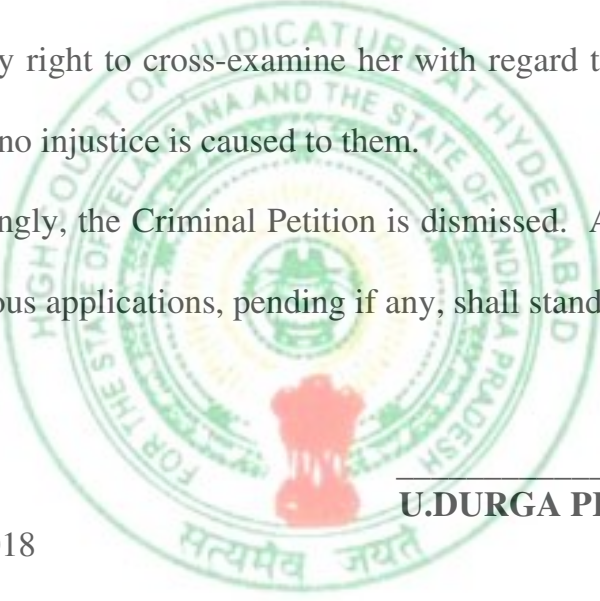
cross-examination on the ground that due to oversight their counsel did not question PWs 1 & 3 regarding the age of the victim and said petition was dismissed by the Court in its order dated 31.1.2018 on the observation that PW-1 is the victim girl and PW-3 is the mother of PW-1 and both of them were cross-examined by the counsel for accused; PW-1 is only competent to speak about her age as per the school records and PW-1 already stated that she was 15 years old by the time of her studying 10th class and in view of her answer, now PWs 1 and 3 cannot be recalled to ask the questions regarding the age of the victim.

4. Be that as it may, the prosecution filed Crl.M.P.No. 601/2018 submitting that the school head master who issued the said certificate dated 7.11.2015 was expired and said document remained unmarked and the said document has to be marked on behalf of prosecution to prove the age of the victim. The counsel for accused submitted that investigating officer is not competent to speak about contents of said certificate and he has no objection if the victim, on whose behalf the certificate was issued, is summoned. On his submission, the Court allowed the said petition and directed PW-1 be recalled for marking her study certificate. Thus, the subsequent order would read that in view of the submission of the learned counsel for accused that he had no objection if PW-1 were to be recalled

for marking her study certificate, the Court was pleased to order recalling of PW-1. In that view of the matter, now the petitioners/accused cannot take an objection on the ground that earlier their application for similar reason was dismissed and allowing of subsequent petition would amount to discrimination against them. It is to be noted that when PW-1 is examined with reference to her study certificate, the petitioners/accused will have every right to cross-examine her with regard to her age and in that view also no injustice is caused to them.

5. Accordingly, the Criminal Petition is dismissed. As a sequel there to, miscellaneous applications, pending if any, shall stand closed.

Date: 20.03.2018
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**U.DURGA PRASAD RAO, J**