



IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 21ST DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE K NATARAJAN

CRIMINAL PETITION NO. 201287 OF 2024

(482(Cr.PC)/528(BNSS)-)

BETWEEN:

KISHAN
S/O HARILAL RATHOD,
AGED ABOUT 22 YEARS,
OCCUPATION: STUDENT,
R/O BADANIHAL TANDA, TQ. JEWARGI
DIST. KALABURAGI - 585 102.
PRESENTLY IN CENTRAL JAIL AT KALABURAGI.

...PETITIONER

(BY SRI. ARUNA P. CHAVAN, ADVOCATE)

AND:

1. THE STATE, JEWARGI PS,
TALUK AND DISTRICT KALABURAGI NOW,
ADDL. SPP, HIGH COURT BUILDING,
KALABURAGI - 585 103.



2. MAHADEVA
S/O CHANDU CHAVAN,
AGED ABOUT 44 YEARS,
OCCUPATION: COOLIE,
R/O GUDUR VILLAGE,
TQ. JEWARGI DIST KALABURAGI - 585 310.

...RESPONDENTS

(BY SMT. ANITHA REDDY, HCGP)

THIS CRL.P IS FILED U/S.482 OF CR.P.C. (OLD), U/SEC. 528 OF BNSS (NEW), PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 05.09.2024 PASSED BY THE HONOURABLE ADDL. SESSIONS JUDGE FTSC-1 POCSO AT KALABURGI IN SPL (P) 24/2022 ANNEXURE-C FOR THE OFFENCES PUNISHABLE U/SS 363, 376(3), (2), (n), 343, 354(D), 506, 509, R/W SECTION 34 OF INDIAN PENAL CODE AND UNDER SECTION 4, 6, 12 AND 17 OF POCSO ACT 2012 CR.NO. 0238/2021 JEWARGI PS AND IN THE INTEREST OF JUSTICE AND ISSUE DIRECTIONS TO SEND TO EXPERTS FOR OPINION THE ADMITTED DOCUMENTS EX-P 41 VIDEO STATEMENT OF THE VICTIM AS WELL AS THE SPECIMEN HANDWRITING FOR COMPARISON WITH DISPUTED DOCUMENTS EX D17 AND D-19 FOR THE REASONS STATED ABOVE AND IN THE INTEREST OF JUSTICE AND NO PREJUDICE WILL BE CAUSED TO THE OTHER SIDE, BUT IF NOT ALLOWED THE ACCUSED WILL BE PUT TO GREAT HARDSHIP AND WHICH CANNOT BE COMPENSATED IN ANY OTHER TERMS.



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

CORAM: HON'BLE MR. JUSTICE K NATARAJAN

ORAL ORDER

(PER: HON'BLE MR. JUSTICE K NATARAJAN)

This petition is filed by the petitioner/accused under Section 482 of Cr.P.C. for quashing the order dated 05.09.2024 passed by the Addl. Sessions Judge, FTSC-1, POCSO At Kalaburagi in Spl(P) 24/20222 for the offence punishable under Sections 363, 376(3), (2), (n), 343, 354(D), 506, 509, R/W section 34 of IPC and under sections 4, 6, 12 and 17 of POCSO Act 2012 in Crime No.0238/2021 by Jewargi Police station, on the application filed by the petitioner under Section 45 of Indian evidence Act, 1872.

2. Heard the arguments of learned counsel for the petitioner and learned HCGP for the State.

3. The case of the prosecution is that the police have filed the charge sheet against this petitioner and others for the offence punishable for the aforementioned sections. The petitioner accused denied the charges and the prosecution said



to be examined the witnesses. During the cross examination the defense taken by the petitioner that there was marriage talk between both the families and they are relatives. In the childhood they had decided the marriage of the petitioner and the victim girl after they attaining the age of majority. When the marriage talks were going on, it came to the knowledge of the family of the victim that the petitioner is suffering from Hemophilia disease. Therefore, the family of the victim were reluctant to get victim married to petitioner. The petitioner also requested. However, the victim girl and petitioner/accused said to have decided to elope for the purpose of marriage. At that time, the family members came to know about the offence and filed the false complaint. It is submitted that the victim returned some love letters and also video clippings recorded by the sister of the accused, where the victim herself spoken with the accused. These documents were produced and marked. In the cross examination of the victim, she denied the love letter and audio clippings in her voice. Therefore, it is necessary for the accused to prove the same by sending the video clippings and handwriting of the victim in the alleged love letter through the handwriting expert. Hence, interlocutory application filed



under Section 45 of the Evidence Act, came to be ***dismissed***. Hence, petitioner is before this court.

4. Learned counsel for the petitioner has contended that the age of the victim is more than 18 years and she is only 1 years younger than the accused, who is 19 years and the victim is aged 18 years. Age is proved by the prosecution. Even as per the doctor evidence, there is no sexual assault on the victim girl. Such being the case, it is necessary for the petitioner to refer the pen drive as well as the love letter to FSL for getting expert opinion. Therefore, prayed for allowing the petition.

5. Per contra, learned HCGP objected the petition.,

6. Having heard the arguments and perused the records. On perusal of the same, the FIR came to be registered only for the offence punishable under Section 363 of IPC for kidnapping or abduction and the age of the victim was stated that she is minor girl aged about 14 years in the FIR. In order to prove the age, the police also produced some transfer certificate from the school as well as admission register extract, to show she is minor. The petitioner though contended she is major and more



than 18 years of age, but he has not produced any documents. As regards to the determination of the age of the victim, the special court is empowered under Section 34 of the POCSO Act, for determination of the age of the victim, whether she is minor or more than 18 years and is considered as major. Therefore, until giving finding by the Trial Court, the contention of the petitioner counsel cannot be acceptable that the age is not proved. The only contention of the petitioner is that, the accused is suffering form Hemophilia and the same came to the knowledge of victim girl. Therefore, they stopped their marriage. However, the victim and the accused were trying to marry each other by eloping from the home. However, before going she was stopped. The case of the prosecution otherwise that the accused said to be abducted and said to be committed sexual assault repeatedly. In view of the provision of section 376(2)(n) of IPC, it is a repeated sexual assault on the victim as per the definition. Though the learned counsel for the petitioner submits there is no medical evidence to be considered by the Trial Court. After hearing the arguments, now that the State Public Prosecutor already argued the matter, learned counsel for the defense also partly argued the



matter and is left with further hearing and post the matter for judgment by the Trial Court.

7. Though the petitioner has stated and produced some love letter alleged to be sent by the victim, there is video clipping. Even it is well settled by the Hon'ble Supreme Court and as per the section 375 of the IPC, even if the consent is given by the victim girl, if she is minor her consent is immaterial either for the purpose of commission of sexual assault or under Section 363 of IPC, abduction. Even if the victim goes with the accused with consent, here consent is immaterial as she is a minor. Therefore, the offence under Section 363 of IPC would attract for the abduction. Apart from that, there is 366(a) of IPC for which charge sheet is filed, for the abduction of the minor girl and compelling her marriage. Such being the case, whether the defense taken by the petitioner, it has to be urged in the trial and when the victim is minor, there is no need to prove that the love letter is sent by her and she has spoken with the accused in the video clipping that she has given consent for eloping, that is immaterial. Such being the case, I am of the view, the Trial Court rightly considered the application and dismissed the application under



Section 45 of Indian Evidence Act. It is also seen from the records, the Trial Court given opportunity to the accused to lead defense evidence and they have examined two witnesses as DW1 and DW2. Such being the case, it cannot be said, there is no opportunity given to the accused for proving the defense. The Trial Court given opportunity for leading defense evidence. Such being the case, I am of the view, the petition is devoid merits and liable to be dismissed.

Accordingly, this petition is hereby ***dismissed***.

The Trial Court shall pass the judgment without influence of the observation made by this court.

**Sd/-
(K NATARAJAN)
JUDGE**

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