IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 10TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

CRIMINAL PETITION NO. 201616 OF 2024

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

BETWEEN:

NAGENDRA @ LAKKI S/O NARAYANSWAMY,
AGED: 25 YEARS, OCC: COOLIE WORK,
R/O. KURUBUR VILLAGE, TQ. CHINTAMANI,
DIST. CHIKKABALLAPUR – 563 125.

…PETITIONER

(BY SRI RAJESH G. DODDAMANI, ADVOCATE)

AND:

Digitally signed by SHILPA R TENIHALLI
Location: HIGH COURT OF KARNATAKA

1. THE STATE OF KARNATAKA
   REPRESENTED BY,
   UNIVERSITY POLICE STATION,
   KALABURAGI CITY,
   THROUGH ADDL. STATE PUBLIC PROSECUTOR,
   HIGH COURT OF KARNATAKA,
   KALABURAGI BENCH – 585 107.

2. SMT. ANUSOOYA W/O LATE MALLIKARJUN PAWAR,
   AGE: 38 YEARS, OCC: HOTEL EMPLOYEE,
   R/O. GANGA NAGAR COLONY,
   OPPOSITE ESIC HOSPITAL, SEDAM ROAD
   KALABURAGI – 585 104.

…RESPONDENTS

(BY SRI VEERANAGOUDA MALIPATIL, HCGP FOR R1)

THIS CRL.P IS FILED U/S.482 OF CR.P.C.(OLD) U/SEC 528 OF BNSS, PRAYING TO, ALLOW THIS PETITION AND SET ASIDE THE ORDER ON I.A FILED U/SEC 311 OF CR.P.C DATED 13.02.2024 ON THE FILE OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE AND FTSC-I (SPL POCSO) ACT KALABURAGI SPL.C (POCSO) NO.69/2023 AND CONSEQUENTLY ALLOW THE I.A FILED U/SEC 311 OF CR.P.C AND TO PASS ANY OTHER APPROPRIATE ORDERS AS MAY BE DEEMED NECESSARY IN THE FACTS AND CIRCUMSTANCES OF THE CASE.

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

CORAM: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

ORAL ORDER

(PER: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY)

This petition is filed under Section 482 of Cr.P.C by the accused in Special Case (POCSO).No.69/2023 pending before the Court of Additional District and Sessions Judge and FTSC-I, Kalaburagi, challenging the order dated 13.02.2024 passed by the Additional District and Sessions Judge and FTSC-I, Kalaburagi in Spl.C(POCSO). No.69/2023, wherein the application filed on behalf of the petitioner/accused under Section 311 of Cr.P.C to recall PW.1 (victim) was rejected.

2. Heard the learned counsel for the petitioner and learned High Court Government Pleader for respondent No.1.

3. Petitioner herein is being tried for offences punishable under Sections 366(A) of IPC, 376(n)(2) of IPC and Sections 4 and 6 of POCSO Act, 2012 by the Court of Additional District and Sessions Judge and FTSC-I (SPL POCSO), Kalaburagi in Spl.C(POCSO).No.69/2023 and during the course of trial the victim has been examined before the trial Court as PW.1. Application filed on behalf of the petitioner/accused under Section 311 of Cr.P.C dated 05.02.2024 to recall PW.1 was rejected by the trial Court vide impugned order and being aggrieved by the same, petitioner is before this Court.

4. Learned counsel for the petitioner having reiterated the grounds urged in the petition submits that in the event the petitioner is not granted an opportunity to further cross examine the victim girl, his case is likely to be prejudiced.

5. Per contra, learned High Court Government Pleader has opposed the petition and submits that victim girl has been extensively cross examined in the present case and only to prolong the trial the application has been filed.

6. The application filed under Section 311 of Cr.P.C on behalf of the petitioner was opposed by the Special Public Prosecutor by filing objections. In the application dated 05.02.2024 filed under Section 311 of Cr.P.C, it is stated that the earlier learned counsel appearing on behalf of the petitioner/accused had not properly cross examined PW.1 and had not put the material questions to the said witness and also had not confronted the material contradictions and omissions to the witness and therefore, he had prayed to recall the said witness for the purpose of further cross examination. The said application was opposed by the Special Public Prosecution by filing objections stating that the victim was extensively cross examined and there is no necessity to further cross examine her and in the event the victim is

recalled there is likelihood of the petitioner tampering the said witness. The trial Court vide the order impugned has rejected the application having placed reliance on the various judgments of the Hon'ble Supreme Court and has observed that an attempt is made by the defence to fill-up the lacuna by recalling PW1, which is not permissible. The deposition of PW.1 which is made available to this Court along with the petition would also go to show that she was extensively cross examined on behalf of the defence and she has completely supported the case of the prosecution. Section 33 (5) of the POCSO Act, 2012 specifically provides that the special Court shall ensure that the child is not repeatedly called before the Court to testify in the Court and Section 35 of the Act provides for a period within which the evidence of the child is required to be recorded.

7. Under the circumstances, I am of the opinion that the trial Court was fully justified in dismissing the application filed on behalf of the petitioner under Section

311 of Cr.P.C. I do not find any merit in this petition.

Accordingly, petition is ***dismissed***.

Sd/-
(S.VISHWAJITH SHETTY)
JUDGE

AMM
List No.: 1 Sl No.: 39
CT:PK