



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 13<sup>TH</sup> DAY OF FEBRUARY, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE K.NATARAJAN**

**CRIMINAL PETITION NO. 3987 OF 2022**

**BETWEEN:**

SRI. JAYANNA B @ JAYARAM,  
S/O. MATE BYAPPA

...PETITIONER

(BY SRI. M.R NANJUNDA GOWDA, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA BY  
BYADARAHALLI POLICE,  
BENGALURU,  
REPRESENTED BY  
STATE PUBLIC PROSECUTOR,  
BENGALURU - 560 001.
2. PADMA,

...RESPONDENTS

(BY SRI. R.D RENUKARADHYA, HCGP FOR R1;  
NOTICE TO R2 DISPENCED WITH)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO  
SET ASIDE THE ORDERS DATED 18.04.2022 PASSED IN SPL.C  
NO. 510/2017 ON THE FILE OF THE ADDITIONAL DISTRICT  
AND SESSIONS JUDGE, FTSC-1 BENGALURU FOR THE



OFFENCES PUNISHABLE U/S 4 AND 8 OF POCSO ACT AND PROVIDE AN OPPORTUNITY TO THE PETITIONER TO CROSS EXAMINE PW-1(VICTIM).

THIS PETITION, COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

Looking to facts and circumstances of the case, issuance of notice to respondent No.2 is dispensed with.

2. This petition is filed by the petitioner-accused under Section 482 of Cr.P.C. setting aside the order of dismissal of the application under Section 311 of Cr.P.C filed by the learned counsel for the petitioner for recalling of PW-1/victim in Spl.Case.No.510/2017 vide order dated 18.04.2022 for the offences punishable under Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO' Act)

3. Heard Sri.M.R.Nanjunda Gowda, learned counsel for the petitioner and the Sri.R.D.Renukaradhya, learned High Court Government Pleader for the respondent No.1-State. Perused the materials on record.

4. The case of the prosecution is that the petitioner-accused is facing trial before the Special Court (POCSO Court)



for the offences punishable under Sections 4 and 8 of the POCSO Act. The P.W.1/victim prosecutrix the cross-examination as P.W.1 and she said to be remained absent for cross-examination and the Police have brought her back for cross-examination. Learned counsel for the petitioner is said to have sought some adjournment for cross-examination which came to be rejected and cross-examination of P.W.1 was taken as 'nil.' Thereafter, the application filed by the learned counsel for the petitioner for recalling P.W.1 for the purpose of cross-examination came to be rejected and the matter was posted for final arguments, which is under challenge.

5. Heard the arguments of learned counsel for the petitioner and learned HCGP for respondent No.1-State. Perused the order sheet. Especially, the order sheet and the deposition of P.W.1 reveals that the evidence of the prosecutrix examination-in-chief has been completed. Subsequently, the witness is not present and she has been traced by the Police and brought before the Court for the purpose of cross-examination. At that time, learned counsel for the petitioner sought some adjournment which came to be refused and rejected by the trial Court, and the cross-examination of P.W.1



taken as 'nil'. Thereafter, the application filed by the petitioner came to be dismissed.

6. Of course, as per Section 33 of the POCSO Act, the prosecutrix/victim and shall not be called frequently for cross-examination by the Court. However, that does not mean there shall not be any opportunity given to the accused for the purpose of prosecution cross-examination of the prosecution witness.

7. Of course, there was a defect on the part of the learned counsel for the accused for not cross-examined the prosecution witness and he sought time. However, the Court at first instance, though rejected ought to have considered sympathetically and allowed the applicant to cross-examine P.W.1.

8. This Court in a catena of decisions held that fair trial is a fundamental right which is guaranteed under Article 21 of the Constitution of India. Of course, the trial is to be concluded within one year under the POCSO Act. The delay should be curtailed but that does not mean the Court should allow cross-examination without giving a fair opportunity to the



accused to defend the case. The trial Court ought to have given one more opportunity to the petitioner for cross-examination of the witness. Accordingly, the order of the trial Court deserves to be set aside.

The petition is allowed. The order of the trial Court rejecting the application for recalling P.W.1 is hereby set aside. The application is allowed with a cost of Rs.2,000/-.

It is needless to say that learned counsel for the petitioner shall not seek any adjournment when P.W.1 is present before the Court for cross-examination.

Accordingly, the petition is ***disposed*** of.

**Sd/-  
JUDGE**