



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 6269 OF 2024

BETWEEN:

SRI. STANLY KIRTHIRAJ @ STANLEY KIRTIRAJ
S/O. LATE A. F. AROKIADASS,
AGED ABOUT 52 YEARS,
R/AT NO.21, 'B' TYPE HOUSE,
ROBERTSON PET ROAD,
FRAZER TOWN,
BENGALURU-560 005.

...PETITIONER

(BY SRI. ELANGO VAN K., ADVOCATE)

AND:

THE STATE OF KARNATAKA BY
J. C. NAGAR POLICE STATION,
BENGALURU-560 046,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-560 006.

...RESPONDENT

(BY SRI. HARISH GANAPATHI, HCGP)

THIS CRL.P IS FILED U/S 482 CR.PC PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 28.12.2023 PASSED ON APPLICATION FILED U/S 311 OF CR.P.C. BY THE II ACMM AT BENGALURU IN C.C.NO.13318/2012 OF CRIME NO.40/2009 REGISTERED BY J.C. NAGAR P.S., BENGALURU FOR OFFENCE P/U/S 408, 468 AN D420 OF IPC, ALSO THE ORDER PASSED IN CRL.RP.NO.14/2024 BY THE LEARNED LXIII ADDL. C.C. AND S.J. ATE BENGALURU CITY AND HE PLEASD TO ALLOW THE RECALL APPLICATION FILED U/S 311 OF CR.P.C., FOR CROSS EXAMINATION OF THE PW.2 BY THE ACCUSED /





PETITIONER COUNSEL IN C.C.NO.13318/2012, PENDING BEFORE THE III ACMM AT BENGALURU.

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

CORAM: HON'BLE MR JUSTICE M.NAGAPRASANNA

ORAL ORDER

The petitioner is before this Court calling in question the proceedings in C.C.No.13318/2012 registered for offences punishable under Sections 408, 468 and 420 of IPC.

2. Heard the learned counsel Smt.Elangovan K., appearing for the petitioner and the learned HCGP Sri.Harish Ganapathi, appearing for the respondent.

3. The petitioner - accused No.1 gets embroiled in a crime in Crime No.40/2009, registered for offences punishable under Sections 408, 468 and 420 of the IPC for it having been registered on 24.02.2009. The issue in the *lis* does not concern the merit or the proceeding before the concerned Court. The police after investigation filed a charge sheet for the afore-quoted offences. The concerned Court, frames charges



on 03.03.2016 and evidence of CW.1 gets completed as PW.1 on 24.03.2016. PW2 is examined on 23.02.2017. Six years thereafter, petitioner on 18.12.2023, files an application under Section 311 of the Cr.P.C., seeking to recall PW.2 for further cross-examination. The Court rejects it, on the score that the matter is an advance stage and the application being filed after six years of the cross-examination getting over, is misuse of the law.

4. The learned counsel appearing for the petitioner would contend that if one opportunity were granted to him to further cross-examine PW.1 and PW.2, as they were short-cross-examined.

5. I have given my anxious consideration to the contentions of respective learned counsel and have perused the material on record.

6. A perusal at the order or the order sheet maintained by the Court is indicative of the fact that the petitioner has gone on seeking adjournments in a case that



began in the year 2009. The trial is yet to get concluded despite passage of 15 years. Six years ago, PW Nos.1 and 2 were examined and cross-examined. An application comes to be filed by the petitioner, when the trial was an advance stage. That comes to be rejected. The petitioner challenges the said rejection before the Court of Session. It comes to be affirmed. The finding of the Court of Session, is necessary to be noticed.

"20. As far as order passed against PW2 is concerned, it is noticed that CW2 who was the Government official is examined as PW2 and concluded her evidence on 23.02.2016 and at the request of the Advocate for the accused, the cross-examination on 16.03.2017. On that day, PW2 was present but the Advocate for the accused sought time, therefore, the case was adjourned for cross-examination of PW2 subject to payment of cost of Rs.1,000/- and posted the matter for cross-examination on 03.05.2017. On 03.05.2017, the Advocate for the accused prays time for cross-examination of PW2, but the Trial Court by rejecting the prayer of the learned Counsel for the accused, taken the cross-examination of PW2 has nil. Again on 23.03.2018, the learned Counsel for the accused filed application u/s 311 of Cr.P.C., to recall the PW2, the said application was allowed on 28.05.2018 and PW2 was recalled for cross-examination. On 08.07.2019, PW2 was present, but the Advocate for accused prays time for cross-examination. The Trial Court noted that the case is of the year 2012, rejected the prayer of the learned Counsel for the accused and the cross-examination of PW2 was taken as nil. Again the Advocate for the accused filed application to recall the PW2 for cross-examination and by noting all these facts the learned Magistrate rejected the IA filed by the Advocate for the accused u/s 311 of Cr.P.C., to recall the PW2 for cross-examination. The above noted proceedings make it very clear that the case pertains to the year 2012, PW2 was examined in the year 2017. As



*per the deposition, CW2/PW2 was the resident of Pune and was aged 57 years and thrice she appeared before the Court for cross-examination but the Advocate for the accused by one reason or the other has failed to cross-examine the witness who came all the way from Pune. According to the Advocate for the petitioner, the Advocate for the accused was engaged in another Court therefore, he could not reach the Court in time. This ground alone is not sufficient to recall the PW1. The Trial Court liberally and generously passed the order thrice on the application filed by the accused to recall the PW2, but the Advocate for the accused failed to make use of the order passed by the Trial Court. The grounds urged to the PW2 are not at all sufficient to interfere with the order passed by the Trial Court. For the reasons discussed above, I do not find any merits in the submission made by the learned Counsel for the petitioner/accused. Accordingly, I answered this point in the **negative**.*

21. **Point No.3:-** *In view of my findings on point No.1 and 2. I proceed to pass the following:*

ORDER

The revision petition filed by the petitioner u/s 397 of Cr.P.C., challenging the order passed on the application filed u/s 311 of Cr.P.C., dated 28.12.2023 in CC No. 13318/2012 by learned III ACMM, Bengaluru, is hereby rejected."

The finding of the Court cannot be found fault with but the action of the petitioner undoubtedly needs to be found fault with. It is trite that an application under Section 311 of Cr.P.C., would in the normal circumstance be permitted except in cases where such applications are filed only to drag the proceedings. The case forms a classic illustration of one such



action being initiated only to drag the proceedings, as the petitioner has filed an application under Section 311 of Cr.P.C., after six years of the examination getting over.

7. Finding no merit in the petition and no warrant to interfere with the order passed by the concerned Courts, the petition stands rejected.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

KG
List No.: 1 Sl No.: 101