

**Rudresh Hiremath vs State of Karnataka**

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**Court :** Karnataka Dharwad

**Decided On :** Dec-24-2024

**Judge :** C M Joshi

**Appeal No. :** CRL.P/103829/2024

**Appellant :** Rudresh Hiremath

**Respondent :** State of Karnataka

**Judgement :**

-1- IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH  
DATED THIS THE 24TH DAY OF DECEMBER, 2024 BEFORE THE  
HON'BLE MR. JUSTICE C M JOSHI CRIMINAL PETITION NO.103829  
OF 2024 (482 OF CR.P.C./528 OF BNSS) BETWEEN: RUDRESH  
HIEMATH, AGE: 34 YEARS, OCC: ADVOCATE, R/AT: TEJASWI  
NAGAR MAIN, DHARWAD - 580 002. PETITIONER (BY SRI A. A.  
PATHAN, ADVOCATE.) AND:

1. STATE OF KARNATAKA, THROUGH VIDYAGIRI POLICE STATION,  
DHARWAD, REPRESENTED BY STATE PUBLIC PROSECUTOR,  
HIGH COURT BUILDING, DHARWAD - 560 001.

Digitally 2. IMRAN S/O. ISMAIL DUKANDAR, signed by

KALMATH RESPONDENTS (BY SRI RAMESH CHIGARI, ADDL. GOVERNMENT ADVOCATE, FOR R.1;) R2 - SERVICE OF NOTICE DISPENSED WITH.) THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. (528 OF B.N.S.S., 2023), PRAYING TO QUASH THE IMPUGNED ORDER DATED 06.11.2024 IN C.C.NO.660/2023 VIDE ANNEXURE-A ON THE FILE OF III ADDL. SENIOR CIVIL JUDGE AND CJM, DHARWAD AND CONSEQUENTLY ALLOW THE APPLICATION FILED BY THE PETITIONERS UNDER SECTION 311 OF CR.P.C. AND ETC.,. -2- THIS CRIMINAL PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

## **ORAL ORDER**

(PER: THE HON'BLE MR. JUSTICE C M JOSHI) Learned Additional Government Advocate takes notice for respondent No.1. Service of notice to respondent No.2 is dispensed with.

2. Heard the learned counsel for the petitioner and learned Additional Government Advocate.

3. The petitioner is before this Court seeking

indulgence in respect of the order passed in C.C.No.660/2023 dated 06.11.2024, whereby an application filed by the petitioner under section 311 of Cr.P.C. for recalling PW.1 and PW.2 for cross-examination was rejected by the learned III Addl. Senior Civil Judge and CJM, Dharwad.

4. Learned counsel for the petitioner submits that

the mother of the petitioner was suffering from ill health and therefore, he could not instruct the counsel who was conducting the case, for cross examining PW.1 and PW.2. -3- Thereafter an application was filed by the petitioner to recall PW.1 and PW.2. But the said application came to be rejected by the impugned order. Now the matter is slated for recording statement of accused under section 313 of

Cr.P.C. and therefore, PW.1 and PW.2 need to be cross examined in **order to ascertain the truth in the case and as such the petition be allowed by setting aside the impugned order** passed by the learned CJM.

5. Per contra, learned Additional Government

Advocate submits that the application was filed after more than 10 months for cross examining PW.1 and PW.2 and particularly after cross examining all other witnesses in the case. He submits that there is no sufficient cause for recalling PW.1 and PW.2 and therefore, the petition is liable to be dismissed.

6. The allegations against the petitioner herein in

C.C.No.660/2023 is that he had committed offence punishable under section 323, 324, 504, 506 of IPC and when the matter was slated for trial, PW.1 and PW.2 who were cited as CW.1 and CW.4 were not cross examined due -4-

to want of instruction by the petitioner to the counsel. The conduct of the petitioner would show that even after the other witnesses were examined, such application under section 311 of Cr.P.C. was not filed, but only when the matter was slated for recording statement of accused under section 313 of Cr.P.C., such application was filed. There is absolutely no material on record to show as to why there is such delay of 10 months and why the petitioner waited till all the other witnesses were examined by the trial Court.

7. However, the interest of justice and equity

requires that in ascertaining the truth no stone should be left unturned. An opportunity to cross examine PW.1 and PW.2 would be an important piece of evidence and it would show the truth or otherwise of the incident. It is needless to say that if PW.1 and PW.2 make a U-turn in cross-examination, such cross-examination may be rejected by the trial Court in view of the several judgments of the Honble Apex Court in this regard.

8. Keeping in view the provisions of section 309 of Cr.P.C. to recall of PW.1 and PW.2 has to be with costs -5- commensurate with the conduct of the petitioner. Hence, for the above reasons, the petition deserves to be allowed and the following order is passed.

## **ORDER**

i) The petition is allowed. ii) The impugned order dated 06.11.2024 passed in C.C.No.660/2023 by the learned III Addl. Senior Civil Judge and CJM, Dharwad, is set aside. iii) PW.1 and PW.2 are ordered to be recalled for cross-examination, subject to the following conditions: a) The petitioner shall pay a cost of Rs.5,000/- to each of the witnesses before cross examining them. b) PW.1 and PW.2 shall be cross examined on the day when they first appear before the trial Court and no adjournments shall be sought by the petitioner. -6- c) Any failure on the part of the petitioner to abide by the above conditions, would result in forfeiture of his right to cross-examination iv) Intimate the trial Court with a direction to fix a date for cross-examination of PW.1 and PW.2, which shall not be beyond the period of 30 days from the date of receipt of a copy of this order. Sd/- (C M JOSHI) JUDGE MRK CT-ASC List No.: 1 Sl No.: 7

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