



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE S SUNIL DUTT YADAV

CRIMINAL PETITION NO. 4788 OF 2025

BETWEEN:

1. C MAHESHKUMAR
S/O. LATE SRI. CHIKKAIAH,
AGED ABOUT 59 YEARS
OCC: LIFE TRUSTEE AND
FINANCIAL ADMINISTRATOR,
R/AT-AVVANA MANE, GANDHINAGAR,
BHADRAVATHI TALUK,
SHIVAMOGGA - 577 401

... PETITIONER

(BY SRI. NAGARAJ M. BHAT, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA BY
PAPER TOWN POLICE STATION,
BHADRAVATHI,
SHIVAMOGGA DISTRICT - 577 401

(REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BENGALURU - 560 001)

2. SRI. SANGAMESHA
S/O BELLADAKOTRAPPA,
AGED ABOUT 60 YEARS,





R/AT- PARVATHI KRUPA,
O.S.M. ROAD, OLD TOWN,
BHADRAVATHI,
SHIVAMOGGA-577 201.

3. SRI. B.K. MOHAN
S/O BELLADAKOTRAPPA,
AGED ABOUT 70 YEARS,
R/AT- PARVATHI KRUPA,
O.S.M. ROAD, OLD TOWN,
BHADRAVATHI,
SHIVAMOGGA-577 201.
4. SRI. GANESH
S/O B.K. SANGAMESHA,
AGED ABOUT 44 YEARS,
R/AT- PARVATHI KRUPA,
O.S.M. ROAD, OLD TOWN,
BHADRAVATHI,
SHIVAMOGGA-577 201.
5. SRI. BASAVARAJ
S/O B.K. SANGAMESHA,
AGED ABOUT 42 YEARS,
R/AT- PARVATHI KRUPA,
O.S.M. ROAD, OLD TOWN,
BHADRAVATHI,
SHIVAMOGGA-577 201.
6. SRI. JAGADEESH @ JAGANNATH
S/O BELLADAKOTRAPPA,
AGED ABOUT 74 YEARS,
R/AT- NANDI NIVASA,
MADHAVANGAR, TARIKEREROAD,



BHADRAVANTHI,
SHIVAMOGGA-577 201.

... RESPONDENTS

(BY SRI. B.N. JAGADEESHA, ADDL. SPP FOR R1;
SRI C.H. HANUMANTHARAYA., ADVOCATE FOR R2 TO R6)

THIS CRL.P IS FILED U/S 482 CR.PC (FILED U/S 528 BNSS) PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 29.03.2025 PASSED BY THE LXXXI ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-82) IN SPL.C.C.NO.828/2018 AND ALLOW THE APPLICATIONS FILED BY PROSECUTION U/S 311 OF CR.P.C. TO RECALL PW.2 AND PW.15, PW.17, PW.18 AND PW.19 IN THE ABOVE CASE.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED ON 02.04.2026 AND COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S SUNIL DUTT YADAV

CAV ORDER

The petitioner, who is the informant has called in question the legality of the order dated 29.03.2025 passed by the Court of LXXXI Additional City Civil and Sessions Judge, Bengaluru (CCH-82) in Spl.C.C. No.828/2018, whereby, the applications filed by the Prosecution under Section 311 of Cr.P.C. to recall PW-2 (C. Jayamma) came to be rejected as well as another application filed seeking



to recall PW-15 (Shivanna), PW-17 (H.S.Raju), PW-18 (M. Venugopal) and PW-19 (Mallappa Shivappa Kaulapure) came to be rejected.

2. The brief facts are that a complaint came to be filed by the informant on 23.05.2010 to the PSI of Paper Town Police Station, Bhadravathi, pursuant to which case in Crime No.74/2010 for the offences punishable under Section 120B, 147, 307 read with Section 149 of IPC came to be registered. It is submitted that the respondent Police have filed a chargesheet.

3. It is made out that the Prosecution filed an application under Section 311 of Cr.P.C. seeking to recall PW-2 and another application seeking to recall PW-15, PW-17, PW-18 and PW-19. Both the applications were filed on 01.02.2025.

4. Insofar as the application filed to recall PW-2, the reason assigned was that the evidence of PW-17 had disclosed that he had received a C.D. from PW-2 during



the course of investigation on 06.07.2010, which had contained the statement of PW-2 and the said C.D. was not marked due to absence of Certificate under Section 65B of the Indian Evidence Act, 1872.

5. It is submitted that, as Section 65B Certificate was now ready to be produced through PW-2, there was a requirement for recalling of PW-2 for the purpose of marking Section 65B Certificate.

6. Insofar as the application for recall of PW-2, the objections filed took up the ground that the Prosecution had failed to assert; as to the custodian of the device which contained the Video recording and that there was a positive statement in the evidence of PW-2. It was also contended that it was some other person who had recorded the Video clip, and accordingly it was asserted that, if that were to be so, PW-2 would not be the authorized person to depose regarding the Section 65B Certificate.



7. Another application was filed for recalling of PW-15, PW-17, PW-18 and PW-19. Insofar as the said application, it was averred that new Special Public Prosecutor was appointed and on going through the material evidence examined by the Prosecution which disclosed that the Investigation Officers, viz., PW-15, PW-17, PW-18 and PW-19 had deposed before the Court in a manner adverse to the documents and material relied on by the Prosecution which had the effect of derailing the case of the Prosecution and it was necessary to treat the said witnesses as hostile and to cross-examine such witnesses in order to bring out the truth.

8. The said application was objected to on the ground that the witnesses were all Investigation Officers who had never deviated from the Prosecution documents or material and accordingly, no ground was made out to treat the said witnesses as hostile.



9. It was also asserted that the Prosecution was insisting the said witnesses to adhere to the stand of the *de facto* complainant and not necessarily of the Prosecution as made out in the chargesheet.

10. It is also contended that mere change in the Special Public Prosecutor would not be a ground for recalling of the witnesses.

Accordingly, the accused had sought for dismissal of applications.

11. The trial Court, after detailed consideration, has rejected both the applications.

12. As regards application for recall of PW-2, it is observed that there was no occasion for recalling PW-2, as she was not "the author of the video in which her statement was given". No details were forthcoming regarding how the Video was recorded, in which



instrument it was recorded, nor the person who recorded it.

13. As regards the application for recall of PW-15, PW-17, PW-18 and PW-19, the trial Court has observed that the application for recall was filed at a belated stage when case was set out for recording statement under Section 313 of Cr.P.C.; that PW-15, PW-17, PW-18 and PW-19 were already examined and had adduced evidence and were not sought to be treated as hostile when they had adduced evidence; that no reasons were assigned to recall the said witnesses; that the said Officers had deposed in accordance with the chargesheet and that they could not have been treated as hostile; that the Investigation Officer had stuck to the stand that it was only accused No. 6 who has committed assault.

14. Heard both sides.

15. At the outset, it must be observed that the scope of Section 311 of Cr.P.C. would point to the



satisfaction of the Court that the summoning and recall and re-examination of such person appears to be essential for a just decision of the case.

16. As regards the recall of PW-2, the only reason assigned was that Section 65B Certificate was required to be marked in connection with the Video clip recorded which would throw light on the incident.

17. Insofar as the production of Section 65B certificate, firstly, in normal course, the Certificate could be marked through the person who had control over the digital device which had recorded the clip. There are no details forthcoming as to whether the device which recorded was under the control of PW-2. Further, it is also necessary that the reasons are to be assigned as regards the relevance of the contents of the Video clip in the application itself, which is also absent. As rightly pointed out by the trial Court, there are no details forthcoming



regarding the person who recorded the instrument on which it was recorded.

18. Considering that the examination of PW-2 was completed 07.05.2022 and in the absence of proper reasons assigned, no case is made out for the Court to take a decision to recall PW-2. The recalling of PW-2 at the present stage where statement under Section 313 of Cr.P.C. has already been recorded is not called for.

19. Insofar as the application filed to recall PW-15, PW-17, PW-18 and PW-19, it must be noticed that the evidence of the said witnesses was completed including the cross-examination on 24.01.2025.

20. Further, it is relevant to notice that on 19.01.2024, an application was filed under Section 311 r/w Section 165 of Cr.P.C. to summon the Investigating Officers (PW-17, PW-18 and PW-19) to treat them as Court witnesses which was dismissed on 21.03.2024. Another application under Section 154 of the Indian



Evidence Act to permit putting leading questions without treating PW-17 as hostile was also dismissed on 20.07.2024. This order of 20.07.2024 was in fact challenged before this Court in Crl.R.P No.942/2024 which was dismissed.

21. After all such developments, as a new Public Prosecutor was appointed on 23.03.2019, the applications under Section 311 of Cr.P.C. have been filed.

22. The trial Court, in its order at Paras-19, 20 and 21 clearly recorded that PW-15-Shivanna, ASI at Paper Town Police Station had led in evidence, the then Special Public Prosecutor had not treated the witness as hostile and had subjected the said witness to detailed "grueling cross examination." It was further observed that there were no other grounds made out for recall of PW-15. Similarly, finding is recorded as regards Basavaraju.N., PW-16, who was deputed by the Station In-charge to record the statement of C. Jayamma. The said witness



had adduced evidence at an earlier point of time and filed a report, while also deposing that C. Jayamma was not in a position to give her statement. It is necessary to notice that, at such point of time, he was not treated as hostile. It was also observed that no reasons were assigned to substantiate that PW-16 was deposing against the tenor of the Prosecution case.

23. As regards PW-17, who is the Police Sub-Inspector at Paper Town Police Station, it was observed that he had registered the FIR as per Ex.P.33 and complaint was marked as Ex. P.1. and he had deposed regarding conducting of Mahazar as per Ex.P.2. It was further observed that request to put leading questions to him was also rejected at relevant point of time. Such detailed findings as regards the witnesses sought to be recalled by the trial Court and opining no reasons were made out in the applications for recalling such witnesses, cannot be interfered routinely in exercise of the limited jurisdiction.



24. The observations made by the trial Court in the impugned order is to the effect that PW-15 to PW-19 had tendered evidence in accordance with the Final Report and if that were to be so, the question of recalling such witnesses in order to treat them as hostile when the matter is at the stage of arguments did not arise. The observations made at para-26 of the order is self-explanatory and is extracted hereinbelow:-

"26. The aforesaid averments are to be compared with the evidence which is already recorded before this court. At no point of time, it was brought to the notice of this court by the learned SPP who was representing the case then or by the Public Prosecutor that they were deposing against the prosecution case. To ascertain the veracity of the said aspect I have verified the final report which is placed before this court and also the evidence tendered by the Investigation Officers. From the time of filing of final report, the Investigating Agency i.e., the present PW17 to PW19 have unequivocally contended that it was accused No.6 Jagadish who had assaulted the victim on the fateful day. For the first time before the court an allegation is leveled



against Investigating officers after a lapse of 14 years i.e., in the year 2024 that they were deposing against the case of prosecution. However, the statements which have been brought on record under sec.161 of Cr.P.C, and also the evidence which is led before the court would clearly indicate that they were deposing in consonance with the final report which they have filed. As such, the question which requires to be considered is whether they can be considered as hostile witness."

25. In light of such detailed finding, this Court finds that no grounds are made out for interference.

26. From the submissions made out, it appears that PW-2 had made certain assertions regarding accused nos.1 to 5 having been involved in the assault. However, such version is contrary to the chargesheet filed, which indicates that accused No.6, Jagadish has committed assault. At this point of time, PW-15, PW-17, PW-18 and PW-19, who have deposed as per the Final Report as observed by the trial Court cannot be recalled to make out a different case contrary to the version in the chargesheet



at the final stage of the trial where statements under Section 313 of Cr.P.C. are recorded. This would cause serious prejudice to the accused and cannot be permitted merely for the reason that the newly appointed Special Public Prosecutor has taken a different view of the matter.

27. It is also necessary to notice that the incident relates to the year 2010 and despite lapse of 15 years, the proceedings have not culminated and any effort to procrastinate the proceedings at this point of time would amount to be an abuse of the process of the Court.

Accordingly, the petition is ***rejected.***

Sd/-
(S. SUNIL DUTT YADAV)
JUDGE

VGR