

**IN THE COURT OF THE JUDGE COURT OF
SMALL CAUSES AND A.C.J.M, AT BENGALURU**

DATED THIS THE 5th DAY OF FEBRUARY -2026

PRESENT:

**Smt.Nirmala.M.C., B.Com LL.B. ,
Judge & ACJM, Bengaluru.**

CC No.1893/2023

Complainant : Sri.Ravi

-Vs-

Accused : S.S.Y.Garments

ORDERS ON I.A.

Applicant : Sri.Ravi

-Vs-

Opponent : S.S.Y.Garments

ORDERS

The complainant has filed this application U/Sec. 311 of Cr.P.C. to recall earlier order and permit him to lead further evidence.

2. In the application it is stated that, on the last occasion the counsel for the complainant was very

much present before this court and lead evidence on behalf of the complainant, then the matter is posted for cross of PW-1. During that time the complainant given some of the bank statement to the counsel, the said documents are very much necessary to prove the case. If the application is not allowed, the complainant would suffer untold hardship and irreparable injury on the other hand, if the application is allowed no hardship would be caused to the accused. Hence, he prays to allow the application.

3. On the other hand, the accused has filed objection to the application contending that, the application filed by the complainant is not maintainable either in law or on facts and same is filed only with a malafide intention to protract the proceedings. The counsel for the complainant was present before this court and he was ready to lead the evidence of the complainant does not arise since the matter was posted for cross examination of PW-1 and PW-1 was absent. Further averment that during that time, the complainant has given some of the bank statements to his counsel is not within the knowledge of the accused. The alleged documents are necessary to prove the case

of the complainant is absolutely false and same is denied and the complainant is put to strict proof of the same. The complainant has filed the present application only to protract the proceedings in the above case and there are no bonafides in the application filed by the complainant. The case was posted for cross examination of PW-1 as back as on 8-5-2023 and subsequently the complainant had made an application under section 143(A) of the Negotiable Instruments Act and this court after hearing prays to dismiss the said application. That though the above case was posted for cross examination of PW-1 on several dates, the complainant did not appear before this court and tender himself for cross examination. The complainant has come-up with the present application with a malafide intention to protract the proceedings in the above case. The application are very vague in nature and further there are no any reasons assigned in the application as to why the complainant could not produce the alleged bank statements when the above complaint was filed. That a witness can be recalled to lead further evidence only if the evidence sought to be produced by the witness came into existence subsequently or if the evidence sought to

be produced could not have been produced by the witness despite due diligence and it is not the case of the complainant that the bank statement which sought to be produced came into existence subsequent to the filing of the above complaint or that despite due diligence exercised by the complainant, he could not produce the same. Hence prays to dismiss the application.

4. Heard, perused the materials on record.

5. The following point arise that would for my consideration:

1) Whether complainant has made grounds to allow the application?

2) What Order?

6. My answer to the above points are as under:

Point No.1 - In the Affirmative

Point No.2 - As per the final Order;

for the following:

REASONS

7. **POINT No.1:** The provision under Section 311 of Cr.P.C deals about the power to summon material

witness, or examined person present. As per this provision of law, any Court may at any stage of any enquiry, trial or other proceedings under the code of Criminal Procedure, summon any person as a witness or examined any person in whose attendance though, not summoned as a witnesses, or recall and re-examine any person already examined and the Court shall summon and examine or recall and re-examined any such person, if his evidence appears to it be essential to the just decision of the case.

8. Now keeping the above said provision of law in mind, let us consider as to whether the complainant could able to made out sufficient grounds to come to the conclusion that recall the case for further chief examination of PW.1.

9. Admittedly, the complainant has filed this complaint against the accused for the alleged offence U/ s.138 of N.I. Act. Admittedly, the accused pleaded not guilty, but claims to be tried. Perused the order sheet, it shows that matter is posted for cross of PW.1, at this stage, complainant come up with this application for recall the order and permit the complainant to produce the document. On the other hand, accused objected the

application wherein submitted that, only to prolong the matter he has filed this application without any other reason. Hence, reject the application. In this regard, perused the order sheet, it is true, matter is posted for cross of PW.1, at this stage, complainant has filed this application to recall the order and permit to produce the document.

10. The complainant has filed this complaint u/s.138 of N I Act wherein he has contended that, accused has issued the disputed cheque to discharge her liability. In support of his contention he relied upon the disputed cheque and other documents which presume that, accused has issued the cheque for discharge her liability until contrary proved. However, accused can rebut the said presumption by oral and documentary evidence. Now the complainant intend to produce the bank statement to prove his case. Hence, it is necessary to give one more opportunity to the complainant to produce bank statement, to prove his case. In case if this application is not allowed, hardship would be caused to the complainant. The grievance of the accused may be compensated by imposing some cost on the complainant, it would meets ends of justice. Therefore,

I am of the opinion that, the complainant has made out sufficient ground to allow the application. Hence, application is deserves to allowed with costs. Hence, I answered the Point No.1 in the **Affirmative**.

11. **Point No.2:** For the foregoing reasons, I proceed to pass the following:

ORDER

The application filed by the complainant under Section 311 of Cr.P.C is hereby allowed with cost of Rs.200/- payable to the accused.

(Dictated to the stenographer, corrected by me and then pronounced by me in the open court on this the **5th day of February, 2026.**)

(Nirmala.M.C)

Judge & ACJM,
Court of Small Causes,
Bengaluru.