

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

Dated this the 13th day of May, 2026

PRESENT:

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

CC No.3943/2023

Complainant: Smt. Anu Balaji

-Vs-

Accused: Abhiram S Balu

Provision under which : U/Sec.311 of Cr.P.C
the application is filed

Relief Sought for : For recall PW.1

The date on which the : 08-10-2025
application is filed:

Number of the application: : ---

The date on which the : 13.011.2025
objections are filed by
different opponents:

The date on which the orders : 13.05.2026
were passed on the said
application:

// ORDERS //

The complainant has filed this application U/Sec.311 of Cr.P.C. to recall the PW.1 for further chief examination.

2. In the application it is stated that, he intends to produce indenture of mutual confirmation, assurance and undertaking executed by the accused, the same has been narrated in the complaint also. The said document was in the custody of the complainant who residing out of India for avocation and recently the GPA holder of the complainant was able to receive the same. If the complainant is permitted to lead further evidence to produce the document on record , the accused will not be put to any untold hardship, irreparable loss and injury, which cannot be compensated in terms of money. Non production of the said document in earlier is not intentional one but for the said bonafide reason. Further stated that, if this application is now allowed the complainant will be put into great hardship and on other hand, no hardship or injury will be caused to the other side. Hence, she prays to allow the application.

3. On the other hand, the accused has filed objection to the application by denying the content in said application and further contended that, the application filed by the complainant is not maintainable either in law or on facts, complainant filed the said application in order to drag the proceedings, complainant filed this application when the matter is posted for cross examination. The entire claim put forth by the complainant is false and concocted for silly reasons as “General Power of Attorney Holder Sri.T.S. Chandrashekar”, signed as third party, when the said third party to the alleged document, the question of the complainant not producing the same at relevant point cast doubt on the authenticity of the document. The complaint is file during the year 2023, the complainant has not offered any explanation for not producing the document along with the complaint. The indenture of mutual confirmation, assurance and undertaking is sufficiently stamped and the same cannot be marked in the evidence of the complainant as Exhibit for

any legal purpose. Hence, the question of adducing further evidence does not arise. Hence, prayed to dismiss the application.

4. Heard the perused the materials on record.

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

1) Whether the complainant has made out sufficient grounds to recall and permit him to witness evidence ?

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 record shows that, complainant has filed this private complaint against the accused for the alleged offence U/s. 138 of N.I. Act. The GPA holder of complainant examined as PW.1 and has produced 10 documents which are marked at Ex.P.1 to Ex.P10. Thereafter, the GPA holder of

complainant/PW.1 subjected to cross examination wherein Learned counsel for the accused raised the several defense to rebut the presumption arise in favour of complainant. Therefore, complainant in order to prove his case, he intend to produce the document and filed this application. On the other hand, accused objected the application wherein submitted that, complainant is intend to mark the unregistered insufficient stamp document. Hence, the said document is not admissible unless and until impound the duty and penalty.

8. Perused the record, the Learned counsel for the complainant relied upon the decision reported in 2011 SCC Online Kar 4526 (Ravikala H Vs. K.V.Rama Murthy) wherein it is held that:

“ 17. In this view of the matter, both the petitions are allowed. The order dated 25.08.2010 directing the complainant to pay Rs.46,50,800/- - as duty and penalty on the agreement of sale for the purpose of admitting it in evidence and the order dated 20.11.2010 directing closure of cross examination of PW.1, are hereby quashed. The Learned Magistrate is directed to admit the said document in evidence without insisting upon payment of duty and penalty

and to proceed to dispose of the proceedings in accordance with law by affording reasonable opportunity to both, the parties to lead further evidence. It is made further clear that the learned Magistrate shall afford reasonable opportunity to the accused to further cross examine PW.1 and also to lead defence evidence, if any”.

The above decision is aptly applicable to the present circumstances of the case. In the above decision the trial court has directed to the complainant to pay the duty and penalty on the sale agreement for the purpose of admitting the documents. Subsequently, the Hon'ble High Court of Karnataka quashed the trial court order and directed the trial court to admit the document in evidence without insisting any duty and penalty on that document.

9. In the present case, complainant intend to produce the unregistered document to prove his case but accused objected that, said document is insufficient stamp document. As above decision, imposing the duty and penalty is not necessary. Accused is at liberty to cross examine the PW.1 on said document. Hence, in case if this application is not

allowed hardship will be caused to the complainant /applicant.
Hence, it is necessary to allow this application for proper adjudication. Hence, I answer point No.1 in the Affirmative.

10. 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.

For further chief of PW.1.

(Directly dictated to the stenographer through computer, typed by her then, corrected by me and then pronounced by me in the open court on this the **13th day of May, 2026**)

**Judge & ACJM,
Court of Small Causes,
Bengaluru.**
