

ORDER ON APPLICATION UNDER SECTION 311 OF Cr.PC

The advocate for complainant has filed this application for recall of DW-1 for further cross examination.

2. In the application he stated that the accused No.2 was examined as DW-1 and he had cross examined by complainant but during cross examination material aspects regarding the merits of the case left out. Therefore, further cross examination of DW-1 is necessary for adjudication of the case. Hence, he prayed to recall the DW-1.

3. The advocate for accused filed objections to the application, wherein he denied the contents of the application and contended that the complainant had completely cross examined the DW-1 on many dates. Now it is posted for final arguments. At this stage the complainant came with the application. The complainant has been delaying the proceedings for dragging the case for harassing old aged accused persons. The complainant failed to produce the documents. He has also mentioned the numbers of decisions of Hon'ble Supreme Court of India and Hon'ble High Court of Other States and prayed to reject the application.

4. Heard both side.

5. The point that arises for the consideration of the court is as under;

Point No.1: Whether the application under section 311 of Cr.P.C., is made out grounds to allow?

Point No.2: What order?

6. My answer to the aforesaid 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 complainant has filed this application at the stage of final arguments.

8. It is alleged that the accused have committed the offence punishable under section 406, 420, 120(B) and 468 of IPC. This case is arising from other than Police report. The accused in order to prove the case of complainant examined the accused No.2 as DW-1. DW-1 was cross examined by the complainant and lastly it was completed on 12.02.2024 and again from next date of hearing filed this application. No doubt, already cross examination was completed after sufficient opportunity given. The complainant had taken nearly about more than six months to cross examine the DW-1. However, in

the interest of justice opportunity has to be given to the complainant for further cross examine the DW-1. No hardship will cause to the accused persons if allow the application. But the matter is more than 15 years old. Therefore, it is necessary to impose some conditions. Hence, I answer Point No.1 in the Affirmative.

9. **Point No.2**:- As discussed on Point No.1, I proceed to pass the following:-

ORDER

The application filed by the complainant under Section 311 of Cr.P.C., for cross examination of DW-1 is hereby allowed with cost of Rs.1,000/- subject to condition that cross examination shall be completed within one date of hearing.

(Dictated to Stenographer, transcribed by him on computer, corrected and then pronounced by me in the open Court on this the 23rd day of February, 2024).

III ACMM, Bengaluru.