

**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 it is contended that the DW-1 was examined by the accused side and he has been cross examined in length by the complainant and the certain documents were confronted through the DW-1 on the side of the complainant and the confronted documents have been marked. The certain materials documents have not been confronted to the DW-1. The documents such as the application dated 13.07.2017, filed before the learned IX ACMM Bangalore, agreement dated 02.07.2007 executed in favour of the accused No.2, the letter sent by the accused No.5, dated 20.09.2006 to the complainant, regarding revenue documents of the properties purchased by the accused persons etc,. The complainant has to cross examine DW-1 regarding other material evidence in favour of the complainant which has been left out in the cross examination of the DW-1 by the complainant. If the application is allowed no hardship will be caused to the accused. If it is rejected irreparable loss will be caused to complainant, which cannot be compensated. Hence, he prayed to allow the application.

3. The advocate for accused filed objections to the application, wherein he denied the contents of the application and contended that the complainant was filed this application third time. The complainant had completely cross examined the DW-1 on many dates. The complainant has been delaying

the proceedings of the prosecution by giving false and frivolous reasons for arguing this matter and harassing the age old accused persons from the year 2008 by filing a false case against them. The matter is already posted for arguments and the complainant cannot file the application at this stage for further cross examination of DW-1. The complainant has been delaying the proceedings of this court from the year 2008 by filing one or the other applications, just to harass the accused persons with malafide intention. The accused has further furnished citation of Hon'ble Supreme Court of India in Para No.12 and 13 of Criminal Appeal No.15/2019 in the case of Swapan Kumar Chatterjee V/S Central Bureau Of Investigation, 2005 (4) SLT 561, Hon'ble Apex Court in (2013) 14 SCC 4461 in the case of Rajaram Prasad Yadav Vs State of Bihar and Another and Hon'ble District Court of Delhi in the case of State Vs Satpal Singh etc., and prayed to reject the application.

4. Heard both side. The advocate for complainant filed written arguments. I have perused the materials on record.

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

**Point No.1:** Whether the application filed by the complainant 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 arguments.

8. It is alleged that the accused have committed the offence punishable under section 409, 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 01.03.2024 and again on 03.09.2024 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.500/- subject to condition that cross examination shall be complete on next date of hearing-17-12-2024.

(Dictated to Stenographer directly on computer, corrected and then pronounced by me in the open Court on this the 7<sup>th</sup> day of December, 2024).

III ACJM, Bengaluru.