

IN THE COURT OF CIVIL JUDGE & J.M.F.C., AT SANDUR.

Present : Md. Shaiz Chouthai,

B.A.,LL.B. (Hons.), LL.M,(M.L.)

Civil Judge & JMFC, Sandur.

Dated: 27th day of February, 2026

C.C. No. 80/2018

COMPLAINANT :: Vijayakumar S/o Shivalingaiah,
Aged about 47 years,
Employee in JSW,
R/o O1-9, Vidya Nagar, JSW Township,
Thoranagallu,
Sandur Taluk, Ballari District.

[By : Sri. K.T.P., Advocate]

/ V E R S U S /

ACCUSED :: K. Rajkumar S/o Nagaraj,
Aged about 57 years,
R/o H. No.82, Ground Floor,
Ist 'C' Cross, Dodda Kempaiah Layout,
Raja Rajeswari Nagar, H.V. Halli,
Bengaluru

[By : Sri. K.R.D., Advocate]

I.A.

Applicant : K. Rajkumar S/o Nagaraj
(Accused)

V/s

Opponent : Vijayakumar S/o Shivalingaiah
(Complainant)

ORDER ON MEMO Dt. 12.11.2025 FILED BY THE ACCUSED

1. The learned counsel for accused filed memo on 12.11.2025 seeking to discard the entire evidence of PW2 and the documents marked through him as Ex.P6 to Ex.P8. The memo is filed when the matter was posed for defence evidence.

2. It is stated that, one Sanjay Ranjan Ojha, Manager, Union Bank (Corporation Bank) was examined on behalf of complainant as PW2 on 04.01.2020 and relied upon Ex.P6 to Ex.P8. One document was confronted to him which is marked as Ex.D1. Later, when PW1 was further cross-examined, it noticed that certain documents were required to be produced through PW2 and further evidence was essential for proper adjudication of the matter. Therefore, further cross-examination of PW1 was deferred vide order Dt. 01.10.2021. On the same day, the accused filed two applications one under section 311 of Cr.P.C. and another under section 91 of Cr.P.C, which, according to the

learned counsel for accused, were allowed on 08.12.2021. Consequently, PW2 was recalled for further examination and the witness was directed to produce seals and daily register used by the Corporation Bank, Srinagar Branch, Bengaluru for the period from 2015 to 2019.

3. According to the applicant, the matter thereafter was adjourned on many occasion in between 25.02.2022 to 19.06.2025. Noticing that PW2 had remained absent for more than 3 years since from the date of the order recalling him for further examination, the court directed the complainant to keep present PW2 and the matter was posted on 14.07.2025. On the even date, the complainant had submitted before the court that PW2 being the Manager of Corporation Bank was not available and his transfer was not known and further the Corporation Bank was merged with Union Bank. It is submitted that Corporation Bank was merged with the Union Bank prior to examination of PW2 on 04.01.2020 itself.

4. Since the complainant did not keep PW2 present before the court and the witness did not subject himself for cross-examination, the matter came to be posted for recording of statement of accused under section 313 of Cr.P.C. According to applicant, since PW2 did not subject himself for cross-examination his entire evidence required to be discarded and the documents which are marked through him i.e., Ex.P6 to Ex.P8 cannot be taken into consideration. As such, it is prayed that the evidence of PW2 be discarded.

5. The learned counsel for the complainant filed objections contending that several applications are filed by the accused to procrastinate the proceedings for one or the other reasons. The present matter pertains to 2018, the evidence has already been closed and the statement of accused under section 313 of Cr.P.C is already recorded. As such, the memo filed by the accused is not maintainable under law since no sufficient reasons or grounds are made out in the memo. On these grounds, he prays to reject the memo with cost.

6. Heard the learned counsel for accused and the complainant. Perused the records.

7. On going through the records and the order sheet, it transpires that the learned counsel for the accused cross-examined PW1 on 25.02.2019 and 13.11.2019.

8. On 04.01.2020, the complainant got examined one witness by name Sanjeev Ranjan Ojha as PW2. He was cross-examined on the same day by the learned counsel for accused.

9. Thereafter, he made an application on 12.02.2020 under section 311 of Cr.P.C. seeking to recall PW1 for further cross-examination, which came to be allowed on 08.04.2021. Thereafter, PW1 was further cross-examined on 01.10.2021. On the said date, further cross-examination of PW1 was deferred. On the same day, the learned counsel for accused filed two applications under section 311 of Cr.P.C. and 91 of Cr.P.C., seeking to recall PW2 and directing him to produce seals and registers. These applications are allowed on 29.01.2022.

Consequently, PW2 was recalled and he was directed to produce seals and daily registers. This court had repeatedly sent summons to him to appear and produce the seals and registers of the Bank but the summons returned unserved every time. Thereafter, this court had directed the complainant to keep his witness PW2 present which he failed to do so.

10. Since PW2 did not appear to face further cross-examination and produce the seals and registers as directed by the court, the learned counsel for accused sought to discard his entire evidence and the documents marked through him.

11. The prayer of the learned counsel for accused fall short of consideration. So because, there is no provision under the law for discarding evidence of the witness and documents marked through him. Importantly, PW2 has been cross-examined by the learned counsel for the accused. The witness who subjected himself for cross-examination, the evidence of such witness cannot be mechanically discarded merely for asking. It is not that

PW2 has never turned back to face cross-examination after leading evidence in chief-examination. After completion of cross-examination, there is no further chief-examination of PW2. In such a case, the evidence given by PW2 in chief-examination and in cross-examination cannot be discarded only on the ground that the complainant did not secure him after the order of the court for further cross-examination. There are absolutely no grounds to allow the memo filed by the accused seeking discarding the evidence of PW2. Such a prayer cannot be considered merely on filing memo. Hence, I proceed to pass the following:-

ORDER

Memo Dt. 12.11.2025 filed by the learned
counsel for accused is hereby rejected.

(Dictated to the stenographer, computerized by him, corrected by me and then pronounced in the open Court, on this the 27th day of February 2026)

(Md. Shaiz Chouthai)
Civil Judge and J.M.F.C., Sandur.