

**IN THE COURT OF II ADDITIONAL DISTRICT AND
SESSIONS JUDGE, BAGALKOTE, ITINERARY COURT,
HUNGUND**

**Present: Sri. G.A.Mulimani, M.A. LL.M.,
District and Sessions Judge.**

Dated this the 6th day of March 2026

SESSIONS CASE No.20/2022

Complainant:

The State of Karnataka.

(By the Learned Public Prosecutor)

Vs.

Accused:

Basavaraj Chandrappa Madar and others

(By Sri.A.B.Jalihal, Advocate)

ORDER ON APPLICATION U/Sec. 311 of Cr.P.C.

The Ld. Public Prosecutor has filed this application U/Sec.311 of Cr.P.C to issue summons to C.W.45- Hosakerappa, CPI, Hungund, who is Investigating Officer of this case. Further the said C.W.45 is partly examined as

P.W.14. Yet further examination and cross examination is not completed and his further examination and cross examination is necessary to conduct the fair trial. On 01.03.2025 the said P.W.14 was not present before the court. Hence the evidence of P.W.14 was dropped. Due to rush of work and inconvenience the said witness is not appeared. Hence prayed for issue summons to the said witness by allowing this application.

2. On the other hand, the learned counsel for the accused has filed his objections inter-alia contending that, the said application is not maintainable either in law or on facts. Further contended that, on 06.07.2024 and 12.07.2024 this court had issued summons to C.W.45. However, C.W.45 was not present before the court. On 26.07.2024, C.W.45 was partly examined as P.W.14. Thereafter repeated issuance of the process on 02.08.2024, 16.08.2024, 24.08.2024, 06.09.2024, 13.09.2024, 27.09.2024, 05.10.2024, 19.10.2024, 26.10.2024, 08.11.2024, 22.11.2024 and 29.11.2024, the C.W.45 did

not turn up. On 06.12.2024 C.W.45 was present and partly examined in further chief examination. Again prays time for further evidence on 24.12.2024, 27.12.2024 and 04.01.2024. On 04.01.2024 this court has directed the concerned agency to keep C.W.45 present on 18.01.2025 without fail and also issued NBW against him. In spite of that, the concerned agency failed to execute NBW against C.W.45, who himself is Investigating Officer in this case. Therefore, this court has dropped the C.W.45 and closed the side of prosecution. Now, the Ld. PP has filed this application to recall the C.W.45/P.W.14 without any valid reason. Hence, prayed to dismiss the application.

3. Heard the arguments of both the sides.

4. On going through the available materials, the point that arises for my consideration is as under:

1. Whether the learned Public Prosecutor has made out a prima-facie grounds to allow the application under section 311 of Cr.P.C. as prayed for?

2. What Order?

5. My finding on the above points are as under:

Point No.1 : In the Affirmative;

Point No.2 : As per final order, for the following:

REASONS

1. **Point No.1**: The learned Public Prosecutor has vehemently argued that, C.W.45 is partly examined as P.W.14. His evidence is not completed and his further examination and cross examination is necessary to conduct the fair trial. Since P.W.14 was not present, hence on 01.03.2025 this court has dropped the P.W.14. The non-presence of P.W.14 due to rush of work and inconvenience.

2. The learned counsel for the accused has vehemently argued that, on 06.07.2024, 12.07.2024, 26.07.2024, 02.08.2024, 16.08.2024, 24.08.2024, 06.09.2024, 13.09.2024, 27.09.2024, 05.10.2024, 19.10.2024, 26.10.2024, 08.11.2024, 22.11.2024 and 29.11.2024, this court issued summons, then warrant.

Inspite of repeated issuance of process as stated in supra, the C.W.45 did not present and give his complete evidence. Further, the Ld. PP has not made out any sufficient grounds to allow the application.

3. On perusal of the above provisions and the materials available on record, admittedly the C.W.45 is the Investigating Officer, who has partly examined as P.W.14. In the instant case, inspite of repeated issuance of summons, warrants the concerned agency failed to keep the C.W.45/P.W.14 for further evidence. The order sheet clearly discloses that, on 06.07.2024 this court has issued summons to C.W.45, till 01.03.2024 he did not turn up. Admittedly, he is the Investigating Officer, it is his duty to appear before this court and give evidence. On the other hand, inspite of taking more than 08 Months time the Investigating Officer did not turn up and has not bothered about to conclude the trial. Further, accused No.1 to 3 are in Judicial Custody. The trial was begun on 31.01.2023. After taking 02 years time the Investigating Officer has

failed to present before this court for giving his further evidence, which itself shows that, the accused No.1 to 3 behind the bar without any progress of the trial as this court has issued summons and warrants to C.W.45 for more than 08 Months.

4. It is pertinent to note that, the evidence of prosecution was closed by dropping the C.W.45 on 01.03.2025. Subsequently, accused statement under section 313 of Cr.P.C. was recorded and case was posted for arguments. The Ld. PP and Ld. Counsel for the accused were submitted their respective arguments and Ld. PP prays time for arguments, after argue the matter has prays time for submitting citations. Finally on 26.12.2025 the Ld. PP has filed this application to recall the P.W.14. On taking into consideration of the above events, which clearly goes to show that, the negligence of the Investigating Officer to give evidence. When the C.W.45 himself is Investigating Officer, it is his duty to give evidence without expectation of the process. In the instant case, inspite of taking more

than 02 years for trial and more than 08 months time only for the evidence of Investigating Officer. The prosecution has not assigned any valid reasons for taking 08 Months time to give evidence of Investigating Officer.

5. Taking into consideration of rival contentions of Ld. PP and Ld. Defence Counsel, admittedly, the Investigating Officer has filed this charge sheet against the accused for the offences punishable under section 302, 120(B), 201 R/w Sec.149 of IPC. The alleged offences are severe in nature. Therefore, the evidence of P.W.14 is necessary to the case of prosecution to arrive a proper conclusion to meet the ends of justice. Further the learned PP has filed this application when the case was posted for final argument. Therefore, if the application is allowed on certain conditions, no harm or prejudice will be caused to the other side. Hence, it is just fair and reasonable to direct the prosecution to keep him present on the next date of hearing without fail, without expecting the issue of process, failing which the order will be inoperative

automatically. Under these observations, I am of the opinion that, Public Prosecutor has made out sufficient grounds to allow the application subject to above condition, in order to reach the just decision of the case. Accordingly, I answer **Point No.1 in the Affirmative.**

6. **Point No.2:** In view of the discussion made in supra paras, this Court proceed to pass the following:

ORDER

The application filed by the learned Public Prosecutor U/Sec.311 of Cr.P.C is hereby **allowed** subject to following condition.

The learned Public Prosecutor is hereby directed to keep present the C.W.45/P.W.14 Hosakerappa on next date of hearing without

fail, failing which the order will be inoperative
automatically.

(Dictated to the Stenographer Grade-3 directly on the computer,
script corrected and signed by me, then pronounced in the open court
on this the 6th day of March 2026.)

(G. A. Mulimani)
II Additional District and Sessions Judge,
Bagalkote,
Itinerary Court, Hungund.