

ORDER ON APPLICATION U/SEC.311 Cr.P.C.

This is an application filed by the accused counsel under section 311 of Cr.P.C. to recall the PW-1 & PW-6 and permit them for further cross-examining the witnesses as certain relevant questions was not put to the witnesses at the time of cross-examination. Hence, prays to allow the application.

2. On the contrary, the learned P.P. has filed his objections by contending that the application filed by the accused does not satisfy the conditions enumerated in Sec.311 Cr.P.C. The application does not state any sufficient reasons to recall the witnesses. PW-1 & PW-6 have been fully cross-examined and the same is noted in the order sheet. Present application is

totally against the spirit of Sec.311 Cr.P.C. and section 311 Cr.P.C. cannot used for filling up of the lacunae. Hence, prays to reject the application.

3. Heard the arguments of both sides & perused the records.

4. Following point would arise for my consideration.

Whether the application filed under Sec.311 Cr.P.C. needs to be allowed?

5. My answer to the above point is in the “**Negative**” for the following:

REASONS

6. At the outset, section 311 Cr.P.C. is a wide provision and spirit of the provision is to afford all the opportunity to the accused or the prosecution to discover at the truth of the matter. The object underlying section 311 Cr.P.C. is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or

leaving ambiguity in the statement of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The discretionary power should be exercised consistently with the provisions of the Code and the principles of Criminal Law. Keeping the above proposition of law in mind, let me now consider whether the application filed for recalling of PW-1 & PW-6 needs to be allowed for the purpose of just decision of the case.

7. On perusal of the order sheet it reveals that PW-1 was examined on 04.03.2023 and on that day an adjournment was sought for cross-examination of PW-1. As there was no valid ground for adjournment this Court had rejected the application & had recorded the cross-examination of PW-1 as nil.

8. The order sheet further reveals that subsequently on 16.08.2023 an application came to be filed to recall the PW-1 and the

same came to be allowed. Subsequently on 21.09.2023 PW-1 was fully cross-examined by the accused counsel. Therefore, it is pertinent to note that in so far as recalling of PW-1 is concerned, this Court has already afforded an opportunity to the accused by recalling the witness on the application filed by the accused counsel and was fully cross-examined subsequently on 21.09.2023.

9. Now, in so far as PW-6 is concerned, the witness was examined on 21.09.2023 and was fully cross-examined at length by the accused counsel on the same day. At this juncture, it is pertinent to note that in the application filed by the accused counsel under Sec.311 Cr.P.C. it is only stated that some relevant questions were not posed to the witness at the time of cross-examination. It is pertinent to note that in the application reason has to be assigned when an application is filed under Sec.311 Cr.P.C. to recall the witness and

the application cannot be vague by only stating that some relevant question has not been put to the witness.

10. In fact, it is settled proposition of law that whenever an application is filed under Sec.311 Cr.P.C. to recall the witnesses for the second time it has to be specifically stated as to on what point the witness will be cross-examined. Nothing has been explained in the application as to what are all the questions and how the questions being put to the said witness created inroad defence of the said accused. In the said circumstance I am of the opinion that this Court has afforded sufficient opportunity to the accused to cross-examine the witnesses and no reasons have been assigned in the application as to why the witnesses are being re-called for further cross-examination. The application is devoid of any merits. Accordingly the point under discussion is answered in the “negative” and I proceed to pass the following:

ORDER

Application filed by the accused counsel
under Sec.311 of Cr.P.C. stands rejected.

Prl. District and Sessions Judge., Bagalkot.