

**Order on objections filed by Sri. KMG,
LADC counsel for the accused**

Sri. KMG, advocate the LADC counsel for the accused has filed objections for the cross examination made by the learned APP treating the prosecution witnesses as partly hostile.

2. The said LADC counsel objects for cross examination of prosecution witnesses by learned APP treating them as partly hostile stating that the learned APP cannot without filing application U/ sec.319 of Cr.P.C. and following due procedure, cross examine the prosecution witnesses as partly hostile and that the court cannot permit the prosecution to cross examine its own witnesses by treating them as partly hostile. It is further stated that as there was farmers strike on 10.11.2025, the LADC counsel could not appear before this court and in the absence of the said LADC counsel, the learned APP without furnishing proper details to the court has obtained permission of the court to cross examine the prosecution witnesses without due process of the law. Generally, the accused possesses right to cross examine the prosecution witnesses and that the right to cross examine by

the accused is protected under article 21 of the constitution. The LADC counsel has also contended that denial of the right to cross examine can lead to the violation of the fundamental rights of the accused. It is further contended that the right to cross examination can be denied in exceptional cases when a party repeatedly delays the proceedings. In addition the LADC counsel relies on Sec.137, 138, 154(1), 154(2) and 155 of Indian Evidence Act. The LADC counsel has also relied on decision laid down by Hon'ble High Court of Karnataka in Vaggeppa Gurulingappa Jangligi V/s State of Karnataka In Cril. Petition No.101997/2019 and has relied on decision of Hon'ble Apex Court of India in KP Tamilmaran V/s State (2025). On these grounds the LADC counsel has prayed to discard the evidences of prosecution witnesses to whom the learned APP has cross examined by treating them as partly hostile.

3. On the other hand, the learned APP has presented his hearing on the said application relying on sec.154 of Indian Evidence Act. The learned APP has submitted that the prosecution can cross examine its own witness if the court permits and in the present case, the

prosecution witnesses are cross examined by the prosecution treating them as partly hostile after obtaining the permission of the court. On these grounds, the learned APP prays to reject the application filed by the LADC counsel.

4. Heard both side. After hearing and on perusal of the materials placed on record, the points that arise for consideration are:

POINTS

Point No.1: Whether the LADC counsel has made out sufficient grounds to discard the evidence of prosecution witnesses?

Point No.2: What order?

5. The findings of this court for the above points are as follows:

Point No.1: In the Negative

Point No.2: As per the following order

REASONS

6. POINT NO.1: To be brief, it is the contention of the LADC counsel that the prosecution cannot cross examine its

own witnesses treating them as partly hostile.

Before dwelling upon discussion, it is necessary to go through sec.154 of Indian Evidence Act. In the application filed by LADC counsel, the LADC counsel has envisaged regarding Sec.154 of Indian Evidence Act. Sec.154(1) of Indian Evidence Act as stated in the application filed by the LADC counsel itself provides that: Sec. 154(1) grants the court the discretion to permit the person who calls a witness to put any question to them that might be put in cross examination by the adverse party. This permission is usually sought when a witness makes a statement that goes against the party's case or their previously recorded statements. This itself shows that the courts can grant permission to the prosecution as well when a witness makes a statement that goes against the previously recorded statements. It is not clear to this court as to whether the present application filed by the LADC counsel is with regards to discarding the evidence of prosecution witnesses or the other way round because the present application itself contains the grounds which show that even the prosecution can be permitted to cross examine its own witness. In the instant case, the

learned APP has obtained the permission of this court and that this court has accorded the permission to the prosecution to cross examine its own witness by treating the witnesses as partly hostile because the statement of the witnesses were against the previously recorded statements. It is to be noted that this discretionary power vests with the court and that when the court is of the opinion that it is necessary to allow the prosecution to set forth the truth of the case, then the court may permit the prosecution to cross examine its own witness. However, in this case the court has granted permission to the prosecution to cross examine only to the extent of contradiction. It is to be noted that the LADC counsel has not specified in the application as to the evidence of which witnesses is to be discarded. The application being vague in nature is not specific and moreover the LADC counsel has relied on the decision laid down in Cril. Petition No.101997/2019 wherein it is not forthcoming to this court on going through the paragraph mentioned by the LADC counsel in the application as to what exactly the said LADC counsel is trying to putforth before this court. The other decision laid down by Hon'ble Apex

Court in K P Tamilmaran V/s State on which the LADC counsel has relied, itself states that the court retains significant power to manage witness examination to ensure a fair trial and determine the truth. The said two decisions of the Hon'ble Court substantiates the argument canvased by the prosecution rather than the LADC counsel. It is to be noted that in the case **Bhagwan Singh V/s State of Haryana, Sri. Rabindra Kuamr Dey V/s State of Orissa, Syad Akbar V/s State of Karnataka** have held that the evidence of prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof. In this case, the prosecution has put leading questions to its own witnesses only to the extent where the witness have deposed against their previously recorded statements. In addition it is to be noted that the LADC counsel during the course of argument stated that the prosecution has to follow due procedure before obtaining permission of the court

to cross examine by filing application U/ sec.319 of Cr.P.C. Sec. 319 of Cr.P.C. comes into play only when the witnesses have stated the name of the person who is involved in committing an offence and is not made accused in the case. When such is the case and provision, then filing of application U/sec.319 of Cr.P.C. is not required as the same would be not maintainable in the eyes of law. For these aforesaid reasons, this court is of the opinion that the application filed by LADC counsel is devoid of merits. Hence, this court answered point No.1 in the Negative.

7. POINT NO.2: For the reasons assigned during discussion of point No.1, this court proceeds to pass the following:

ORDER

The objection/application filed by LADC counsel dated. 01.12.2025 is hereby dismissed.

No order as to cost.

For orders on application sec.311 of Cr.P.C. and sec.348 of BNSS.

Call on later.

**Civil Judge and J.M.F.C
Banahatti**

ORDER ON U/S. 311 of Cr.P.C.

The present application is filed by the LADC counsel for the accused with a prayer to recall the CW-10/PW-6 for cross examination.

The copy of the application was duly served upon the learned APP.

The Learned APP has orally objected resisting the application.

Heard and Perused.

It is submitted that to avoid multiplicity of proceedings and to provide one more chance to accused to rebut the case of the prosecution, allowing present application is necessary.

Once, the prosecution proves its case, the burden to rebut the case of the prosecution shifts to the accused. Hence, it is just and necessary to provide an opportunity to the accused to cross-examine CW.10/PW-6.

It is to be noted here that the Courts have to exercise the power conferred U/s.311 of Cr.P.C., and sec.348 of BNSS judicially and not arbitrarily, the provision ensures that the judgment should not be rendered as inchoate, inconclusive and speculative, wherein the ends of justice would be

defeated. Therefore, this Court is of the view that, the accused has made out a prima-facie grounds to recall CW-10/PW-6 for cross-examination. Hence, this court proceeds to pass the following:

ORDER

The application filed by the LADC counsel for the accused is hereby allowed and the stage for cross-examination of CW.10/PW-6 is recalled.

The LADC counsel for the accused is hereby directed to cross examine CW-10/PW-6 without fail .

Issue witness summons to CW.10/
PW-6

For Cross-examination of CW.10/
PW-6.

Call on 12.02.2026.

**Civil Judge and J.M.F.C
Banahatti**