

ORDERS ON APPLICATION FILED U/S 311 OF Cr.P.C.

1. This present application is filed by the learned counsel for the accused by stating that on 02.11.2021 the CW-1 to 3 were present and got examined as PW-1 to 3. The counsel on record for accused was absent due to illhealth. Hence, the cross-examination of said witnesses taken as nil. Thereafter, the counsel who filed by the present application appeared for accused by taking NOC from earlier counsel on record. Hence, after his appearance he came to know that the cross examination of CW-1 to 3 taken as nil, as the accused has good case and offences are heinous in nature. Hence, CW-1 to 3 need to be cross examined. Accordingly, prayed to allow the present application.

2. Per contra the learned APP has filed objection and strongly contented that the present application is deserves to be dismissed as no merits. Further argued that inspite of giving sufficient opportunity, the accused has not choosen to cross-examine to CW-1 to 3. Further argued that the present application is filed just to drag the proceedings and to trouble the witnesses. Hence, prayed to reject the same.

Heard both sides, perused materials available on record.

3. The following points would arise for this court consideration:

1. Whether the present application is deserving to be allowed at this stage?

2. What order?

This court is answering the above points as under.

Point No.1 In the **Affirmative**

Point No.2 as per final order

For the following:

:REASONS:

4. **Point No.1:-** The present case is filed against the accused U/Sec.326, 504, 506 of IPC against the accused. On perusal of the order sheet CW-1 to 3 were present on 02.11.2021 and chief examined by learned APP. On same day the cross of CW-1 to 3 has taken as nil. On perusal of the examination in chief of CW-1 to 3 it goes to show that CW-1 to 3 being a material witness to the prosecution case and has thoroughly supported to the case of the prosecution.

No doubt the accused has come up with this application after the lapse of more than 1 year. It is well settled principle of law that in criminal cases the prosecution has entire burden to prove its case beyond all reasonable doubt, similarly, the accused should not be denied an opportunity to defend his case. Of course,

there is a valid point raised by the learned APP, but on the sole ground of delay this application should not be rejected.

At this stage, this court is of opinion of that in the interest of justice an opportunity should be given to the accused for fair trial, otherwise which amounts to violation of principle of natural justice. The delay caused could be compensated in terms of money. Therefore, this court inclined to allow this application. Accordingly, Point No.1 is answered Affirmative.

5. **Point No.2:-** For the above said reasons this court proceed to pass the following:

ORDER

**Application filed by the accused
U/Sec.311 of Cr.P.C. is allowed on cost of
Rs.200/- each witnesses.**

**Accordingly, cross-examination of
CW-1 to 3 is hereby recalled.**

Issue witness summons to CW-1 to 3
By 02.02.2023

**II Addl. Civil Judge & JMFC.,
Hosakote.**