

Case called out

Complainant and accused are present

The counsel for the accused files objection to application filed under Section 311 of Cr.P.C.,

Heard,

**ORDER ON APPLICATION FILED BY THE
COMPLAINANT UNDER SECTION 311 OF THE
CODE OF CRIMINAL PROCEDURE, 1973**

The complainant has filed the present application under Section 311 of Code of Criminal Procedure, 1973 (Hereinafter referred to as 'Cr.P.C.', for brevity) seeking to recall DW.1 and permit him to further cross-examination.

2. It is averred in the application that during the course of the cross-examination of DW.1, certain vital questions regarding documents confronted to PW.1 were not posed to the accused, and the same have been left out. Therefore, further cross-examination of DW.1 is very much necessary. If the application is allowed no way prejudice to the accused. If the application is not allowed the complainant will be put up irreparable loss and

injury which cannot be compensated in terms of money. With these, prayed to allow the application.

3. On the other hand, the accused resisted the application by filing objection and contended that the application is not maintainable either in law or on facts. There is no valid and strong reason made out by the complainant to recall DW.1 for further cross-examination. The counsel for the complainant has cross-examined the accused for his full satisfaction and there is nothing remaining to recall DW.1. The complainant has filed the present application only to drag on the proceedings. Therefore, sought for dismissal of the application with exemplary cost.

4. The points that would arise for consideration are:

1. Whether the application is deserves to be allowed?
2. What order?

5. I have heard the learned counsel for the parties and meticulously perused the material on record.

6. My answer to the above said points are as follows:

Point No.1: In the Affirmative;

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

REASONS

7. **Point No.1:-** After hearing and careful perusal of the application, objection and materials placed on record the complainant has filed the present application praying to recall DW.1 for further cross-examination. The complainant has filed the present case against the accused for the offence punishable under Section 138 of NI Act. It is worth to refer provisions of the Cr.P.C., particularly Section 311 of Cr.P.C., which is being reproduced below:

311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or. recall and re- examine any person already examined; and the Court shall summon and examine or recall and re- examine any such person if his evidence appears to it to be essential to the just decision of the case.

8. The above provision manifest that at any stage material witness may be examine or recall for the just decision the court. It is worth to refer decision of the Hon'ble Apex Court in the case of Swapan Kumar Chatterjee -Vs- Central Bureau of

Investigation reported in (2019) 14 SCC 328, wherein it is held at para No.11 that, **It is well settled that the power conferred under Sec. 311 of Cr.P.C. should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has wide power under this Section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is not satisfied that the application has been filed as an abuse of the process of law.**

9. When the matter was posted for reply arguments, at this stage the complainant has filed the present application. On perusal of the material placed on record, the complainant specifically contended that the suggestions in respect of the documents confronted to the complainant were not posed during the course of cross-examination of DW.1. A perusal of the entire order sheet depicts that the cross-examination of DW.1 was closed only after full satisfaction of the learned counsel for the

complainant. Considering the facts and circumstance of the case and just for the purpose of determine the matter with full opportunity, the complainant has made out reason to allow the application. If the application is allowed, no way prejudice to the accused. If any prejudice will be caused to the accused same may be compensated by imposing exemplary and heavy costs on the complainant. Accordingly, I answer point No.1 in the **‘Affirmative’**.

10. **Point No.2:-** In view of discussion and conclusion arrived at point No.1, I proceed to pass the following:

ORDER

The application filed by the complainant under Section 311 of the Cr.P.C., is hereby allowed on cost of Rs.500/-.

Consequently, DW.1 is recalled and further cross-examination DW.1 finally as last chance by:

**Prl. Civil Judge & JMFC.,
Hoskote.**