

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

Accused 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 PW.1 to PW.3 and permit him to cross-examination of witness.

2. It is averred in the application that during the course of the cross-examination of PW.1 to PW.3 certain vital questions were not posed and were left out. It is very much necessary to recall PW.1 to PW.3 for further cross-examination and the same is essential for the just decision of the case, otherwise he will be put irreparable loss and hardship. With these, prayed to allow the application.

3. Per contra, the learned APP resisted the application by filing objection. It is contended that the application is not maintainable either in law or on facts. There is no valid and strong reason made out by the accused to recall PW.1 to PW.3 for further cross-examination. The present application is filed 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 accused has filed the present application praying to recall PW.1 to PW.3 for cross-examination. 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 confirmed 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 vide 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 excised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be excised if the court is cannot view that the application has filed as an abuse of the process of law.**

9. When the matter was posted for issue summons to CW.2 to CW.6, at this stage the accused has filed the present

application. On perusal of the materials placed on record depicts that the cross-examination of PW.1 to PW.3 was closed after complete cross-examination. In the case on hand, the accused specifically contended that certain vital questions were not posed and were left out. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the court. Considering the facts and circumstance of the case and just for the purpose of determine the matter with full opportunity, the accused has made out reason to allow the application. If the application is allowed, no way prejudice to the prosecution. If any prejudice caused to the prosecution, same may compensated by imposing cost on the accused. 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

Application filed by the accused under Section 311 of the Cr.P.C., is hereby allowed on cost of Rs.3,000/-.

Consequently, PW.1 to PW.3 recalled subject to payment of cost of Rs.1000/- each to the witness.

Re issue summons to PW.1 to PW.3
and CW.2 to CW.6 by: 03.02.2026

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