



**IN THE COURT OF THE PRINCIPAL DISTRICT AND
SESSIONS JUDGE, CHITRADURGA.**

Present:

Sri. Ron Vasudev, B.Com. LL.B.(Spl)
Prl. District & Sessions Judge,
Chitradurga.

Dated this the 5th day of August, 2024

Spl.(PC) C. No.6/2016

Complainant : State by Lokayuktha police,
Chitradurga.

(By the learned Special Public Prosecutor,
Chitradurga)

-VERSUS-

Accused : 1. B.Rajanna S/o Dyamanna,
Age: 57 years, Occ: Labour Inspector,

2. B.S.Rajeshwari W/o D. Rajanna,
Age: 52 years, Occ: Women Supervisor,
Women and Child Development Department,

Both are r/o 5th Block, Ward No.34,
Yangammanakatte, Teachers' Colony,
Chitradurga.

(Sri.Shankar P. Hegde/N.T.Raju, Advs.)

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

The accused have filed this application seeking to recall PW.26 for further cross-exam. The Special Public

Prosecutor has filed objections in writing. Perused the application. Now the following points would arise for my consideration;

1. Whether the accused have made out sufficient grounds to recall PW.26 once again for further cross-exam as prayed for?

2. What order?

2. I have heard Sri.NTR Advocate for the accused and learned Special Public Prosecutor for the State on the application on hand and thoroughly gone through the case file as well as the authorities cited by the learned defence counsel. My findings on the above points are as under;

Point No.1: In the Negative

Point No.2: As per below

for the following;

R E A S O N S

3. **POINT No.1:-** In this case these accused have been charge sheeted for the offence punishable U/s.13(1)(e) r/w. S.13(2) of the P.C. Act, 1988. The prosecution papers show that the IO raided the house of the accused No.1 on 4.6.2014 and after conducting raid and ascertaining that accused No.1 and accused No.2, who is the wife of accused No.1, allegedly possessed wealth disproportionate to their known

sources of income, after investigation has laid the charge-sheet for the offence punishable U/s.13(1)(e) r/w. S.13(2) of the P.C. Act, 1988.

4. In pursuance to the charge-sheet my predecessor-in-office took the cognizance of offence on 16.9.2016 and issued process to the accused. In response thereto they entered appearance and after hearing them as well as the prosecution my predecessor-in-office framed the charge and read over to them and on their pleading not guilty, set down the case for trial vide his order dtd.17.3.2017. Then the trial commenced and prosecution examined the witnesses and this PW.26 being the IO, was examined for the first time on 31.8.2019 and his chief was completed on 31.1.2020. Thereafter at the instance of the defence counsel cross-examination was deferred on the said date i.e., on 31.1.2020.

5. Intentionally and deliberately I have set out these facts to show how the system is abused by some vested interests to prolong litigation with ulterior motive, so that a case should never reach to its logical end. It is also on record that when these accused sought time for cross-exam of PW.26 on the reason that their advocate is home quarantined due to COVID-19, PW.26 was bound over on 19.3.2021, again when this

witness was appeared for cross-exam on 23.7.2021, once again accused prayed time on the reason that their advocate has taken Vaccination and was not keeping well. At that time this court bound over the said witness as it was a second time, but on cost of Rs.2,000/-. However once again continuing the habit of taking adjournment on 19.8.2021, though PW.26 was present, stating that their advocate is out of station and by producing the Air-ticket copies accused took adjournment and on that 3rd occasion Rs.3,000/- cost was imposed by my then predecessor.

6. But when accused did not show interest to cross-exam PW.26 again on 19.11.2021, being fed up with the attitude of these accused my predecessor-in-office took cross-examination of PW.26 as nil. Thus for the first time on 19.11.2021 by rejecting the prayer of the accused for cross-exam, it was taken as nil. Then starts the chain of filing applications U/s.311 of Cr.P.C.

7. On 15.12.2021 accused filed first application U/s.311 of Cr.P.C. to recall PW.26 for cross-examination. At that time my predecessor-in-office upon hearing the Special Public Prosecutor allowed that application on 29.12.2021 with cost of Rs.8,000/- and out of that amount, he directed the accused to pay Rs.3,000/- to the witness and balance Rs.5,000/- to

the Bar Association, Chitradurga and recalled PW.26 for cross-exam. When the said witness appeared on 11.3.2022, for the first time accused commenced their cross-exam and having done part of it they prayed time as such it was deferred. As usual when the accused continued the tendency of seeking adjournment and when they did not come forward to cross-examine PW.26 further on 28.4.2022 for the second time my then predecessor-in-office took further cross-examination as nil. It may be noted that on 28.4.2022 adjournment was sought on the ill-health of the advocate on record without producing any documents, therefore my predecessor took further cross-examination as nil.

8. Then came the second application U/s.311 of Cr.P.C. and it was filed on 30.5.2022 seeking to recall the very PW.26 for further cross. As usual this court called upon the Special Public Prosecutor and on filing objections by him, it passed order on 20.6.2022 and once again allowed the application with the cost of Rs.10,000/- directing the accused to pay out of that amount, Rs.5,000/- to the witness and balance Rs.5,000/- to the Bar Association, Chitradurga. It was the magnanimity of the court so it is once again allowed the second application as it was contended that defence counsel was suffering from viral fever and doctor had

advised him to take rest. Therefore when PW.26 appeared on 28.12.2022 accused did further cross-exam in part and again stating that they need time for further cross-exam took time. While doing so, they just paid Rs.5,000/- cost to the witness, but they did not report the complete compliance of the order dtd.20.6.2022 in its true spirit by producing receipt evidencing payment of balance Rs.5,000/- to the Bar Association, Chitradurga. But when they again did not come forward to complete the cross-exam of PW.26 on 24.8.2023 for the third time, this court took further cross-examination as nil as no ground was cited by the accused to seek adjournment.

9. Thereafter came the third application U/s.311 of Cr.P.C. urging the ground that one of the relative of the defence counsel had died and the counsel is busy in attending the funeral ceremonies of the deceased. Considering the ground urged in the application though the Special Public Prosecutor objected that application in tooth and nail, this court allowed it on 4.10.2023 by imposing nominal cost of Rs.2,500/- for the reason stated in the application and PW.26 was recalled for further cross-exam.

10. May be emboldened by the generous approach of the court, which went on allowing the application

after the application, on the reason that fullest opportunity has to be granted to the accused to put forth their defence, as usual continuing their ill habit of seeking adjournment on flimsy grounds, when PW.26 appeared for further cross-exam on 3.7.2024 by filing a memo the junior counsel for the advocate on record sought time for further cross-exam on the reason that his senior counsel is suffering from diarrhoea. Looking to the order sheet proceedings and abuse of the court process again and again by the accused, this court rejected the said prayer and took further cross-examination as nil for the fourth time.

11. Now it is the turn of 4th application in hand and under the very same provision, with the very same relief of recalling of PW.26 for further cross-exam on the claim that advocate on record was suffering from ill-health as such he could not attend the court and complete the cross-exam, prayer is sought to recall the witness. If one stares at application No.3 filed on 29.9.2023 and application No.4 filed on 6.7.2024, which is now under consideration, one can see that both applications are more or less similar with the peripheral changes required to be made to present the third application again for the 4th time.

12. The narration of the sequence of events in the foregoing paragraphs undoubtedly point out that

though PW.26 was examined on 31.8.2019 this court is unable to record his complete cross-exam even after 4 years 6 months, just because of the attitude of the accused, who took the goodwill gesture of the court for their ends. In their application accused have cited the decisions in Narayan Nayak Vs. State of Orissa, Shivarayahalgunki Vs. State of Karnataka, V.N.Patil Vs. K.Niranjan and others, State Vs. N.Seenivasagan and Manju Devi Vs. State of Rajasthan reported at (2019) 6 SCC 203. Certainly one cannot dispute the principles laid down in the decisions cited above, however on the reason that opportunity is to be granted to the accused to cross-examine the prosecution witnesses it does not mean that it has to cause injustice to the prosecution witnesses or to the State. When the official witnesses appear for cross-exam by keeping aside their work, particularly the proceedings dated 3.7.2024 show that PW.26 had come all the way from Chikmagalur. It is high time for the courts to deprecate the acts of litigants, who unnecessarily prolong the litigation without any cause and thereby disrepute the system.

13. In this context, I refer to the decision of the Hon'ble Supreme Court reported at ILR 2016 Karnataka 3341 in the case of Gayathri Vs. M. Girish. In that case also when a litigant went on filing applications after application for further cross-exam of his opposite

party, without discharging his duty when the said witness appeared and applications were allowed, and finally when such application went against him, he took it to the Hon'ble High Court and finally to the Hon'ble Supreme Court. In that case, Hon'ble Apex court cautioned the Trial Courts in indiscriminate entertaining of such applications as it would erode the faith of the litigants on the system.

14. This case having commenced its journey in the year 2016, even after 8 years, it has not reached the finality. Out of that 8 years, this court is struggling to complete cross-exam of PW.26 only for 4 years 6 months and whenever the opportunity was accorded to the accused by entertaining their applications sympathetically, without utilising the said opportunities they went on seeking adjournments on one or the other ground so that they can pull on litigation at their wish.

15. According to me, doing justice does not mean doing injustice to the system or to the other party of the case. Therefore if the application in hand, which is 4th in line is once again allowed, it is nothing short of committing gross injustice and already accused have availed the maximum opportunity to cross-examine PW.26 further and to put forth their defence and also

that no justifiable cause is shown for the absence of their advocate on 3.7.2024, except the reason of ill-health which has repeatedly shown on previous occasion as noted earlier, I have no other option except to answer this point in the negative, accordingly it is answered.

16. **POINT No.2**:- In view of my above finding, I proceed to pass the following;

O R D E R

The application filed U/s.311 of Cr.P.C. to recall PW.26 for further cross-exam is rejected.

For recording statement of accused U/s.313 of Cr.P.C.

(Dictated to the Stenographer Grade-I, transcribed and computerised by her, corrected, signed by me and then pronounced by me in the open Court on this the 5th day of August, 2024.)

(Ron Vasudev)

Prl. District & Sessions Judge,
Chitradurga.

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