

Order on A/U/S. 311 of Cr.P.C filed by the accused side

The complainant police have filed the charge sheet against the accused person alleging the commission of the offences punishable under sections 302, 120-B, 404, 201 r/w 34 of IPC.

2. When this case has been posted for arguments of defense side, the counsel for the accused person has filed this application praying to recall the P.W.34 as his cross examination was taken as nil who is the partial investigating officer who conducted the preliminary investigation in the case. Further, it is also prayed in the application for recalling P.W.10, 15, 16, 27, 28, 32, 35, 37 and 40 on the ground that previous counsel failed to put important material omissions during their cross examinations and important contradictions have not been elicited which are very essential for the just decision of the case. The recall of the above said witnesses is very much essential for the just decision of the case and to bring the truth before the court. In case the application is not allowed, the accused will be subjected to untold hardship and inconvenience and on the other hand, no prejudice will be caused to the prosecution, if the application is allowed. Accordingly, the accused has prayed to allow this application.

3. The learned incharge Public Prosecutor has filed her objections stating that in the case on hand all the prosecution witnesses have been examined and the prosecution has also submitted its arguments and now the case has been posted for arguments of the defense side, at this stage, without any cogent reasons the defense side have filed this application only to drag the proceedings further with malafide intention. Further, the defense side have sufficiently cross examined the above said witnesses. Therefore, at this stage the application filed by the defense side is not maintainable and

the same may be dismissed with cost. Accordingly, she has sought for rejection of the application.

4. For disposal of this application, the following points arise for consideration:

1. Whether the accused person has made out sufficient grounds to allow application filed under sec. 311 of Cr.P.C ?

2. What order ?

5. Having heard the arguments on both sides, my findings to the above points are as under.

Point No.1: Partly in the Affirmative

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

REASONS

6. **Point No.1**: It is pertinent to note here that the case is pertaining to the year 2012. In the case on hand, the prosecution has examined all the witnesses. However, the records show that after chief examination of P.W.34, his cross examination was taken as nil. Further, P.W.10, 15, 16, 27, 28, 32, 35, 37 and 40 have been extensively cross examined by the defence side. Therefore, there is no necessity to recall the P.W.10, 15, 16, 27, 28, 32, 35, 37 and 40. As the cross examination of P.W.34, who has conducted the preliminary investigation in the case on hand, was taken as nil therefore, recalling of P.W.34 is found necessary in order to provide fair hearing to the accused, though the case is pertaining to the year 2012 and it has been listed in the 25 oldest cases.

7. It is well settled that the scope and object of Sec.311 of Cr.P.C. is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision in the case. In other words, said power must be exercised judiciously and not capriciously or arbitrarily which ultimately lead to undesirable results. An application under section 311 of Cr.P.C also cannot be allowed to fill up the gaps and lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party.

8. Further, in the case of ***Manju Devi Vs. State of Rajasthan and Another*** [Criminal Appeal No.688 of 2019(arising out of SLP(Crl.) No.8315 of 2018)], wherein the Hon'ble Apex court by referring the paras no.8 and 15 of the case in ***Natasha Singh Vs. CBI (state) reported in (2013) 5 SCC 741***, has vividly discussed the importance of Section 311 of Cr.P.C.

9. Considering the fact and circumstances of the case, it is necessary to recall only P.W.34. If this application is allowed in part with respect to P.W.34 only, then no hardship would be caused to the prosecution. On the other hand, if this application is denied there is a possibility of the accused being denied an opportunity to defend himself, in case P.W.34 is not recalled. Therefore, there are sufficient reasons to recall PW.34 whereas recalling of other witnesses is not necessary. Accordingly, point No.1 is answered partly in the ***Affirmative***.

10. **Point No.2:** In the light of the above discussions, I proceed to

pass the following:

ORDER

The application under section 311 of Cr.P.C filed by the accused is hereby partly allowed.

PW.34 – H.S. Suresh is recalled solely for the purpose stated in the application.

Office is directed to issue summons to PW.34 – H.S. Suresh for his cross examination on 04.01.2022.

Hence, call on for cross of PW.34 by 04.01.22.

Sd/-

**[Manjunath Sangreshi]
II Addl. District and Sessions Judge,
Chikkamagaluru.**