

**Orders on application under section 311 of Cr.P.C filed
by the accused**

The complainant police have filed the charge sheet against the accused persons alleging the commission of the offences punishable under sections 143, 147, 148, 341, 307, 504, 109 r/w 149 of IPC.

2. The case is at the stage of defense arguments. However, the accused have filed this application to summon one Nadeem Pasha of Mayur Digital Photo Studio of Chikkamagaluru to speak about the certificate and bill issued by him for having downloaded the photos from the chip of the mobile to the computer and thereafter, to the C.D.

3. It submitted by the learned counsel for the accused the said witness had appeared once before the court however, the witness was bound over and further, due to covid pandemic and SOP, the case has been adjourned from time to time. Thereafter, due to oversight and bonafide mistake the defense was unable to examine said Nadeem Pasha. That the examination of said Nadeem Pasha is absolutely necessary in the case on hand since marking of photos in the absence of marking of C.D., is of no value. Since the said documents are obtained from the electronic device, it is just and necessary to prove the secondary evidence U/S.65-B of Indian Evidence Act. That if the said Nadeem Pasha is not summoned/recalled, the accused would be put to greater hardship and injury and on the other hand, if said Nadeem Pasha is recalled it will not cause any prejudice to the prosecution. Accordingly, the accused have prayed to allow this application.

4. The learned Public Prosecutor has filed her objections stating that defense side have already been taken sufficient time for their defense evidence and now the case is set for defense argument, at this stage , the defense side are filing this application only with an intention to prolong the case. That the grounds mentioned in the applications are all false. That there are no reasons to recall or summon the said Nadeem Pasha and accordingly, he has sought for rejection of the application.

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

1. Whether the accused has made out sufficient grounds to recall/summon the Nadeem Pasha ?

2. What order?

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

Point No.1: In the affirmative

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

REASONS

7. **Point No.1:** It is contended by the counsel for the accused that the said witness-Nadeem Pasha had appeared once before the court however, the witness was bound over and further, due to covid pandemic and SOP, the case has been adjourned from time to time. Thereafter, due to oversight and bonafide mistake the defense was unable to examine said Nadeem Pasha. That the examination of said Nadeem Pasha is absolutely necessary in the case on hand since marking of photos in the absence of marking of C.D., is of no value.

8. Be that as it may, it is settled principle of law that justice must not only be done but it also must seem to be done. When the accused have put forth plea that a certain important documents that can aid in establishing his innocence, then there are no reasons to reject the prayer of the accused.

9. As the accused themselves have submitted that except for limited purpose to got mark the bill, C.D., and certificate issued by the witness confronting certain documents nothing else is required, then there is no possibility of any prejudice being caused to the prosecution side by recalling these witnesses.

10. If this application is allowed no hardship would be caused to the prosecution as their interest can be confronted as discussed earlier. On the other hand, if this application is denied there is a possibility of the accused being denied an opportunity to defend themselves. Therefore there are sufficient reasons to

summon the Nadeem Pasha for the purpose prayed in the application. However, by recalling the said witness certainly he would be put some amount of inconvenience. The witness would have to drop his work to attend the Court which certainly would cause loss of a day's income for him apart from other expenses. Therefore while recalling the said witness, it is necessary to impose cost on the accused to compensate the inconvenience suffered by the witness. Considering the present day cost of living it is deemed fit to impose cost of Rs.500/- for recalling said Nadeem Pasha which would meet the ends of justice. Accordingly, I answered the Point No.1 is answered in the *Affirmative*.

11. In the light of the above discussions, I proceed to pass the following:

ORDER

The application under section 311 r/w 91 of Cr.P.C., filed by the accused is allowed. Nadeem Pasha is recalled/summoned solely for the purpose prayed in the application on cost of Rs.500/- payable to said Nadeem Pasha.

Office is directed to issue summons to said Nadeem Pasha by 30.08.2021.

Sd/-

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