

**COMMON ORDERS ON APPLICATIONS FILED
UNDER SECTION 311 & 91 OF CR.P.C**

The present applications are filed at the stage of further cross-examination of PW1. The Complainant has filed the present applications seeking permission to produce certified copies of records pertaining to C.C.No.416/2020 on the file of this Court and also to recall the PW1 for the purpose of marking the said documents.

2. The grounds urged by the complainant in support of the present application is that the accused had entered into compromise with the complainant in C.C.No.416/2020. But the complainant could not produce the document pertaining to the said case earlier within time. As such now after obtaining the certified copies of the same is producing the said documents. Further, for the purpose of exhibiting the said documents it is very much necessary to recall the PW1 for further chief examination. If the present applications are not allowed then the complainant will be put to irreparable injury. Accordingly, the complainant has sought for allowing the present applications.

3. On the other hand, learned counsel for accused has filed the statements of objection to both the applications wherein contended that the present applications are filed at belated stage without any specific reason. The complainant has

not explained as to why he intends to reexamine himself without tendering for cross-examination. The present applications are filed only to drag the proceedings. Learned counsel for accused further by placing his reliance on the decision of our Hon'ble High Court of Karnataka in the case of Chandrakant @ Kantu V/s The State Through Nelogi P.S reported in 2019(2) KLR 420, seeks for rejections of the present application.

4. Having heard the arguments addressed by both side, this Court has carefully perused the entire materials available on record and also the decision referred by the learned counsel for accused. Now the following points do arise for consideration.

1) Whether the complainant has made out sufficient grounds to permit him to produce additional documents and to recall PW1 for further chief-examination?

2) What order?

5. The above points are answered as following

POINT No.1 : In the affirmative

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

REASONS

6. POINT NO.1: This is a case alleging an offence under Section 138 of N.I.Act. It is the case of complainant that the accused has issued the

subject matter cheque as per the compromise entered into in C.C.No.416/2020. By way of present applications, the complainant is seeking permission to produce the certified copies of records in C.C.No.416/2020. The only ground urged by the complainant is that the documents sought for production are very much necessary in support of complainant case and they could not be produced earlier. The specific contention of the defense is that the complainant cannot re-examine the PW1 without tendering for cross-examination.

7. On perusal of application filed under Section 311 of Cr.P.C. filed by the complainant, it could be understood that the complainant is seeking for recalling the PW1 for further chief-examination and not for re-examination. The factum involved in the decision relied by the accused is totally different to the case on hand.

8. In view of the presumption under Section 118 and 139 of N.I.Act, the complainant has got initial burden of showing the ingredients of Section 138 of N.I.Act. Thereupon it is on the accused to put forth the defense which may be probable in order to rebut the presumption made in favour of complainant. Discharging the initial burden does no way close the doors of proving other aspects by the complainant as it is for the complainant to prove his case. Though the matter is posted for cross-examination of PW1, the defense has not commenced the cross-examination and it is always

open for the accused to post the questions to PW1 touching the points regarding the documents which are now sought for production. Under the circumstances, this Court is of consideration to permit the complainant to produce the documents as sought for and to recall the PW1 for further chief examination by imposing the costs for delayed production of the documents. Hence, Point No.1 is answered in **Affirmative.**

9. Point No.2: In view of the reasons recorded on point No.1, this Court deems it fit to allow the present application. Hence, the following:

ORDER

Applications filed by the complainant under Section 311 and Sec. 91 of Code of Criminal Procedure, are hereby allowed on cost of Rs.300/-.

Complainant is permitted to produce additional documents and PW1 is recalled for further examination in chief by: 18.03.2024.

Sd/-

**ADDL. CIVIL JUDGE & JMFC.,
MUDIGERE**