

**ORDERS ON APPLICATION FILED UNDER  
SECTION 311 OF Cr.P.C.**

This application is filed by the accused at the stage of defence evidence. The present application is filed under section 311 of Cr.P.C, seeking to recall the PW1 for further cross examination.

**2.** It is the case of accused that he has obtained some documents recently and on basis of the said documents, he has to cross-examine the PW1. Since these documents were not available while cross-examining the PW1 at the earlier occasion, some questions could not be posted. If the present application is not allowed, then the accused will be put to hardship and injustice. On these grounds, the accused has sought for allowing the application.

**3.** On the other hand, the complainant has filed his statement of objections to the present application wherein contended that the PW1 is fully cross-examined and there are no grounds for recalling the PW1. The present application is filed belatedly and to cause wrongful loss to the complainant. On these grounds, the complainant has sought for rejection of the application.

**4.** Heard both side and perused the materials available on record. Now, the points that arise for consideration of the above application are as under:

**1) Whether the accused has made out sufficient grounds to recall the PW1 as sought for?**

**2) What Order?**

5. The findings of this Court on the above points are as under:

**Point No.1:** In the Affirmative

**Point No.2:** As per order for the following

### **REASONS**

**6. POINT NO.1:** This is a case against the accused for the alleged offence under Section 138 of N.I.Act. After completion of prosecution evidence, the incriminating substance appearing against the accused is read over to him and his statement is recorded. The accused having denied the incriminating evidence, has submitted that he has got defence evidence. It is at the stage of defence evidence, the present application came to be filed seeking recall of PW1 for further cross-examination.

7. The only ground urged by the accused is that he has to question the PW1 on basis of the documents which are recently obtained. On the other hand, the complainant has denied the grounds urged by the accused. It is no doubt that the initial burden is upon the complainant to

make out the ingredients of Sec.138 of N.I.Act and on discharge of such burden, it is for the accused to rebut the presumptions raised in favour of complainant. If the burden on accused to place rebuttal evidence in the cases of present nature is considered, it could be held that if the accused is denied of his right to place evidence in support of his case, then it would not only lead to injustice but may also lead for multiplicity of proceedings. This apart, the stage at which the accused has filed the present application cannot be lost sight. Therefore, on basis of the above discussion, this Court is of view to recall the PW1 for further cross-examination and accordingly, point No.1 is answered in **Affirmative**.

**8. POINT No.2:** In view of the above findings on point No.1, this Court proceed to pass the following.

### **ORDER**

Application filed by the accused under Section 311 of Cr.P.C., is allowed on cost of Rs.500/-.

PW1 is recalled for further cross-examination.

For further cross-examination of PW1 and  
for payment of costs by: 27.06.2025.

Sd/-

**(VISHWANATH.A)**  
**PRL. CIVIL JUDGE & JMFC., MUDIGERE**