

Accused present. APP files objection to application filed under section 311 of Cr.P.C.

Heard both side. For orders by 3.00 p.m.

Sd/-

P.C.J & J.M.F.C; Mudigere.

ORDER ON APPLICATION FILED UNDER SECTION 311 OF Cr.P.C.

The present application is filed by the accused, when the case was stood for examination of the witnesses, seeking an order of this court to recall the PW3 and 4 for cross-examination by the accused.

2. It is stated in the application that on 23.08.2021, PW3 and 4 have been examined and on that day, advocate for accused was in station as suffering from ill-ness. But, the cross-examination of the said witnesses was taken as closed. Hence, it is necessary to cross-examine them to establish the defence of the accused. Accordingly, if the application is allowed, no loss or injury will be caused to the prosecution. On the other hand, the accused will be put into greater hardship. Hence, prayed for allow the application and recall the witnesses.

3. The above application has been resisted by the learned APP by filing objection statement. Wherein, it is contended that on 23.08.2021, when the PW3 and 4 have examined, they are not cross-examined inspite of opportunities. Further, the present case is for the year 2014 and hence, in order to protract the proceedings, the present application is filed that too at belated stage without mentioning proper reasons and hence, the application of the accused is not maintainable. Hence prayed for reject the application of the accused with cost.

4. Having heard both side, the court scrutinized the application, objection statement and other materials made available on record.

5. Now, the following points arise for consideration;

1. Whether the accused made out sufficient grounds to allow the present application?

2. What order?

6. The findings of the court to the above points are as follows;

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

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

REASONS

7. POINT No.1: The accused is facing the trial of the offences punishable under sections 409, 420, 465, 468, 471 and 477 R/w section 34 of IPC. When the case is posted for examination of the prosecution witnesses, the present application is moved by the accused. It is his contention that PW3 and 4 have not been cross-examined. Therefore, in order to establish his defence, it is necessary to cross-examine them. Hence, he constrained to file the present application.

8. On perusal of the records, it is evidence that CW7 and 8 examined as PW3 and 4 respectively on 23.08.2021. Order sheet dated 23.08.2021 goes to show that on that day the counsel for the accused was prayed time to cross-examine the witnesses. But, the court has rejected the prayer of the counsel for the accused. It is very pertinent to note that the consequences of the criminal case will be directly affect to the accused. Just because of the counsel mistake, the accused would not suffer. It is to be noted here that in the criminal cases, the cross-examination of the witnesses is the major stage to the accused to disprove the case of the prosecution. Hence, though accused has filed the present application at belated stage, if the application is allowed, no loss will be caused to the prosecution.

9. Admittedly, this being the trial court fullest opportunities has to be given to the

both parties to prove their respective cases. Herein this case, if the application of the accused has been rejected, then the accused would be deprived from establishing his defence. Therefore, in order to give fullest opportunities to the parties, it is necessary to allow the application of the accused. It is pertinent to note that the application of the accused is filed at belated stage. Therefore, the inconvenience caused to the witnesses has to be compensate by imposing suitable cost on accused. Accordingly, this court answer point No.1 **in the Affirmative.**

10. POINT No.2: In view of the foregoing discussion on point No.1, this court proceed to pass following;

ORDER

The application filed by the accused under section 311 of Cr.P.C., is hereby allowed on cost of Rs.500/- each payable to PW3 and 4.

Consequently, PW3 and 4 are recalled for cross-examination by the defence.

Issue witness summons to PW3 and 4 and CW5 and 11. R/by 18.12.2023.

Sd/-

P.C.J & J.M.F.C; Mudigere.