

CC465/2018

Counsel for complainant
present. Accused absent.

ORDER ON APPLICATION FILED U/SEC 311 OF CR.P.C.

DATED 26.10.2021.

The present application is filed on behalf of the accused for recalling of PW-1 for further cross examination.

The counsel for complainant filed objection opposing the said application.

Heard both sides.

On going through the materials on record, the complainant examined as PW-1 on 29.04.2019 by filing memo treating his sworn statement as examination in chief. On that day the counsel for accused filed application U/sec.145 (2) of NI Act for seeking permission to cross examine the PW-1, the said application is allowed and granted time for cross examination. Thereafter the Pw-1 was present before the court on 13.06.2019, 06.08.2019, 22.08.2019, 20.09.2019, 30.10.2019. But inspite of sufficient time granted the counsel for accused did not choose to cross examine the PW-1. Hence, cross of PW-1 is taken as nil and posted the matter for recording the statement of accused U/sec. 313 of Cr.P.C. At that stage on 27.11.2019 the counsel for accused has come up with application U/sec. 311 of Cr.P.C., for recall of PW-1. The said application is came to be allowed on cost of Rs.500/-.

Further the PW-1 was present before the court on 19.12.2019. But the counsel for accused again sought time for cross examination, time has been granted. Again on 04.01.2020 when the PW-1 was present, the counsel for accused prays time for cross examination of PW 1, the curt rejected the prayer of the learned counsel and cross of PW 1 and cross of PW 1 taken as nil and once again the matter has been posted for argument.

Again on 23.01.2020 the counsel for accused filed same application U/sec. 311 of Cr.P.C for recall of PW-1 for cross examination. Once again the said application came to be allowed on cost of Rs.500/- and posted the matter for cross of PW-1 on 27.02.2020. On that day PW-1 was present. But on the request of the counsel for the accused the cross examination of PW 1 is deferred on 05.03.2020. On that day the PW-1 was present and he has been partly cross examine by the counsel for accused and defer the further cross of PW 1 on 04.04.2020. Further the matter has been adjourned from time to time and on 23.02.2021 the PW-1 was present. But the further cross of PW 1 is adjourned on the request of the counsel for accused on cost of Rs.300/- on 04.03.2021. On that day PW-1 was present. But counsel for accused was not ready to cross examine the PW 1. Hence, once again cross of PW 1 taken as nil and posted for the matter for recording 313 statement on 18.03.2021. On that day again the counsel for accused filed the similar application U/sec. 311 of Cr.P.C for recall the PW 1 for the purpose of cross examination. The counsel for complainant submitted that, the application may be allowed on heavy cost. The said application came to be allowed on cost of Rs.1000/- and the matter is posted for cross of PW 1 on 03.04.2021. On that day PW-1 was present and on the request of the counsel for accused again the cross of PW 1 is deferred on 07.04.2021. On that day also PW 1 was present. But counsel for accused was absent and the accused sought time for cross examine the PW-1. Noting down the same once again the cross of PW 1 is taken as nil and posted the matter for 313 statement. On the same day recorded the statement of accused U/sec. 313 of Cr.P.C and posted the matter for defence evidence on 21.04.2021.

Inspite of giving sufficient time the accused has not chosen to lead evidence on his behalf. Noting down the same the matter has been posted for argument. At that stage on 22.04.2021 the counsel for accused once again has come up with the application U/sec. 311

of Cr.P.C for cross of PW-1. The counsel for complainant sought time for filing objection to the said application On 03.08.2021 the counsel for complainant has orally submitted his objection. However the court in order to give one more opportunity the said application is allowed subject to payment of cost of Rs.3000/-. On 21.08.2021, 25.08.2021, 13.10.2021 the PW-1 was present before the court. But counsel for accused has not chosen to cross examine the accused. Hence, once again the cross of PW 1 taken as nil and posted for recording 313 statement.

Thereafter on 26.10.2021 the counsel for accused has come up with the present application U/sec. 311 of Cr.P.C for recall of PW1 for cross examination. On perusal of the entire materials on record the evidence of PW-1 is commenced on 29.04.2019, the counsel for the accused for one or the other reason protracting the proceedings of the case by taking adjournments and not ready to cross examine the PW-1. In spite of giving sufficient opportunity. It shows that, the accused is playing delay tactics and go on taking the adjournments. Hence, the accused is not fair enough in conducting the case. Hence, the present application deserves to be rejected on heavy cost. Accordingly following

ORDER

The application filed on behalf of the accused U/sec. 311 of Cr.P.C dated 26.10.2021 is rejected on cost of Rs.3,000/- .

Already 313 statement of accused is recorded. Hence, for arguments by 17.11.2021.

Sd/-

I Addl. Civi Judge & JMFC,

Harihara