

ORDERS ON AN APPLICATION FILED
BY THE PROSECUTION U/SEC.348 OF
B.N.S.S

The prosecution has filed an application U/Sec.348 of B.N.S.S., and prays the Court recall PW.4 and PW.9 for further chief examination.

2. The prosecution contends that, the PW.4 is the person, who video graphed the incident, while drawing Ex.P.3 mahazer, which bears his signature. During the course of evidence, his signature found on the mahazer was not marked as exhibit. By recalling PW.4, the prosecution intends to get his signature marked. The investigating officer/CW.15 was examined as PW.9. By recalling the IO, the prosecution intends to question him about the statements given by

PW.10 and 11, which are marked as Ex.P.24 and 25 respectively. Hence, the learned APP prays the Court to recall PW.4 and 9 for the purpose of their further chief examination and thereby allow his application.

3. The accused objected this application and filed his written objections contending that, the prosecution has not assigned good reasons to recall PW.4 and 9. Those witnesses are cross examined in length by his counsel. The witnesses cannot be recalled to nullify the cross examination done by his counsel. Great hardship would be caused to him, if the witnesses are recalled and the prosecution is permitted to further chief examine them. Now the case stands posted for hearing arguments on merits. The present application is filed just to prolong the

proceedings. Hence, the accused prayed the Court to dismiss the application.

4. I have heard both the counsels on this application.

5. The Sullia police have filed charge sheet against the accused for the O/P/U/Sec.32 and 34 of Karnataka Excise Act. Now the case stands posted for hearing arguments on merits.

6. The prosecution has cited 16 witnesses in the charge sheet and among them, it has examined 11 witnesses. The CW.6/PW.4 is the police personnel, who has allegedly video recorded the incident, while drawing Ex.P.3 seizure mahazer. That mahazer bears his signature. Due to oversight, his signature was not marked as an exhibit, while recording his chief examination. By recalling

him, the prosecution intends to get his signature marked as an exhibit.

7. The CW.15/PW.9 is the officer, who partly investigated the matter. In his chief examination, the PW.9 stated that, he has recorded the statements of CW.7 and 8, the pancha witnesses of seizure mahazer/Ex.P.3. The CW.7 and 8 are examined as PW.10 and 11 after the evidence of PW.9. They have turned hostile and they did not support the case of the prosecution. They denied that, they had given statements to the IO and hence, their statements are marked as Ex.P.24 and 25 respectively.

8. By recalling PW.9, the prosecution intends to ask him about Ex.P.24 and 25. When the PW.9 in his evidence has stated that, he has recorded the statements of CW.7

and 8, there is no need to recall him and question him about the statements given by those witnesses, only on the ground that, they have turned hostile.

9. Recalling PW.9 and permitting the prosecution to question him about Ex.P.24 and 25 amounts to filling up of lacunas found in the evidence of the prosecution, which is nothing but an abuse of process of law.

10. Now at the fag end of the case, when the matter is posted for hearing arguments on merits, the present application came to be filed. The prosecution has not assigned good reasons to recall PW.9. The object of Sec.311 of Cr.P.C/348 of BNSS is to arrive at the truth to produce some evidence, which is necessary for a just decision of the case.

While considering this type of application, the court has to consider the relevancy of evidence. No prejudice would be caused to the accused, if the prosecution is permitted to recall PW.4 for getting his signature marked as an exhibit, which is found on Ex.P.3 mahazer. Because, the accused will get an opportunity to further cross examine him. By considering all these aspects, I proceed to pass the following;

ORDER

Application filed by the prosecution U/Sec.348 of BNSS is partly allowed.

CW.6/PW.4 is recalled for further chief examination.

Issue summons to CW.6/PW.4.

Call on 19.06.2026.

[Tattanda Damayanti Somayya]
Senior Civil Judge & JMFC
Sullia, D.K.