

23.07.2026

Comp GIH Adv.

Ad- SNC Adv.

for order on application
filed U/s 145(2) of NIAAct.

**ORDER ON APPLICATION UNDER SECTION
145(2) of NIAAct R/W 311 OF CR.P.C Dated:
05-02-2025**

This is an application filed by the advocate for the accused U/s 145(2) of NIAAct R/w Sec 311 of CPC seeking permission to recall the PW1 for cross-examination.

2. In the application, the accused has stated that when the matter was posted for the cross-examination of PW.1, he was suffering from a kidney ailment and, therefore, could not appear before the Court. Consequently, the cross-examination of PW.1 was taken as nil and the matter was posted for recording the statement of the accused under Section 313 of the Cr.P.C. It is contended that his absence on that day was neither intentional nor deliberate, but was due to his health condition. Hence, he has prayed to allow the application.

3. On the other hand, the complainant has opposed the application by contending that the accused has filed the present application only with an

intention to protract the proceedings on one pretext or another. It is submitted that on 27.04.2023, the accused had filed an application under Section 145(2) of the Negotiable Instruments Act seeking permission to cross-examine PW.1, and the said application was allowed. However, on 09.01.2024, despite sufficient opportunities, the accused failed to cross-examine PW.1 and, therefore, the cross-examination of PW.1 was taken as nil. It is further contended that having failed to avail the opportunity already granted by the Court, the accused cannot repeatedly seek permission to recall PW.1 for cross-examination. The accused has also not produced any material to substantiate the reasons assigned for his absence. Hence, the complainant has prayed for rejection of the application with exemplary costs.

4. Heard the learned counsel for the complainant and the accused. Perused the application, objections, and the materials available on record. The following point arises for consideration:

Whether the accused has made out sufficient grounds to recall PW.1 for the purpose of cross-examination?

5. The answer to the above point in the affirmative for the following reasons.

REASONS

6. The complainant has filed the present complaint against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act in respect of the dishonour of a cheque for a sum of Rs.1,50,000/-. By filing the present application, the accused seeks recall of PW.1 for cross-examination on the ground that he was suffering from a kidney ailment on the date fixed for cross-examination and, therefore, could not remain present before the Court. According to the accused, his absence was neither intentional nor deliberate but was due to his ill health.

7. On the other hand, the complainant has contended that the accused had already been granted an opportunity to cross-examine PW.1 pursuant to the order passed on the application filed under Section 145(2) of the Negotiable Instruments Act. Despite several adjournments, the accused neither cross-examined PW.1 nor settled the matter as represented before the Court. Consequently, the cross-examination of PW.1 was taken as nil on 09.01.2024. It is further contended that the accused has been filing such applications repeatedly only to delay the disposal of the case.

8. On perusal of the order sheet and the evidence on record, it is evident that PW.1 has not been subjected to cross-examination. It is true that the accused has not produced any medical records in support of his contention that he was suffering from a kidney ailment on the relevant date. Therefore, the explanation offered by the accused is not fully substantiated. However, the right of cross-examination is a valuable right available to the accused, and denial of such an opportunity may result in prejudice to his defence. Though there has been delay on the part of the accused in availing the opportunity granted by the Court, the same can be compensated by imposing reasonable costs. If one more opportunities granted to the accused will not cause serious prejudice to the complainant. On the contrary, refusal of such an opportunity may result in denial of a fair trial. Accordingly, this Court is of the opinion that the application deserves to be allowed subject to payment of costs. Hence, Point No.1 is answered in the Affirmative. In the result, this court proceed to pass the following:

ORDER

The application filed under section 145 (2) of NIAAct R/w Sec.311 of Cr.P.C. dated: 05.02.2025 is hereby allowed on costs of Rs.1000/-.

For cross-examination of PW.1.

Call on 05.08.2026.

Pr1. Civil Judge & JMFC,
Dharwad