

ORDER

This application is filed by the accused under Section 311 of the Code of Criminal Procedure seeking recall of PW1—complainant for further cross-examination.

The records show that this case is filed under Section 138 of the Negotiable Instruments Act. PW1 was examined in chief. The accused had opportunity to cross-examine PW1 and in fact PW1 was partly cross-examined on 21-02-2023. Thereafter, the accused sought time on several occasions. It is seen from the order sheet that during the pendency of the case, the accused admitted his liability and made part payments before this Court. Subsequently, the accused remained absent continuously and did not utilize the opportunity granted. Hence, further cross-examination of PW1 was taken as NIL on 15-10-2025 and the case was posted for arguments.

At this stage, the accused has filed the present application stating that the application under Section 145(2) of the Negotiable Instruments Act was not filed in time due to unavoidable reasons and that cross-examination of the complainant is necessary in the interest of justice.

The complainant has filed detailed objections contending that the application is frivolous, filed only to delay the proceedings, and that no valid or new reason is shown for recalling PW1. It is also pointed out that an earlier application under Section 311 Cr.P.C. filed by the accused was already rejected by this Court by order dated 07-06-2024 and there is no change in circumstances thereafter.

On careful consideration of the application, objections, and the entire order sheet, this Court is of the view that the application deserves to be rejected for the following reasons.

Section 311 Cr.P.C. confers a discretionary power on the Court to recall or re-examine a witness only if such examination appears to be essential for a just decision of the case. This power is not meant to fill up lacunae in the defence or to give repeated opportunities to a negligent party. The accused must show bona fide reasons and necessity. Mere filing of an application does not create a right to recall a witness.

In the present case, the accused had sufficient opportunity to cross-examine PW1. He partly cross-examined PW1 and thereafter voluntarily chose not to proceed further. The accused also admitted liability by making payments before this Court, which clearly shows that the defence was conscious and deliberate. After allowing the cross-examination to be taken as NIL and after the case reached the stage of Section 313 Cr.P.C., the accused cannot seek to reopen the prosecution evidence as a matter of routine.

The reason stated in the application that the accused's counsel was out of station is vague, unsupported by any material, and not convincing. Such a reason cannot override the settled procedure of law, especially when the case has been pending for a long time.

Further, the accused has not stated in the application as to what specific questions are required to be put to PW1 or how recalling PW1 is essential for a just decision of the case. Absence of such particulars clearly shows that the application is filed only to delay the proceedings.

It is also relevant to note that this is the second application filed under Section 311 Cr.P.C. for the same relief, which was earlier rejected. Filing repeated applications without change in

circumstances amounts to abuse of process of Court.

This Court is also mindful that proceedings under the Negotiable Instruments Act are summary in nature and are intended to ensure speedy disposal. Allowing such applications at the stage of arguments would defeat the very object of the Act and cause prejudice to the complainant.

In view of the above facts and circumstances, this Court finds that the application is not bona fide, not supported by valid reasons, and not necessary for the just decision of the case. The application is filed only to protract the proceedings. Accordingly, this court pass following:

ORDER

The application filed by the accused under Section 311 of Cr.P.C. is **rejected**.

For arguments.

Call on:04.02.2026.

**Prl. Civil Judge & JMFC,
Puttur, D.K. 09-01-2026**