

IN THE COURT OF I ADDL. DISTRICT & SESSIONS JUDGE
AND SPL.JUDGE, AT HAVERI.

DATED THIS THE 9th DAY OF JUNE 2025

PRESENT

SRI. N.M.Ramesha, *B.com, LL.B., LLM*
I Addl. District & Sessions Judge
and Spl. Judge, Haveri.

Special SC/ST. NO. 20/2021

COMPLAINANT : State by Haveri Town P.S
(*By Public Prosecutor*)

Vs

ACCUSED 1. Shambulinga Iranna Porapur,
Age: 32 years.
2. Manjunath Suresh Yereshemi,
Age: 24 years,
Both are R/o: Yettinahalli,
Haveri taluk and district.
(*By Sri.U.N. Gouli, Advocate*)

ORDER ON APPLICATION FILED BY THE ACCUSED UNDER
THE PROVISION OF SECTION 311 OF Cr.P.C.

This is an application filed by the learned counsel for the accused under the provision of section 311 of Cr.P.C., to recall P.W.5 (C.W.4) for further cross-examination on the ground that, C.W.4 has been examined as P.W.5 on 29.8.2024. But, due to unavoidable circumstances, some

important questions were not asked to the said witness in the cross-examination and it was not deliberate one. Therefore, recall of P.W.5 for further cross-examination is necessary. Hence, this application.

2. The Learned Public Prosecutor for state has resisted the application by filing objection contending that, learned counsel for the accused has already fully cross-examined P.W.5 on 29.8.2024. But, the accused has filed this application to drag on the proceedings and to waste the time of the court. The accused has not made out any grounds for recall of P.W.5 for further cross-examination. Therefore, application is liable to be dismissed.

3. I have heard the arguments of both side and perused the application, objection and the materials placed on record.

4. Now the points that would arise for my consideration are as under:

1. Whether the recall of P.W.5 (C.W.4) for further cross-examination is essential for just decision of the case and whether the application filed by the accused under the provision of section 311 of Cr.P.C., is deserves to be allowed?

2. What order ?

5. My findings to the above points are as follows:

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

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

REASONS

6. **POINT NO.1:** The provision of section 311 of Cr.P.C., deals about Power to summon material witness, or examine person present. As per this provision of law, any court may, at any stage of any inquiry, trial or other proceeding under this section, summon any person as a witness, or examine any person in attendance, though not summoned as a witness or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to just decision of the case.

7. Now keeping the above said provision of law in my mind, let us consider as to whether recall of P.W.5 (C.W.4) for further cross-examination is essential for just decision of the case and whether the application filed by the accused is deserves to be allowed or not.

8. On perusal of record, it would indicate that the Haveri Town Police Station has charge-sheeted the accused No.1 and 2 for the offences punishable under the provision of section 302 and 201 r/w section 34 of IPC and section 3(2)(v) and 3(2)(va) of SC/ST(P.A.)Act, 2015. The

prosecution has already examined 20 witnesses as P.W.1 to P.W.20 and got marked the documents as Ex.P1 to Ex.P65 and also got marked material object as M.O.1 to M.O.13. It is at this stage of proceedings and when the case was set down for further evidence of prosecution side, this present application being filed by the defense seeking recall of P.W.5(C.W.4) for further cross-examination.

9. According to the defense, C.W.4 has been examined as P.W.5 on 29.8.2024. But, due to unavoidable circumstances some important questions were not asked to the said witness and therefore recall of P.W.5 (C.W.4) for further cross-examination is just and essential.

10. Admittedly, stage is set down for further evidence of prosecution side. Admittedly, the alleged offences against accused are punishable under the provision of section 302 and 201 r/w section 34 of IPC and section 3(2)(v) and 3(2)(va) of SC/ST(P.A.) Act, 2015. The defense wants to further cross-examine P.W.5 on some important aspects. Therefore, considering the facts and circumstances of the case including the stage of the proceedings and also nature of the offences alleged against the accused persons, this court is of the considered view that, if this application is allowed and if P.W.5 is recalled for further cross-examination by imposing some conditions, then it would meet the ends of justice. Otherwise, chances of multiplicity of proceedings including wastage of cost and time of both side cannot be

ruled out. Hence, for the reasons discussed above, I hold that accused has made out sufficient grounds to come to the conclusion that recall of P.W.5 (C.W.4) for further cross-examination is essential for just decision of the court. Hence, I answer point No.1 in the **affirmative**.

11. **POINT NO. 2**: I view of my findings on point No.1, I proceed to pass the following.

ORDER

The application filed by the accused under the provision of section 311 of Cr.P.C., is hereby allowed with costs of Rs.1,000/- to be payable to P.W.5 (C.W.4).

P.W.5 (C.W.4) is recalled for further cross-examination.

It is made it clear that since the matter is relates to the year of 2021 which is admittedly more than 4 years old case, the learned counsel for the accused is specifically directed to further cross-examine P.W.5 in next date of hearing without fail and without seeking any further adjournments.

Payment of cost is condition precedent for further cross-examination of P.W.5.

(Dictated to the Stenographer, transcribed and typed by him, corrected, signed and then pronounced in the open court on this the 9th day of June, 2025.)

(N.M. Ramesha)
I Addl. District and Sessions Judge,
And Spl. Judge, Haveri.