

**ORDER ON APPLICATION FILED BY THE
COMPLAINANT UNDER SECTION 311 OF CR.P.C.**

The counsel for the accused has filed this application U/Sec.311 of Cr.P.C, prayed to recall the PW-1 for the cross examination .

2. It is contended in the application the case was posted for 313 statement. On the last hearing date court as passed the order cross of PW-1 taken as nil. Due to his mother ill-health he has unable to attend before the court and paid the cost imposed by this court. The complainant on 28-06-2024 and

produce Ex.P-19 to P-21 it is necessary to counsel for the accused. Cross examine the on the above said documents. As such it is absolutely necessary to cross examine PW-1. Know the controversy between the parties. Hence, prayed to allow the application.

3. The complainant counsel filed objection contending that the accused filed by the application is not maintainable under the Law, with intention to drag the proceeding filed present application. It is false to state that on account of illness of his mother he was unable to attend court and paid of Rs., 500/- as per order of court. Already 4 successive application are filed by the accused under the same provisions on dated 15-06-2020, 05-02-2022 and 19-04-2024. On

dated 19-04-2024, the court permit the cross examination PW-1 without seeking adjournment for cross examination of PW-1. Un-fortunately the even after taking so many adjournments accused did not cross examine the PW-1. Therefor prayed to dismiss the application with imposing heavy costs.

4. The present complaint is filed against the accused for the offence punishable U/Sec., 138 of N.I. Act. The complainant examined as PW-1, Hence, matter was posted for cross of PW-1 examination on 19-08-2023. There after taking several adjournments the accused had not cross examine the PW-1. Again filed application U/Sec., 311 of Cr.P.C., on dated 05-02-2024, the same is allowed on dated 19-04-2024 and permitting to cross examine the PW-1 with costs. The accused has not cross examine the PW-1. After that matter posted for 313 Statement. The complainant counsel filed application recall the PW-1, for purpose of chief examination. The complainant marked documents Ex.P.-19 to P-21, again matter posted for cross of PW-1. Due to non-payment of costs. This court cross of PW-1 taken as nil. Now again filed application recall the PW-1 for the purpose of cross examination which is produced by the complainant on dated 15-11-2024.

5. *Heard and perused.*

6. *The following points would arise for my consideration.*

1. Whether the application filed by the accused U/sec.311 of Cr.P.C., is deserved to be allowed?

2. What order?

7. *My answer to the above points as under;*

POINT NO:1 : In the Affirmative

POINT NO: 2 : As per the final order for the following:

: REASONS :

8. Point No.1: The burden is on accused to prove his innocence by cross examine the PW-1. Further to avoid multiplicity of proceedings it is necessary to last opportunity is to be granted to the accused with respect to the cross examination. Which is produce by the complainant on document Ex.P-19 to Ex.P-21. The Complainant raising by the contention may be compensated by imposing costs. Hence, I answer Point No.1 in the ***Affirmative.***

9. Point No.2: In view of the above discussion on Point No.1, I proceed to pass the following:

:: ORDER ::

The application filed by the accused counsel U/sec. 311 of Cr.P.C., is hereby allowed on costs of Rs.,1000/- with a condition that Accused shall cross examine PW-1

Ex.P.-19 to Ex.P.-21 without
seeking adjournments.

For cross of PW-1.

Call on: 10-02-2025.

Sd/-

(Smt.Shrishylaja H.V.)

Addl Sr.Civil Judge & JMFC
Haveri.