

**ORDERS ON APPLICATION FILED U/S
311 OF CR.P.C.**

The petitioner / applicant has filed this application U/Sec.311 of Cr.P.C. to summon Hazrath Salman Farsi (RA) Masjid-O-Madarasa, Ashraya Colony, C-Block, Bommanakatte, Shivamogga to produce marriage register and to give evidence.

2. The learned counsel for the respondent has filed objection to the said application.

3. I have heard the arguments on both the sides.

4. The point that would arise for consideration of this Court is:-

Whether petitioner has made out valid grounds to summon the witness ?

5. My findings to the above said point is in the **Affirmative** for the following:-

REASONS

6. The petitioner has filed petition U/Section 12 of D.V. Act claiming maintenance and other reliefs from the respondent. In order to prove her case, petitioner herself examined as PW1 and got marked Ex.P1 to 12 documents. Petitioner also examined three more witnesses as PW.2 to PW.4. After completion of the evidence of the petitioner, the respondent also examined himself as RW.1. When the case was posted for arguments, the petitioner has come up with the present application to summon the aforesaid witness to produce documents and to

give evidence contending that, the respondent has denied the relationship with her and also denied his signature in Ex.P.1 to 3. Therefore, it is necessary to summon the aforesaid document to prove the marriage between herself and respondent. On the other hand, the respondent has opposed the application on the ground that, once the case is posted for arguments, the petitioner filing frequent applications for one or other reasons. Hence, there is no scope for reopen the stage for evidence. The application is filed only with an intention to protract the proceedings and fill up the lacuna. He also contended that, Ex.P1 is not having any legal sanctity. The witnesses on Ex.P.1 as relied by the petitioner is not known to him. Hence, question of examining proposed witnesses could not arise. There is no any merit in the said application. Hence, prays to dismiss the application.

7. Order sheet depicts that, when the case was posted for argument, the learned counsel for petitioner has filed the present application to summon the witnesses named in the application to produce the marriage registration in order to prove Ex.P.1. The respondent has seriously disputed Ex.P1 also denied the marriage with petitioner. Therefore, in order to prove the relationship proposed witness is necessary. Therefore, this Court is of the opinion that the application filed by the petitioner is liable to be allowed. Hence, the above point is held in Affirmative and proceed to pass the following:-

ORDER

The application filed by the petitioner U/Sec. 311 of Cr.P.C. is hereby allowed on cost of ₹.500/- payable to the witness.

Issue witness summons to authorized person of Hazrath Salman Farsi (RA) Masjid-O-Madarasa, Ashraya Colony, C-Block, Bommanakatte, Shivamogga to produce the marriage register and to give evidence.

2nd Addl.Sr. C.J & JMFC, RNR.

ORDERS ON APPLICATION FILED
U/SEC.45 OF EVIDENCE ACT.

The advocate for petitioner has filed this application U/Sec.45 of Indian Evidence Act praying to send Ex.P1 to 3 i.e., Nikha Nama, certificate issued by Hazarath Salman Parsi Darga and agreement for the expert opinion to compare the impugned signatures appears on Ex.P.1 to 3 with the admitted signatures appears on his deposition to the hand writing expert to give opinion.

02. The respondent has filed objections to the said application.

03. For the purpose of brevity, the facts stated in the application and objections will be stated at appropriate stage of orders.

04. Heard both side and perused the materials on record.

REASONS

05. The advocate for petitioner has filed this instant application contending that, the respondent has denied his signatures in Ex.P.1 to P.3 and also denied the relationship with the petitioner. Therefore, the above said documents refer to hand writing expert to give opinion regarding the disputed signatures of the respondent found on Ex.P.1 to 3. In order to prove Ex.P3 petitioner has already examined PW.3 and PW.4 who are the advocate and notary. Despite of the same, the petitioner has filed the present application to refer the documents to the hand writing expert opinion. Even the petitioner has not made any effort to examine the attesting witnesses to Ex.P1 Nikha Nama and Ex.P.3 agreement. It is trite that, U/Sec. 125 of Cr.P.C. or under D.V.Act, strict proof of marriage is not required for a women to claim maintenance from her husband. A prima facie case of marriage, established by evidence of living together as husband and wife for a reasonable period is sufficient. Therefore it is not necessary to refer the disputed documents to expert opinion. It appears that, the application filed by the petitioner is only to drag the proceedings. Hence application deserves to be rejected. Accordingly, I proceed to pass following:

ORDER

The application filed by the advocate for petitioner U/Section 45 of Indian Evidence Act is hereby rejected.

Call on: 27-05-2025.

2nd Addl. Sr. Civil Judge & JMFC.,
Ranebennur.