

### **ORDERS U/SEC 311 OF Cr.P.C**

Advocate for the accused filed an application u/Sec. 311 of Cr.P.C., to recall PW-1.

2. In the application it is contended that, CW-1 was examined as PW-1 and while cross examining the witness certain questions have been left out and document has to be confronted which is very much necessary to cross examine further in the above case. If PW-1 is not cross examined, injustice will be caused to the accused. Therefore, prayed to recall PW-1 for further cross examination in the ends of justice.

3. On the other hand, the learned PP filed objections stating that, the offence alleged against the accused is u/Sec. 307 of IPC and u/Secs. Sec. 3, 25 and 27 of Indian Arms Act and u/Sec. 3(1)(r) & 3(1)(s) and 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Already PW-1 was cross examined and before that when PW-1 was not cross examined by accused the court has taken his cross examination as Nil, later on, accused has filed an application u/Sec. 311 of Cr.P.C., in order to permit him to cross examine PW-1. Afterwards, based on the orders of the court, the accused has cross examined PW-1 fully. Already the prosecution after the cross examination of PW-1 enquired the witnesses, completed the evidence of Investigating Officer and closed its side. At this juncture, this application has been filed by the accused in order to recall PW-1 for the purpose of further cross examination. In the application it was not

contended that, what are all the important questions which are left out earlier and what are the documents which are not confronted to PW-1. The entire application has been filed in order to drag the proceedings. Further, since the offence is under Sec, 3(1)(r) & 3(1)(s) and 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which has to be disposed as expeditiously as possible. If at all the application is allowed, it will be impediment for disposal of the case. Accordingly, prayed to reject the application in the ends of justice.

4. Heard both sides.

5. As rightly contended by learned PP, already PW-1 was fully cross examined by accused and when the prosecution has closed its side, the accused has come up with this application contending that, he has left out some important questions. When an attempt was not made by the accused to confront those documents to PW-1 is not explained. Further, what are all the important questions which are left out and to which aspect he wants to further cross examine PW-1 is also not explained. No doubt, the court cannot use the powers u/Sec. 311 of Cr.P.C., often, rather than it has to be used sparingly. Here, earlier PW-1 was not cross examined by the accused and later on, upon the application of accused u/Sec. 311 of Cr.P.C., only PW-1 was cross examined by the accused.

6. The learned counsel appearing for the accused contended that, some documents are

necessary which are to be confronted and if at all PW-1 was cross examined to that effect, it will be easier for the court for adjudication of the case. Moreover, it is the defebce of the accused also. In view of the above submissions of learned counsel appearing for the accused, this court is of the opinion that, no much harm will be caused to PW-1 if he is recalled for further cross examination. However, the delay in filing the application is to be compensated by imposing cost. Accordingly, the application filed by the accused u/Sec. 311 of Cr.P.C., is hereby allowed with cost of Rs.2,000/-. Accordingly, I pass the following.....

**ORDER**

The application filed u/Sec. 311 of Cr.P.C., by the accused is hereby allowed.

The accused has to pay cost of Rs.2,000/- to PW-1 on the date of the cross examination itself.

Re-issue summons to PW-1.

R/by 28.01.2025.

Sd/-xxx

**I Addl. District & Sessions Judge,  
Kodagu- Madikeri**