

Accused absent. E.P filed, same is allowed.

**Orders on application under Section 348 of B.N.S.S (311 of the Cr.P.C).**

An application was filed under Section 311 of the Cr.P.C by the accused in order to re-call PW-1 for further cross examination to meet the ends of the justice.

In the application it was contended that, CW-1 has been examined as PW-1 and now the case has been posted for 313 statement. The complainant has started to troubling the accused through his friends mobile making use of them who was the co-accused in Spl.C 61/2023. The complaint has been lodged before the Somwarpet Police station and NCR has been issued by the police. This NCR has to be confronted to the PW-1 along with the other documents as there is further development of the complainant to harass the accused and it is very much necessary to cross examine further and confront the documents in above case.

If the PW-1 is not cross examined great injustice will be caused to the accused. Accordingly pray to re-call PW-1 for the further cross examination in the ends of the justice.

Along with the application also submitted the pendrive containing the voice records, the acknowledgment issued by the police, the copy of the complaint.

On the other hand, the learned P.P filed objections by stating that, in this case the court has posted the above matter for recording the statement of accused under Section 313 of the Cr.P.C.

Accused is absent for recording of statements and the case was adjourned on that ground. At this junction, the accused filed this application and contended that, PW-1 and his friends are obstructing him and they have

threatened him through phone and the same has to be listened to PW-1 for examination.

As per the charge sheet, prosecution has already examined PW-1 to PW-22 and only if an application is filed in support of the charge then, the court can consider the application for the examination of the PW-1. Already, accused has cross examined PW-1 by filing the application under Section 311 of the Cr.P.C.

The application itself is not legally maintainable because, there is no connection between the audio and the charges levelled against the accused. Further the accused has every option to lodge the complaint against the PW-1 with respect to that audio which will be a separate case and cannot be merged with this case.

Accordingly, pray to dismiss the application in the ends of the justice.

Heard both sides. No doubt the offences alleged under Section 307 of the IPC and also under the provision under Indian Arm's Act. No doubt, the prosecution has already examined all the witnesses in order to prove the charges levelled against him. When the case is posted for recording of statement under 313 of the Cr.P.C, accused came up with this application contending that, the documents as well as the audio which is collected in the pendrive is to be confronted to PW-1 and for that reason contended that, PW-1 is to be recalled.

Already, the order sheet shows that, this court has given ample opportunity to the accused to cross examine the version of the PW-1. The accused has to establish the documents submitted by him are necessary in order to defend his case or in other words, there should be some nexus in between the documents placed by the accused and the charge levelled against him. Already, the complaint has been filed by the accused against one Sampath Kumar. And police have already enquired the matter.

Even the voice in the pendrive is not belonging to PW-1 itself rather than accused contended that, it is the voices of the friends of the PW-1 itself. Since there is no connection between the charges framed against the accused and these documents, no purpose will be served to the accused if those are confronted to the PW-1. Even the Honourable High Court and Supreme Court repeatedly stated that, the court cannot use the powers under section 311 of Cr.P.C often. Already, accused has cross examined PW-1 in length and now the case is posted for recording of the 313 statement, therefore it is not necessary to re-call PW-1 for further cross examination of him by confronting these documents.

Already the case is of the year 2019. Therefore, this court is of the opinion that, it is not proper to allow the application . Accordingly I proceed to pass the following

**ORDER**

The application filed by the accused under Section 311 of the Cr.P.C is hereby dismissed.

For recording of statement under Section 313 of the Cr.P.C and compliance under Section 437(A) of the Cr.P.C.

Call on 16-04-2025.

**Sd/-xxx**

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