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C.C.561/2023

IN THE COURT OF THE CIVIL JUDGE & JMFC., KUSHALNAGAR

**Present:Smt. Chaithra L B.B.M., L.L.B.,
Civil Judge & JMFC, KUSHALNAGAR.**

Dated this the 2nd day of July 2026

C.C. No. 561/2023

Complainant : K.S Prasanna Kumar

(By Sri. KCS Advocate.)

-Vs-

Accused : Ramesh B.M

(By Sri.HEP Advocate.)

ORDER ON APPLICATION UNDER SECTION 311 OF CR.P.C.

The accused has filed the present application under Section 311 of the Code of Criminal Procedure seeking to recall P.W.1 for the purpose of cross-examining of the said witness.

2. The application averments state that the complainant has instituted the present complaint against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and has examined himself as P.W.1. The case was thereafter posted for



the cross-examination of P.W.1. However, this Court recorded the cross-examination of P.W.1 as nil, as the learned counsel for the accused was engaged in a few matters before the Hon'ble Senior Civil Judge, Somwarpet, and was therefore unable to conduct the cross-examination. It is further averred that the case is now posted for arguments and, due to inadvertence and unavoidable circumstances, the learned counsel for the accused could not cross-examine P.W.1 on the previous date of hearing. The accused contends that several material facts are required to be elicited through the cross-examination of P.W.1 and that recalling the witness is necessary for a just and proper adjudication of the case. It is further contended that the accused has a good defence and that, if P.W.1 is not recalled for cross-examination, he would suffer grave injustice and irreparable loss. On the other hand, no prejudice would be caused to the complainant if P.W.1 is recalled. It is also stated that the failure to cross-examine P.W.1 on the earlier occasion was neither deliberate nor intentional, but occurred due to bona fide reasons. On these grounds, the accused has sought recall of P.W.1 for the purpose of cross-examination.

3. The complainant has filed objections to the application contending that it is not maintainable either in law or on facts. It is



contended that the application does not disclose any valid or sufficient grounds for recalling P.W.1 and has been filed only with an intention to harass the complainant and to protract the proceedings. The complainant further submits that the reason assigned by the accused, namely that his counsel was engaged in other matters before the Hon'ble Senior Civil Judge, Somwarpet, does not constitute a sufficient ground for recalling P.W.1. It is further contended that the order sheet reveals that the matter was initially posted for cross-examination of P.W.1 on 10.01.2024 and that the cross-examination of P.W.1 was recorded as nil on two occasions, i.e., on 20.11.2025 and 16.12.2025. It is also stated that the accused had earlier sought recall of P.W.1 on two occasions and that this Court had granted sufficient opportunities to cross-examine the witness. However, the accused failed to avail himself of those opportunities. The complainant further submits that on 16.06.2026, this Court again recorded the cross-examination of P.W.1 as nil and posted the matter for arguments. The complainant's counsel has already addressed final arguments, and the case now stands posted for the arguments of the accused. At this belated stage, the accused has once again filed the present application seeking recall of P.W.1 for cross-examination without assigning any sufficient or justifiable grounds. According to the complainant, the application is



misconceived, amounts to an abuse of the process of the Court, and is liable to be dismissed. It is further contended that allowing the application at this stage would cause serious prejudice and hardship to the complainant. Accordingly, the complainant has prayed for rejection of the application.

4. Heard the arguments of the learned counsel for the accused and the learned counsel for the complainant.

5. The following point arises for the consideration of this Court:

1. Whether the accused has made out sufficient grounds to recall P.W.1 for the purpose of cross-examination?
2. What order?

6. This Court answers Point No.1 in the **Affirmative**, for the following:

REASONS

7. It is evident from the records that the complainant has already examined himself as P.W.1 and that the cross-examination of P.W.1 was taken as nil. The accused has sought recall of P.W.1 on the ground that his counsel could not conduct the cross-examination due to engagement in other cases before the Hon'ble Senior Civil



Judge, Somwarpet. Though the complainant has opposed the application contending that sufficient opportunities had already been granted and that the application has been filed only to protract the proceedings, this Court is of the considered opinion that an opportunity to effectively cross-examine a material witness is an integral part of a fair trial.

8. Section 311 of the Code of Criminal Procedure confers wide discretionary powers upon the Court to summon, recall or re-examine any witness at any stage of the inquiry or trial if such recall is essential for arriving at a just decision in the case. The object of the provision is to ensure that the truth is brought before the Court and that no party is denied a reasonable opportunity to present its case. Since P.W.1 is the complainant and the principal witness, his cross-examination is necessary for a proper adjudication of the matter.

9. Although the accused had earlier failed to avail the opportunities granted by this Court, denying the present request would deprive the accused of an opportunity to test the veracity of the testimony of P.W.1. Any inconvenience caused to the complainant can be compensated by imposing appropriate terms. Therefore, in the interest of justice and to afford a fair opportunity to the accused, this Court is inclined to allow the application, subject to payment of costs and on the condition that no unnecessary adjournment shall be sought.



Point No.2:-

10. From the foregoing reasons stated therein and in view of findings to point No.1, this court proceed to pass the following:

ORDER

Accordingly, the application filed by the accused under Section 311 of Cr.P.C. is hereby allowed.

P.W.1 is recalled for cross-examination by the accused on payment of cost of Rs. 1500/- .

The accused shall ensure that the cross-examination shall proceed without seeking unnecessary adjournments.

(Dictated to the Stenographer, transcribed and computerized by him, revised, corrected and then pronounced by me in the open court on this the 2nd day of July 2026).

Sd/xxx
(Chaithra L)
Civil Judge & J.M.F.C,
Kushalnagar .