

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

The learned counsel for complainant has filed application U/Sec.311 of Cr.P.C., seeking to recall of PW.1 for cross-examination.

2. Learned counsel for the accused filed objection contending that PW.1 has failed to tender for cross examination even after providing sufficient opportunities. Now the complainant has filed this application intentionally which is not maintainable. On these grounds prays to dismiss application with cost.

3. Heard arguments of learned counsel for either side. Scrutinized the records of the case.

4. Points for consideration is as under :-

1. *Whether complainant has made out sufficient grounds for recall of PW.1 for cross-examination?*

2. *What order ?*

5. My findings to the above points are as under :-

Point No.1 : In the **Affirmative**;

Point No.2 : As per final order;
for the following.-

REASONS

6.**Point No.1:** Indisputably, present complaint is filed by the complainant against the accused for the offence punishable under Section 138 of Negotiable Instrument Act. Accused in order to discharge the said legally recoverable debt, had issued cheque in question. Now, case is posted for recording statement of accused under Sec.313 of Crpc, the complainant come up with the present application seeking to recall him for cross-examination. As per perusal of order sheet, this court has taken cross examination of PW-1 as not tendered 27.05.2026 and posted for 313 statement.

7. It is well established principle of law that, the concept of fair trial as envisaged under **Article 21 of Constitution of India**, includes affording sufficient opportunities to both the parties to prove their respective cases. This proposition of law is fructified by the decision of Hon'ble Supreme Court of India reported in **(2007) 2 SCC 258 (KALYANI BASKAR V/S M. S. SAMPORNAM)**. It is also pertinent to place reliance on the decision of Hon'ble High Court of Karnataka reported in **2017 (1) KCCR 201 (Ravi alias Ravindra Vs. Laxmavva and others)**.

8. If the factual matrix of the present case is decided on the anvil of the principles emerging from these decisions, it becomes clear that, the complainant ought to prove his case by offering himself for cross-examination. Here in this case, the accused has not all cross-examined PW.1. Hence, an opportunity has to be provided, otherwise it will certainly lead to injustice and results in multiplicity of proceedings. With these observations, by compensating reasonable cost by looking into the date of case and stage at which application is filled, I answer point No.1 in the **Affirmative**.

9. **Point No.2 :-** In view of my above finding, I pass the following.-

ORDER

Application filed by the complainant U/Sec. 311 of Code of Criminal Procedure, 1973 is hereby **allowed** on cost of Rs.500/-.

Learned counsel for complainant to keep present PW.1 on next date and learned counsel for accused to cross examine PW.1 without seeking any adjournment.

**Prl Civil Judge & JMFC.,
Mulbagal**