

ORDER ON APPLICATION FILED U/Sec.91 & 311 OF Cr.P.C

Advocate for complainant has filed applications U/Sec.91 of Cr.P.C seeking leave of the court to produce license operating as trader, GST registration certificate, notice issued by Secretary, APMC, Mulbagal, ledger account, From GSTR-9 and also filed another application U/Sec.311 of Cr.P.C seeking re-call of PW.1 for further examination for marking of aforesaid documents which are essential in support of his assertions. On all these grounds, he sought for allowing the applications.

2. Learned counsel for the accused has filed objections to both the applications by contending that, application is not maintainable as same is not filled under correct provisions of BNSS. These applications are filed at the belated stage and no proper reasons are assigned. On all these grounds, he sought for rejection of both the applications.

3. Heard arguments of learned counsel for the complainant as well as learned counsel for the accused on the applications. Scrutinized the records of the case.

4. Having heard arguments and on scrutiny of records of the case, following points arise for consideration;

1. *Whether complainant has made out grounds for production of document at this stage?*
2. *Whether complainant has made out sufficient grounds for recall of P.W.1 for marking of said documents?*
3. *What order?*

5. My findings to the above points as under:

Point No.1 & 2 : In the **Affirmative**,

Point No.3 : As per the final order
for the following;

REASONS

6. **Reasoning on points No.1 & 2:** Both these points are interrelated to each other and involve common appreciation of evidence and facts. Finding on the point No.1 will have bearing on other. Hence, to avoid repetition of facts, I have taken both these points together for common consideration.

7. Indisputably, present complaint is filed by the complainant against the accused for the offence punishable under Section 138 of Negotiable Instrument Act in the year 2025. While the case posted for arguments, the complainant come up with the present applications to recall himself for further chief examination and production of certain documents.

8. 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)**, which reads thus :

“The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. 'Fair trial' includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and courts should be jealous in seeing that there is no breach of them.”

9. 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)** in which it is held as under:

“Needless to say, a litigant has to be given a full opportunity to establish his/her case. As the plaintiff, it is the duty of the respondent No.1 to establish her case. Since her very status as family member has been denied, if the plaintiff is prevented from establishing her case, it may even jeopardise her social status. Thus, even if the plaintiff has filed applications repeatedly for calling certain persons as her witnesses and even if the said application has been allowed, no illegality is being committed by the Court.”

10. If the factual matrix of the present case is decided on the anvil of the principles emerging from these decisions, it becomes clear that, complainant is entitled to prove his case by producing all available evidence. Here in this case, the learned counsel for accused himself has posed question as to license, GST registration, bills and others. It is settled law that mere production of documents are not proof and it is the person to comply necessary legal requirement under law to mark said documents. It is for the accused to raise necessary contentions while marking documents.

Hence, the complainant has made out sufficient grounds to accept his version. Mere mentioning old provisions under Cr.P.C ipso facto not grounds for rejection. With these observations, I answer points No.1 & 2 in the **affirmative**.

11. **Reasoning on point No.3:** For the reasons stated above, I proceed to pass the following :

ORDER

Application filed by the complainant U/Sec.91 of Code of Criminal Procedure, 1973 is hereby **allowed** on cost of Rs.200/-. Complainant is permitted to produce the documents.

Application filed by the complainant U/Sec.311 of Code of Criminal Procedure, 1973 is hereby **allowed**. PW.1 is recalled for further examination.

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