

KAMS010068772022



**IN THE COURT OF THE III ADDL DISTRICT & SESSIONS
JUDGE, MYSURU**

Present: Smt.K.Bhagya, B.A.,L.L.B.

Dated this the 17th day of April 2025

SC/338/2022

Complainant:

State by Nazarbad Police

/vs/

Accused:

Ramesh

**Order on application filed U/s 231(2) of Cr.P.C by the
accused**

The advocate for accused has filed an application U/s 231(2) of Cr.P.C stating that the complainant police filed charge sheet against the accused for the offences punishable U/s 504, 307, 323 of IPC. On the last date of hearing, C.W.1 and 2 were examined as P.W.1 and 2 in chief. Now the case stands for cross examination of P.W.1 and 2. The C.W.1, 2, 5 and 6 are the main witnesses i.e. victim and eye witnesses to the above case and they are giving evidence for alleged incident. So, the cross of P.W.1, 2 and C.W.5, 6 at the same

day is just and necessary. Hence, prayed to permit him to cross examine P.W.1 and 2 after examination of C.W.5 and 6 at the same day.

2. The Public Prosecutor filed objections to the application contending that the application is not maintainable either in law or on facts of the case. The IO filed charge sheet and the case is set down for evidence. C.W.1 and 2 were examined as P.W.1 and 2 in chief and posted the case for cross of P.W.1 and 2. At this juncture, the accused filed this application. Further in the judgment of 'Shamoon Ahmad Sayyad & Another Vs Intelligence Officer' (ILR 2008 Kar. Page 4378) the Hon'ble High Court of Karnataka has held as "..... Such discretion may be exercised by the Court only in an exceptional circumstance, particularly when the Court feels that deferring the matter for cross-examination of witness/witnesses by the adverse party may not result in delaying the proceedings. It is both irregular and inconvenient to allow all the witnesses to be examined-in-chief at one stretch and to reserve the cross-examination of all the witnesses to a subsequent date.....". Further held as "..... Having regard, to the Scheme of Code of Criminal Procedure and Evidence Act more particularly the object for enacting Section 231(2) and proviso to 242(3) of Cr.P.C (which replaced old Section 251A of Cr.P.C) and the procedure normally followed by the Courts in our country, this Court is of the considered opinion that sub-section(2) of

Section 231 of Cr.P.C and proviso to Section 242(3) of Cr.P.C may be invoked only with a view to have the speedy trial and nor otherwise.....". As per the observation of the Hon'ble High Court of Karnataka in the said case, the present application is not maintainable. The accused has filed this application only to drag on the proceedings. Hence, prayed to reject the application.

3. Heard both side.

4. Now the points that arise for my consideration are:

1. Whether the accused has made out grounds to allow the application?

2.What Order?

5. My answers to the above points are as follows:-

Point No.1 : In the Negative.

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

REASONS

POINT NO.1:

6. I Have gone through the case papers before me. Here, the I.O., has filed the charge sheet against these accused persons for the offences punishable U/s 504, 307, 323 of IPC.

7. The charge sheet reveals that there are 8 witnesses. Among them, the prosecution has examined C.W.1 and 2 as P.W.1 and 2 before the Court. C.W.1 is the complainant. C.W.2 is an injured. The charge sheet reveals that C.W.5 and 6 are the eye witnesses to the incident. Instead of cross examining the P.W.1 and 2, the advocate for accused has come up with the present application praying this Court to allow him to cross examine P.W.1 and 2 and C.W.5 and 6 on the same day, as C.W.5 and 6 are eye witnesses to the incident. As rightly argued by the learned Public Prosecutor, because of paucity of time, definitely this Court cannot allow to cross examine P.W.1 and 2 and C.W.5 and 6 on the same day. In this regard, The learned Public Prosecutor has rightly relied upon the decision of our own High Court in 'Shamoon Ahmad Sayyad & Another Vs Intelligence Officer' (ILR 2008 Kar. Page 4378) in which it is held as "..... Such discretion may be exercised by the Court only in an exceptional circumstance, particularly when the Court feels that deferring the matter for cross-examination of witness/witnesses by the adverse party may not result in delaying the proceedings. It is both irregular and inconvenient to allow all the witnesses to be examined-in-chief at one stretch and to reserve the cross-examination of all the witnesses to a subsequent date.....". The counsel for advocate has not made an exceptional circumstances to allow him to cross examine the above 4 witnesses at a stretch. Thus, there are no grounds made out

by the accused to allow the present application. Hence, I answered point No.1 in the **Negative**.

POINT NO.2:

8. In the result, I proceed to pass the following:-

ORDER

The application filed by the accused U/s
231(2) of Cr.P.C is hereby rejected.

(Dictated to the Stenographer directly on computer and then pronounced in the open court on this the 17th day of April 2025)

(K.Bhagya)
III Addl. District & Sessions Judge,
Mysuru.

(Order pronounced in open Court vide separate Order)

ORDER

The application filed by the accused U/s 231(2) of Cr.P.C is hereby rejected.

III AD & SJ, Mysuru.