

KAMS300003042023



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE
AND JMFC AT HUNSUR**

Present: Anitha, B.A.(Law) LLB.,
Prl.Senior Civil Judge and JMFC,
Hunsur

Dated this the 24th day of June 2026

CC No.106/2023

Complainant: Sri.Arafa Trading Company,
Proprietor, A.T.Hussain,
Aged about 36 years, R/at Rathnapuri
colony Village and Post, Kasaba Hobli,
Hunsur Taluk. Mysuru District.

V/s

Accused: Abhishek.H.N., S/o Late Narayangowda,
Aged about 34 years, R/at Hosuru
Kodagu Colony, Ballenahalli Post,
Kasaba Hobli, Hunsur Taluk,
Mysuru District.

1.	Provision under which the application is filed	:	Under Section 311 of Cr.P.C.
2.	Relief sought for	:	To reopen the case for the purpose of defence evidence
3.	The date on which the application is filed	:	10.06.2026
4.	Number of the application	:	Nil
5.	The date on which the objection is filed by the opponents	:	11.06.2026
6.	The date on which the orders passed on the said application	:	24.06.2026

**ORDERS PASSED ON AN APPLICATION FILED UNDER
SECTION 311 OF CR.P.C.**

When the case is posted for arguments, the learned counsel for the accused has filed the present application under Section 311 of Cr.P.C to reopen the case for the purpose of defence evidence.

2. In the application it is stated that, the complainant filed the complaint against the accused for the offence punishable under Section 138 of NI Act and now the case is posted for arguments. On the last date of hearing the case was posted for defence evidence. On that day he could not able to adduce the defense evidence since he was suffering from ill-health and the same is not intentional, but for the bonafide reason. Hence, the case is posted for arguments. The defense evidence is very much necessary to prove case of the accused. The accused has good defense to defend the case. If the application is not allowed he will be put to great hardship and inconvenience. On the other-hand if the same is allowed no harm or injustice will be caused to the other-side. Hence, pleaded to allow the application.

3. On the other-hand, learned counsel for the complainant filed the objection contending that the application is not maintainable under law or on facts. Already the complainant evidence and cross of PW1 has been closed and this court posted the case for defense evidence. Inpsite of giving opportunities the accused has not come forward to lead

defence evidence and defense evidence has been taken as nil and posted the case for arguments. The complainant further contended that, the accused not produced any supportive documents and there is no prima-facie ground to file this application. The application is filed to drag on the proceedings. If the application is not allowed there will be no harm or injustice to the accused. On the other-hand if the same is allowed he will be put to great hardship and inconvenience. Hence, prayed to dismiss the application.

4. Thereafter heard arguments addressed by learned counsels for the accused and the complainant and perused the case papers. After hearing the arguments and on perusal of the case papers the points that arise for consideration are as hereunder:

POINTS

1. Whether the accused has made out sufficient grounds to reopen the case for the purpose of defence evidence?
2. What order?
5. The findings on the above points are as hereunder

Point No.1: In the affirmative

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

REASONS

6. **Point No.1:** The complainant has presented the complaint under Section 200 of Cr.P.C against the accused for the offence punishable under Section 138 of Negotiable Instruments Act. It is the case of the complainant that, the

accused purchased fertilizers, chemicals and seeds from the complainant's firm for the value of Rs.6,50,000/- and towards repayment of the same, the accused got issued Ex.P1 cheque in favour of the complainant which is drawn on Axis Bank, Hunsur branch dated 15.12.2022 and upon presentation, the said cheque came to be dishonoured for the reason funds insufficient in the account of the accused. On 16.01.2023 the complainant issued demand notice and in spite of service of notice the accused has not chosen to repay the cheque amount and not issued any reply evidence which made the complainant to file this complaint.

7. After filing of the complaint this court took cognizance for the aforesaid offence and issued summons to the accused. In pursuance of service of summons the accused appeared before the court and he has been released on bail. Thereafter the plea of the accused for the offence punishable under Section 138 of Negotiable Instruments Act was recorded. The accused pleaded not guilty and claimed to be tried. As per the guidelines issued by Hon'ble Supreme Court of India in the decision between Indian Bank Association v. Union of India AIR 2014 SC 2528, the sworn statement affidavit of the complainant came to be treated as his chief-examination. The complainant got marked totally six documents including the complaint as per Ex.P1 to P6. On 29.10.2025, 03.12.2025 and 14.05.2026 the complainant has been fully cross-examined by the accused. On 03.06.2026 the accused was examined under Section 313 of Cr.P.C and he denied all the incriminating

circumstances appeared against him in the complainant evidence and has opted to lead defence evidence.

8. As per the order-sheet on 20.12.2025 the case was posted for defence evidence and on 30.12.2025 the accused was absent, hence, the defence evidence taken as nil and posted the case for arguments. Thereafter, on 09.01.2026 the accused came up with an application under Section 311 and 91 of Cr.P.C. to reopen the case for defence evidence which came to be allowed on 27.01.2026. In spite of it accused not chosen to lead evidence. Again on 20.02.2026 the accused came with an application under Section 311 of Cr.P.C. to reopen the case and to recall PW1 for the purpose of further cross-examination which was allowed on 04.03.2026. On 14.05.2026 PW1 was partly cross-examined and further cross-examination was taken as nil and again posted the for defence evidence. It shows that, this court provided sufficient opportunities for the accused to lead his evidence. However, it is settled principles of law that, in a litigation before the court the parties shall be given equal opportunity. The principles of natural justice is to be followed. If the accused is not given an opportunity to lead the defence evidence it will curtail his right to prove his defence. No hardship is going to be caused to the complainant, if the application is allowed and the accused is permitted to lead defence evidence. On the other-hand the complainant will get an opportunity to cross-examine the accused. Admittedly, the accused caused delay in this case and it could be compensated by imposing costs. On the basis

of above discussions this court comes to the conclusion that, the accused has made out sufficient grounds to reopen the case and to permit his to adduce defence evidence. Accordingly, point No.1 is answered in the Affirmative.

9. **Point No.2:** In view of the reasons discussed above, this court proceeds to pass following:

ORDER

The application filed by the accused under Section 311 of Cr.P.C is hereby allowed with the costs of Rs.1,500/-.

Accordingly, the case is reopened and the accused is permitted to lead defence evidence subject to payment of costs.

(Dictated to the Stenographer directly on the computer, same is corrected and pronounced by me in the open court on this the 24th day of June, 2026)

Sd/-

(Anitha)

Prl.Senior Civil Judge and JMFC.,
Hunsur.