

KAMS300003972014



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

**Present:** Smt.Anitha, B.A. (Law) L.L.B,  
Addl. Senior Civil Judge & JMFC.,  
Hunsur.

**Dated this the 22<sup>nd</sup> day of November, 2024**

**CC No.620/2014**

Complainant: State by Hunsur Town Police Station.

-V/s-

Accused: Balasubramanya Bhat,  
S/o Venkataramana Bhat, Aged 52 years,  
Manager Karnataka Bank, R/at No.4526,  
17<sup>th</sup> Main, 2<sup>nd</sup> Stage, Vijayanagara  
Layout, Mysuru.

1.	Provision under which the application is filed	:	Under Section 311 of Cr.P.C
2.	Relief sought for	:	Reopen the case and to recall PW20 to PW24 and PW26 for the purpose of cross-examination
3.	The date on which the application is filed	:	07.11.2024
4.	Number of the application	:	Nil
5.	The date on which the objection is filed by the opponent	:	15.11.2024
6.	The date on which the orders passed on the said application	:	22.11.2024

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

Learned counsel for the accused filed the present application under Section 311 of Cr.P.C to reopen the case and to recall PW20 to PW24 and PW26 for the purpose of cross-examination.

2. In the application it is stated that, the case is posted for defence evidence and already PW20 to PW26 have been examined and their chief-examination has been recorded and due to ill-health of the accused he could not give proper documents and instructions to the counsel for cross-examining the witnesses and the cross-examination has been taken as nil. The non cross-examination of the aforesaid witnesses is bonafide and not intentional. Their cross-examination is very much necessary to adjudicate the matter. If the witnesses are not recalled the accused will be put to great hardship. On the other-hand no hardship will be caused to the other-side. Hence, prayed to allow the application.

3. The learned APP filed the objection contending that, the application is not maintainable under law or on facts. The Hunsur Town Police have submitted the charge-sheet against the accused for the offences punishable under Section 409, 468 and 471 of IPC. Already PW20 to PW24 and PW26 have given evidence before the court. In order to cause hardship and inconvenience to the said witnesses the present application is filed. If the application is allowed there is chance of winning over the witnesses. The witnesses are working far away from the jurisdiction of the court and if they are recalled they will be

put to great hardship. There is no necessity for the accused to further cross-examine said witnesses. Hence, prayed to reject the application with costs.

4. Thereafter, heard arguments addressed by learned counsel for the accused and learned APP 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 and to recall PW20 to PW24 and PW26 for the purpose of cross-examination?
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 PSI of Hunsur Town Police Station has submitted the charge-sheet against the accused for the offences punishable under Section 409, 468 and 471 of IPC. It is the case of the prosecution that, the accused being the Branch Manager of Karnataka Bank, Hunsur Town Branch has created the documents and misappropriated an amount of Rs.25,93,250/-. Upon completion of investigation the I.O. has submitted the charge-sheet against the accused. After filing the charge-sheet this court took cognizance for the aforesaid offences. After taking cognizance the court issued summons to

the accused and he appeared before the court and released on bail. Thereafter on 11.06.2019 the charge has been framed for the aforesaid offences and the accused pleaded not guilty and claimed to be tried.

7. In the charge-sheet the prosecution has cited totally 42 witnesses and till now the prosecution examined 27 witnesses as PW1 to PW27. CW2 to CW6, CW13, CW16 to CW18, CW33 have been dropped and CW37 and CW38 have been given up. The prosecution also got marked the documents. When the case was posted for recording evidence of CW27, the accused came up with this application for the purpose of reopening the case and to recall PW20 to PW26 for the purpose of cross-examination. Later the learned counsel for the accused filed memo stating that he is not going to cross-examine PW25. It is to be noted that, CW34 has been examined as PW20 on 04.12.2023 and he is the resident of Hunsur and he has been turned hostile and on the said date itself the learned counsel for the accused has stated no cross-examination of this witness. On the same day the prosecution examined CW42 Lava M.R., who is one of the I.O and who came from Mysuru as PW21. On the same day the accused and his counsel remained absent and the cross-examination of this witness has been taken as nil. On 20.12.2023 the prosecution examined CW40 Thomas who has received the complaint, who came from Chamarajanagar and CW39 S.D.Kumar who has taken the documents to the FSL came from Mysuru as PW22 and PW23 and on the said date the accused and junior counsel were not ready to cross-examine

the witness and the same has been taken as nil. On 02.01.2024 the prosecution examined CW38 Shankarappa Mural as PW24 who came from Bengaluru and this witness is the Expert. On the said date the learned counsel for the accused sought time for cross-examination and this court rejected his prayer and taken the cross-examination as nil. On 16.01.2024 the prosecution examined CW41 Harivardhan as PW26 who came from Bengaluru and he is one of the I.O in this case. On the said date also the learned counsel for the accused sought time for cross-examination and this court rejected the said prayer and taken the cross-examination of this witness as nil.

8. In the application the learned counsel accused stated that, due to ill-health of the accused he could not able to furnish documents and instruct his counsel to cross-examine the said witnesses and as such learned counsel for the accused could not cross-examine the aforesaid witnesses. It is further stated that, the cross-examination of PW20 to PW24 and PW26 is very much necessary for proving the innocence of the accused. Admittedly, the evidence of a witness completes only the said witness is subjected for chief-examination, cross-examination and re-examination. The aforesaid witnesses are coming from different places. Admittedly, if the aforesaid witnesses are not cross-examined by the accused, he will be deprived from putting forth his defence. Further the accused will be put to great hardship. The delay and the inconvenience caused to the witnesses could be compensated by imposing costs. Hence, this court comes to

the conclusion that the accused has made out sufficient grounds to reopen the case and to recall PW20 to PW24 and PW26 for the purpose of cross-examination. 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 the following:

**ORDER**

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

Accordingly, the case is reopened and PW20 to PW24 and PW26 are hereby recalled for the purpose of cross-examination.

The accused shall pay costs of Rs.250/- to PW20, Rs.500/- each to PW21 and PW23, Rs.750/- to PW22, Rs.1,000/- each to PW24 and PW26 on their appearance before the court.

(Typed by me directly on the Laptop, same is corrected and pronounced by me in the open court on this the 22<sup>nd</sup> day of November, 2024.)

**(Anitha)**

Addl. Senior Civil Judge and JMFC.,  
Hunsur.