

KAMS300046982022



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

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

**Dated this the 1<sup>st</sup> day of February 2025**

**CC No.3643/2022**

Complainant: Sri.Sheena Shetty,  
S/o Late Venkatappa Shetty,  
Aged about 68 years,  
R/at House No.57, Sheshadri Nilaya,  
H.D.Kote Road, Opposite CTRI,  
Jyothinagara, Hunsur Town,  
Mysuru District.

V/s

Accused: Sri.Venkatapathi,  
S/o Late P. Venkataiah, Aged  
about 58 years, Class-I Contractor,  
R/at Vinobha Colony, Rathnapuri  
Road, 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 and to recall PW1 for the purpose of further cross-examination
3.	The date on which the application is filed	:	22.01.2025
4.	Number of the application	:	Nil

5.	The date on which the objection is filed by the opponents	:	25.01.2025
6.	The date on which the orders passed on the said application	:	01.02.2025

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

Learned counsel for the accused has filed the present application under Section 311 of Cr.P.C to reopen the case and to recall PW1 for the purpose of further cross-examination.

2. In the application it is stated that, the complainant has filed the case against the accused for the offence punishable under Section 138 of NI Act. The case is now posted for arguments. On the last date of hearing the learned counsel for the accused could not completely cross-examine PW1 and the further cross-examination of PW1 has been taken as nil. The non further cross-examination of PW1 on the last date of hearing is not intentional but for bonafide reasons. In order to prove the defence it is very much necessary to further cross-examine PW1. If the application is allowed no hardship is going to be caused to the other-side. On the other-hand if the application is not allowed the complainant will be put to great hardship. Hence, prayed 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. The case is now posted for arguments and at this stage the present

application is not tenable. Already PW1 has been completely cross-examined and thereafter the complainant was recalled and got marked some documents and at that time the counsel for the accused was not present and the further cross examination of PW1 has been taken as nil. No reason has been assigned by the accused for non appearance of his counsel on the said date. Hence, prayed to reject the application with costs.

4. Thereafter heard arguments addressed by learned counsels for the complainant and the accused and perused the entire 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 PW1 for the purpose of further 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 complainant has presented the complaint under Section 200 of Cr.P.C against the accused for the offence punishable under Section 138 of NI Act. This court took cognizance for the said offence and after recording sworn

statement of the complainant upon finding reasonable grounds registered this case and summons has been issued to the accused. In pursuance of service of summons the accused appeared before the court and released on bail. Already the plea of the accused has been recorded and he has pleaded not guilty and claimed to be tried. Thereafter the complainant filed his chief examination affidavit and got examined as PW1 and got marked 7 documents as per Ex.P1 to P7. Thereafter the complainant was fully cross examined by learned counsel for the accused. When the case was posted for arguments learned counsel for the complainant filed application under Section 311 of Cr.P.C which came to be allowed and on 12.12.2024 the complainant was recalled and got marked further documents as per Ex.P8 to P11. On the said date the learned counsel for the accused remained absent and as such the further cross-examination of PW1 has been taken as nil and the case has been posted for defence arguments. At that stage this application came to be filed.

7. It is alleged that, on the date of further chief-examination of PW1, the learned counsel for the accused was absent and it is necessary to further cross-examine PW1. It is to be noted that, the complainant got marked additional documents by way of further chief-examination and the said documents have not been subjected for cross-examination and in such event the right of the accused will be curtailed to prove his defence. No hardship is going to be caused to the complainant if he is recalled. The delay caused could be

compensated by imposing costs. It is the settled principles of law that, all the parties to a litigation shall be given ample opportunity. Hence, this court comes to the conclusion that the accused has made out sufficient grounds to recall PW1 for the purpose of further cross examination. Accordingly point No.1 is answered in the affirmative.

8. **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 CrPC is hereby allowed.

Accordingly the case is reopened and PW1 is hereby recalled for the purpose of further cross-examination subject to payment of costs of Rs.300/- to the witness upon his appearance before the court.

(Directly typed by me on the computer, same is then corrected and pronounced by me in the open court on this the 01<sup>st</sup> day of February 2025)

Sd/-

**(Anitha)**

Addl.Senior Civil Judge and JMFC,  
Hunsur.