

Accused No.1 to 3 are Present.

**ORDER ON APPLICATION DATED 27.06.2025 FILED BY THE
COUNSEL FOR ACCUSED PERSONS U/S.311 OF CR.P.C.**

The instant application is filed by learned counsel for accused persons seeking an order to recall of PW-1 and 2 for cross-examination.

2. This application is opposed by learned APP by filing written objection.

3. Heard both side and perused the materials placed on record.

4. The points that arise for my consideration are as under:-

1) Whether the application filed by the counsel for accused persons U/s 311 of Cr.P.C., is deserves to be allowed.?

2) What Order?

5. My findings on the above points are as under:-

Point No.1 : In the **Affirmative**

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

REASONS

6. **Point No.1:-** In the application it is stated that, due to non-availability of the documents and information their counsel could not able to corr-examine PW.1 & PW.2. If the application is not allowed they will be put to great hardship and on the other hand no hardship would be caused to the other side. Hence, they prayed to allow the application.

7. This application is opposed by the learned APP by contending that application is frivolous, vexatious and not maintainable either under law and on facts. She further contended that on the date of examination of witnesses the learned counsel for accused persons remained absent, hence the court has taken the cross-examination of PW.1 and 2 as nil. The learned counsel for accused persons has not stated the proper reasons for not cross-

examined the PW.1 and 2. On all these grounds and other grounds, she prays for rejection of application.

8. In order to appreciate the stand of the accused persons it will be worthwhile to refer to section 311 Cr.P.C. The same is extracted hereunder:-

“Section 311, Code of Criminal Procedure

311. Power to summon material witness, or examine person present: Any court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

9. A conspicuous reading of Section 311 Cr.P.C., would show that widest of the powers have been invested with the courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression “any’ has been used as a prefix to “court’, “inquiry”, “trial”, “other proceeding”, “person as a witness”, “person in attendance though not summoned as a witness”, and “person already examined’. By using the said expression “any” as a prefix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case.

10. In **Iddar & Ors. Aabida & Anr.-AIR 2007 SC 3029**, the object underlying under section 311 Cr.P.C. has been described by the Hon'ble Supreme Court of India which are as follows:-

“The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In section 311, the significant expression that occurs is ‘ at any stage of inquiry or trial or other proceeding under this Code.’ It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.”(Emphasis added)”

Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized. Adducing evidence in support of the prosecution is a valuable right. Denial of such right would amount to the denial of a fair trial.

Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same”.

11. Let me conclude by saying that every trial is a voyage of discovery in which truth is the quest. Minor procedural irregularities which are curable should not be allowed to stand as an encumbrance to the unearthing of the truth. I, therefore, deem it fit to exercise the power vested in me U/s.311, Cr.P.C. to discern and find out the truth in relation to the instant case. Hence in the considered opinion of the court that learned counsel for accused persons must get adequate opportunity to prove the innocence of accused persons and if they are permitted to cross-examination of PW.1 and PW.2 no prejudice will be caused to the other side and hence than I am of the opinion that rejecting their prayer won't serve any purpose. Hence, application is liable to be allowed on cost. Accordingly point No.1 is answered in **Affirmative**.

12. **Point No.2:-** In view of the above said reasons and discussions made supra, this court proceed to pass the following:-

ORDER

Application filed by the learned counsel for accused persons U/s.311 of Cr.P.C., is hereby allowed on cost of Rs.500/- and they are permitted to cross-examination of PW.1 & PW.2.

For cost and issue summons to PW.1 & PW.2.

Call on : 16.09.2025.

Principal Civil Judge & JMFC,
Nanjanagudu.