

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC
NANJANAGUDU**

PRESENT

Sri. Sathisha K.G., B.A.,LL.B.
Principal Civil Judge & JMFC., Nanjanagudu

Dated: 15th day of April, 2025

CRIMINAL CALENDAR CASE NO.1747/2014

COMPLAINANT :: State of Karnataka,
Represented by
Hullahalli Police Station,
Nanjanagudu.

(Learned A.P.P.)

- V/s -

ACCUSED :: 1) Sri. Guruswamy S/o Late Sannaiah,
Aged about 42 years,
2) Smt. Shanthamma W/o Guruswamy,
Aged about 39 years,
Both are R/at Balluruhundi Village,
Nanjanagudu Taluk.

(By Sri. MAS. Advocate)

**ORDERS ON BAIL APPLICATION FILED BY THE
COMPLAINANT U/s.311 OF CR.P.C.**

The instant application is filed by learned Counsel for accused persons seeking to re-call PW.1 and 6 for the purpose of cross-examination.

2. In the application, the learned Counsel for accused persons has stated that, on last date of hearing prosecution

has examined PW.1 and PW.6. When the matter is set down for cross-examination of PW.1 and PW.6, he is unable to cross-examine PW.1 and PW.6 due to lack of instructions. Accordingly, cross-examination of PW.1 and PW.6 was taken as nil. Hence, it is necessary to cross-examine the PW.1 and PW.6 in the interest of justice. If the application is allowed, no hardship and injury would be caused to the prosecution. On the other hand, accused persons will be put to irreparable loss and injury. Hence, he sought for allow the application.

3. This application is opposed by learned A.P.P., appearing for State by filing objection.

4. Heard both sides and perused the materials placed on record.

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

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

2) What Order?

6. 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

7. **POINT NO.1:-** In the application it is stated that, PW.1 and PW.6 have not been cross-examined due to lack of

instructions. Accordingly, cross-examination of PW.1 and PW.6 taken as nil. Hence, accused persons prayed to allow the application.

8. This application is opposed by the learned A.P.P., by filing objection. In the objection statement it is stated that, the chief-examination of PW.1 and PW.6 was completed and they are Government Officials. Hence, she sought for rejection of application.

9. In order to appreciate the stand of the complainant 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.”

10. 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.

11. In this context, I would like to refer certain decisions rendered by the Hon’ble supreme Court of India on the interpretation of section 311 Cr.P.C. In the decision reported in **U.T. of Dadra and Nagar Haveli and Anr. Vs. Fatehsinh Mohansinh Chauhan-2006 (7) SCC 529**, the Hon’ble Supreme Court of India held as follows:-

“A conspectus of authorities referred to above would show that the principle is well settled that the exercise of power under section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof of such facts which lead to a just and correct decision of the case, this being the primary duty of a criminal court. Calling a witness or re-examining a witness already examined for the purpose of finding out the truth in order to enable the court to arrive at a just decision of the case cannot be dubbed as “filling in a lacuna in the prosecution case” unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused resulting in miscarriage of justice.”
(Emphasis added)”

In **Iddar & Ors. Aabida & Anr.-AIR 2007 SC 3029**, the object underlying U/s.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”.

12. Now, it has become evident from the judicial pronouncements cited above that a court of law must permit inadvertent mistakes to be corrected. After all, 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.

13. 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 U/s.311, Cr.P.C., to discern and find out the truth in relation to the instant case.

14. Let me also point out here that PW.1 and PW.6 are yet to be cross-examined. Hence, there is no question of the prosecution case being prejudiced by allowing the said witnesses for cross-examination. Accordingly, Point No.1 is answered in the **Affirmative**.

15. **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 accused U/s.311
of Cr.P.C., is hereby allowed on cost of

Rs.400/- payable to PW.1 and PW.6 and they are re-called for cross-examination.

Accused persons are permitted to cross-examine PW.1 and PW.6.

(Dictated to the Stenographer directly on computer, typed by him, the same is corrected, revised, signed and then pronounced by me in the open Court, on this the **15th day of April, 2025**)

(SATHISHA K.G.)
Principal Civil Judge & JMFC,
Nanjanagudu.