

:: O R D E R ::

At the stage of Arguments this application filed by the counsel for accused under Section 311 of Cr.P.C. seeking to re-call the P.W-1 for further cross-examination.

2. In the application filed under Section 311 of Cr.P.C. it is stated that, the complainant has filed the complaint against the accused for the offence punishable under Section 138 of Negotiable Instruments Act. The complainant has been examined himself as P.W-1 and posted the matter for cross examination of P.W-1 and accused has partly cross examined the P.W-1. Further stated that, the accused has not given complete information in order to complete the cross examination of P.W-1. Hence, it is necessary to recall the P.W-1 for the purpose of eliciting the truth in respect of present case. Further stated that the complainant is the sole material witness could elicit truth of the case and also to avoid multiplicity of the proceedings, an opportunity is required for cross examination of P.W-1. If the above application is not allowed the accused will be put to hardship and injury. Therefore, it is necessary to cross-examine the P.W-1 in the interest of justice. Accordingly, prays to allow the application.

3. On the other hand the learned advocate for complainant has filed objection to the above application and

contended that the application filed by the accused is not maintainable and the reasons mentioned in the application are false and baseless. Further contended that the accused has already fully cross examined the P.W-1. Further the accused has not stated the proper reasons to recall the P.W-1 for cross examination. Further contended that the accused has taken many adjournments for the purpose of cross examination of P.W-1, but the accused has not fully cross examined the P.W-1. Further contended that the accused has already cross examined the P.W-1 and the accused has already posed all the questions to the P.W-1. Hence, it is not necessary to recall the P.W-1 for the purpose of further cross examination. Further contended that the accused has filed the present application in order to fill up the lacuna. Further the accused has filed the present application in order to drag on the proceedings. Hence the application filed by the accused is not maintainable. Hence prays to reject the application.

4. Heard the hearing of both sides.

5. I have completely gone through the entire case records and also perused Section 311 of Cr.P.C., which states that, **“power to summon material witness, or examined person present-Any court may at any stage of any inquiry, trial or other proceeding under this Code,**

summon any person as a witness or examined any person in attendance, though not summoned as a witness, or recall and reexamined any person already examined; and the court shall summon and examined or recall and reexamined any such person of his evidence appears to it to be essential to the just decision of the case.”

6. After perusal of the case file and application under Section 311 of Cr.P.C. and also the Section 311 it is so clear that, Court may summon any person whose evidence is so necessary to the case for proper adjudication. In this case on hand, the complainant has examined as P.W-1 and accused has partly cross-examined the P.W-1. Thereafter, this Court has given sufficient opportunity for the purpose of further cross examination of P.W-1. But the learned Advocate for accused has not further cross examined the P.W-1. Hence, this court has closed the further cross examination of P.W-1. Further, this court has recorded the statement under section 313 of Cr.P.C and posted the matter for defence evidence. Thereafter, the accused has examined himself as D.W-1 and the learned Advocate for complainant has fully cross examined the D.W-1. Hence this court has posted the matter for arguments. Now the learned counsel for the accused has filed the present application for re-call the P.W-1 in order to further cross-examination. Moreover, the present private complaint has filed under Section 200 of Cr.P.C. for the

offence punishable under Section 138 of N.I. Act. In these type of cases the burden is on the accused to rebut the presumption available under Section 139 of N.I. Act. Hence, it is necessary to provide an opportunity to accused in order to rebut the evidence of complainant. Hence, it is necessary to allow the application on heavy cost and recall the P.W-1 for the purpose of further cross examination. Therefore, if P.W-1 is not summoned, then the just decision of the case will be futile. Therefore, I am satisfied from the application filed under Section 311 of Cr.P.C. Accordingly, I accept the arguments of the learned counsel for the accused. Hence, I proceed to pass the following:-

:: O R D E R ::

The application filed by the counsel for the accused under Section 311 of Cr.P.C., is hereby **allowed on cost of Rs.500/-**.

The P.W-1 is hereby re-called as prayed in the application.

For further cross-examination of P.W-1.

Call on: 22.02.2025.

**Addl. Civil Judge & J.M.F.C.,
T.Narasipura.****