

:: O R D E R ::

This is the application filed by the accused under Section 311 of Cr.P.C. seeking to recall the P.W-1/C.W-1 for the purpose of cross-examination.

2. In the application filed under Section 311 of Cr.P.C., it is stated that, the Talakadu Police has filed above case against the accused for the offence punishable under Section 279, 304(A) of I.P.C and Section 128(1), 177, 146 R/w Section 196 of I.M.V Act. Further stated that, on 22.06.2024 the above case was set down for Chief examination and on 06.07.2024 the above case was set down for cross examination of the P.W-1. On the said days learned Advocate for the accused prays time for cross examination. Hence, this Court was recorded that, cross examination of the P.W-1 taken as nil and posted the matter for further evidence. Further stated that, the learned Advocate for the accused was engaged with some other case so he could not able to cross examined the P.W-1. Further stated that, the proper cross examination of the prosecution witness is necessary on material aspects and to bring the falsity of allegation of the complaint. Hence, prayed to allow the application.

3. On the other hand, the learned A.P.P filed an objection to the application filed under Section 311 of Cr.P.C. In the objection, it is stated that, the chief examination of P.W-1 was recorded. In spite of sufficient opportunities the learned counsel for the accused has not cross examined the P.W-1. Hence, the cross-examination of P.W-1 was taken as nil. Now, the accused has filed

instant application to delay the proceedings of the case and to cure the fault of the accused. Accordingly, prayed to reject the application with cost.

4. 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.”

5. 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. Therefore, if such 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.

6. For the reasons stated above, 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 cross-examination of P.W-1.

Issue Summons to C.W-1 to 3.

Call on: 15.03.2025.

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