

13.09.2024
For Orders.

ORDERS ON APPLICATION U/Sec.311 of Cr.P.C.

The counsel for the accused has filed the application under Sec.311 of Cr.P.C., to recall the PW-4 for the purpose of cross-examination. The counsel for the accused contended that, due to ill health and personal inconvenience of accused, he could not give the instruction to conduct the cross-examination of PW-4. Hence, cross-examination of PW-4 taken as nil. The cross-examination of PW-4 is very much necessary to disprove the alleged offence. If the PW-4 not recalled accused will be put in to irreparable loss and injury. Hence, prays to allow the application.

2. The learned APP has filed objections to the application and contended that, after chief-examination of PW-4 the court has given opportunity to cross-examine the PW-4. But the accused has not chosen to cross-examine the PW-4. Simply to drag the matter the accused has filed present application. Hence, prays to reject the application.

3. Heard arguments learned APP and counsel for accused and perused the materials available on record.

4. The following point arises for my consideration:

1. Whether the application filed by the accused U/Sec. 311 of Cr.P.C., is deserve to be allowed ?

2. What order ?

5. My answer to the above points are as under:

Point No.1: Affirmative.

Point No.2:- As per final order,

REASONS

6. **Point No.1:-** In the case on hand, the evidence of PW-4 taken on 10.11.2022, on that day the counsel for the accused was absent hence, cross-examination of PW-4 taken as nil.

7. Section 311 of Cr.P.C., confers unfettered power on the Court to recall the witnesses already examined and also to call any witness whose evidence is just and necessary for effective decision of the case. The said power vested under the Court as authority at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. The paramount consideration is to ensure just and fair trial. Under the facts and the circumstances of the case, I am of the opinion that one more opportunity is to be accorded to the accused by imposing costs to compensate for causing delay.

Hence, in view of the above reason I proceed to pass the following:

ORDER

The application filed by the accused under Section 311 of Cr.P.C, is hereby allowed on cost of Rs.300/-. Consequently PW-4 is hereby recalled.

Office is hereby directed to issue summons to PW-4.

Call on 04.10.2024.

**Prl. Civil Judge & J.M.F.C.,
Magadi.**