

**18.05.2024**

Compt:- Sri. C.K.H., Adv.,

Acad:- Sri. S.S.P., Adv.,

For orders

**ORDER ON APPLICATION FILED BY THE  
COMPLAINANT U/SEC.254 & 311 OF Cr.P.C.,**

The learned counsel for the complainant has filed applications for recall of PW-1 for further chief-examination of PW-1 and to adduce the evidence of witnesses on behalf of complainant. In the applications it is stated that, the complainant produced the some documents hence it is just and necessary to recall the PW-1 for marking of those documents and to adduce the evidence of witness by name Venkatagiriappa who was witnessed the act of second marriage of accused No.1. Hence, prays to allow the applications.

2. On the other hand, the accused counsel filed objection stating that, the applications filed by the complainant is not maintainable either in law or on facts. At the time of filing of complaint the complainant has to furnish the list of witnesses but, the complainant after taking of cognizance filed

present application to examine witnesses. There is no averments in the application for what purpose the witness is examining. In the absence of the same the applications are not maintainable. In the sworn statement of the complainant there is nowhere mentioned that the said witness was present at the time of alleged offences. Hence, prays to reject the applications.

3. I have heard the arguments of learned counsel for complainant. Even though sufficient opportunity accused counsel not addressed argument hence, argument taken as nil.

4. The following point arises for my consideration:

1. Whether the applications filed on behalf of complainant is deserves to be allowed?

2. What order?

5. My findings to the above points is as under:

Point No.1 : In the Affirmative.

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

**REASONS**

6. **Point No.1:** The complainant has filed complaint U/Sec.200 of Cr.P.C., for the offence punishable U/Sec.494 of IPC, the complainant examined herself as PW-1 and got marked documents and issued process against accused No.1 to 5. Accused persons appeared through their counsel and enlarged on bail. When the matter posted for Evidence Before Charge, the complainant filed present applications contending that the witness was present at the time of second marriage of accused No.1 and the complainant has produced some documents which are relevant to the complaint. Hence, prays to allow the applications.

7. Sec.311 of Cr.P.C., confers any court may at any stage of trial recall witness who already examined and the court shall recall the witness which appears to be essential to the just decision of the case. The object of the Sec.311 of Cr.P.C., is that, there may not be failure of justice on account of mistake of

either party in bringing the valuable on records. Hence, this being the position it is well-established principal of law that every opportunity has to be given on either side. Under such circumstances, if the applications are rejected the complainant will be put into irreparable loss and hardship. On the other side, if the applications are allowed there is no hardship cause to the accused. In view of this if the applications are allowed on cost it will meet the ends of justice. Hence, without more discussion, I answer the point No.1 in the **Affirmative**.

8. **Point No.2**: In view of my finding to the point No.1 in the affirmative, I proceed to pass the following:

**ORDER**

Applications filed by the complainant U/Sec.254 & 311 of Cr.P.C., is hereby allowed on cost of Rs.300/- and consequently PW-1 is hereby recalled and list of witness taken on record.

For further chief-examination of  
PW-1 as well as further evidence of  
complainant.

Call on 29.06.2024.

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