

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

The accused counsel has filed application for recall of PW-1 & 2 for cross examination of

PW-1 & 2. In the application it is stated that, due to ill health and personal inconvenience of accused he could not able to contact his counsel and gave instruction to conduct the cross of PW-1 & 2. The cross examination of PW-1 and 2 is very much necessary. Hence, prays to allow the application.

2. On the other hand, the learned APP filed objection to the application and stated that, on 06.10.2023 the CW-1 & 2 were present and examined as PW-1 & 2. At the time of examination of CW-1 & 2 the counsel for accused was present and prays time for cross examination of PW-1 & 2 but, this court rejected the prayer of accused counsel and cross of PW-1 & 2 taken as nil. The accused counsel filed present application to drag the proceedings hence, prays to reject the application.

3. I have heard learned APP and counsel for accused and perused the materials on record.

4. The following point arises for my consideration:

1. Whether the application filed by the accused 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 I.O. has filed charge sheet against the accused for the offence punishable U/sec.504, 506 R/W.Sec.34 of IPC. After issuing of summons the accused appeared before the court through their counsel and enlarged on bail. After furnishing charge sheet and enclosed as per complianance U/Sec.207 of Cr.P.C., the charge framed against accused. Accused pleaded not guilty and claims to the tried. Hence, witness summons issued. The CW-1 & 2 present and examined as PW-1 & 2. after chief examination

of PW- 1 & 2 the counsel for accused prays time for cross examination but there was no genuine ground hence, cross of PW-1 & 2 taken as nil.

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 application is rejected the accused will be put into irreparable loss and hardship. On the other side, if the application is allowed there is no hardship cause to the prosecution. Hence, without more discussion, I answer the point No.1 in the **Affirmative**.

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

ORDER

Application filed by the accused U/Sec.311 of Cr.P.C., is hereby allowed on cost of Rs.300/- and consequently PW-1 & PW-2 are hereby recalled.

Office is hereby directed to issue summons to PW-1 & PW-2 and re-issue summons to CW-5, 9 & 10.

Call on 20.06.2024.

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