



**IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.,
MAGADI.**

**Present :- SRI.SHRINIVASA.K.R., B.A.L., LL.M.
Prl. Civil Judge & JMFC.,
Magadi.**

C.C.No.6758/2024

Dated this the 13th day of March - 2026

Complainant : Smt.Jalaja,L,
W/o Basavaraju.V.S,
Aged about 30 years,
Residing at Bannikuppe road,
Near Basaveswara Temple,
Vibhuthikere, Kailacha Hobli,
Ramanagara Taluk,
Ramanagara District.

Present residing at
Ganganilaya,
Behind Lakshmi rice mill,
5th cross, Srinidhi layout road,
Ward No.15, Vidhyanagara,
Kalyagate, Magadi Town,
Ramanagara District.

// Versus //

Accused : Sri.Suresh.H.R,
S/o Late Rangaiah,
Aged about 32 years,
Residing at Vinayakanagara,
Handanakere,



Handanakere Hobli,
Chikkanayakanahalli Taluk,
Tumkur District-572119
and also working as
process server,
Senior Civil Judge and JMFC at
Chikkanayakanahalli,
Chikkanayakanahalli,
Tumkuru District-5720119.

**ORDER ON APPLICATION FILED BY THE ACCUSED
U/SEC.145(2) OF NI ACT READ WITH SECTION 311 OF
CR.P.C.,**

The learned counsel for the accused has filed application for recall of PW-1 for cross-examination of PW-1.

2. In the application it is stated that, the complainant filed private complaint against the accused for the offence punishable under Section 138 and 142 of NI Act. Along with private complaint, the complainant had filed the application for condoning the delay in filing the private complaint and he also adduced his evidence on the said application. Thenafter, this court directly posted for statement without giving opportunity to the accused to conduct the cross of CW-1. While preparing for hear on the accused came to know about the same. Hence, it is just and necessary to cross examination of complainant. The cross of complainant is very



much necessary to proper adjudication of the matter and to prove the defense of the accused. Hence, prays to allow the application.

3. On the other hand, the complainant counsel filed objection & contended that, after recording the 313 statement of accused posted the matter for cross of complainant, but the accused not chosen to conduct the cross of complainant and posted the case for arguments. At this stage the accused filed present application only to drag the proceedings. The complainant is being the child bed and she is not in a position to appear before the court for tender of cross examination. The accused has not stated any cogent reasons and valid grounds to allow the application. Hence, prays to reject the application.

4. I have heard the arguments of learned counsel for complainant & accused.

5. The following point arises for my consideration:

1. Whether the application filed on behalf of accused is deserves to be allowed?
2. What order?



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

Point No.1 : In the **Negative**.

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

REASONS

7. **Point No.1:** The complainant has filed complaint U/Sec.200 of Cr.P.C., for the offence punishable U/Sec.138 of N.I.Act., the complainant examined herself as PW-1 and got marked documents and issued process against accused. Accused appeared through his counsel and enlarged on bail and after appearance of accused substance of accusation recorded and accused pleaded not guilty and the accused counsel partly cross-examined the PW-1 and prays time for further cross-examination of PW-1 and prayer of accused was accepted on ground that, when the complainant advanced the matter, the accused counsel should ready for cross examination of PW-1 and posted for further cross examination of PW-1. On 29.01.2026 case was advanced by the complainant and PW-1 was present but, accused counsel prays time for further cross-examination of PW-1 but, the prayer of accused counsel was rejected as there is genuine ground and accordingly further cross-examination of PW-1



taken as nil. When matter posted for 313 statement of accused, the accused counsel filed present application for recall of PW-1 stating the complainant counsel without intimation to the accused counsel advanced the case hence, accused counsel could not cross-examined the PW-1. The further cross-examination of PW-1 is very much necessary. Hence, prays to allow the application.

8. On the other hand, the counsel for complainant stated that, simply to drag the proceedings the accused has filed application without valid reasons. The complainant is unable to appear before the court. Hence, prays to reject the application.

9. 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.

10. I have carefully gone through the application, in the application it is stated that, “the complainant at the time



of filing complaint filed application for condoning the delay in filing the private complaint and he also adduced his evidence on said application and thereafter, this court directly posted to statement without giving opportunity to the accused to conduct the cross examination of CW-1 and while preparing for hear, the accused came to know about the same hence, it is just and necessary to file application”. I have carefully gone through the records at the time of filing complaint, the complainant not filed any condonation application to condone the delay in filing private complaint and after adducing evidence by complaint not directly posted to statement without giving opportunity to the accused to conduct the cross-examination of CW-1. Therefore, on perusal of application it clearly shows that, the reasons assigned by the accused is not valid and genuine reasons because after recording of substance of accusation, accused counsel not filed application for recall of PW-1 hence, cross of PW-1 taken as nil and posted for 313 statement of accused and when matter posted for 313 statement of accused, accused counsel filed application for recall PW-1 and same was allowed and accordingly, PW-1 recalled for cross-examination and on 05.06.2025 PW-1 was present and accused counsel prays



time for cross-examination of PW-1 and cross-examination of PW-1 taken as nil as there is no genuine ground and posted for 313 statement of accused and 313 statement of accused recorded and accused denied the incriminating evidence against him and submitted for defence evidence. When case was posted for defence evidence, again accused counsel filed application for recall of PW-1 and same was allowed and posted for cross of PW-1. Even though sufficient opportunity, accused counsel not cross examined the PW-1 hence, again cross-examination of PW-1 taken as nil and posted for defence evidence and again the accused counsel filed application for recall of PW-1 and same was allowed and accused counsel partly cross examined the PW-1 and prays time for further cross of PW-1. On 29.01.2026 the case was advanced by the complainant for further cross examination of PW-1 but, the accused counsel prays time for further cross-examination and prayer of accused counsel rejected as there was no genuine ground and further cross-examination of PW-1 taken as nil and again the accused counsel filed present application. Hence, the reasons assigned by the accused is not genuine reasons and moreover the accused three times filed application for recall of PW-1 and same were allowed and



sufficient opportunity given to the accused for cross examination of PW-1 even though accused failed to cross-examine the PW-1. Therefore the accused not made out any sufficient grounds to allow the application. Under such circumstances, if the application is allowed the complainant will be put into irreparable loss and hardship. Hence, I answer the point No.1 in the **Negative**.

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

ORDER

Application filed by the accused
U/Sec.311 of Cr.P.C., is hereby
rejected on cost of Rs.1000/-.

(Dictated to the Stenographer on Computer, typed by him, order corrected and signed by me, then pronounced by me in open court on this the **13th day of March - 2026.**)

(SRI. SHRINIVASA.K.R.)
Prl. Civil Judge & J.M.F.C.,
Magadi.