

**ORDERS ON APPLICATION FILED UNDER SECTION 311 OF
THE CR.P.C**

1. The learned counsel for applicant-accused has filed application under Section 311 of the Code of Criminal Procedure, 1973, seeking to re-call P.W-1 for the purpose of cross-examination.
2. The learned counsel for the opponent-complainant has filed objection.
3. Heard the arguments of both side and perused the records in detail.
4. Now, the point that arise for my consideration is “Whether the application filed by the applicant under Section 311 of the Cr.P.C, is deserves to be allowed?”
5. My answer to the above point is in the **Affirmative**, for the following:-

REASONS

6. The learned counsel for the applicant-accused submits that, presently the above case is posted for defense evidence; that when the case has been adjourned for the statement of accused under Section 313 of the Cr.P.C the accused did not cross-examine the complainant on the previous dates. It is his case that, the Court has recorded the statement of accused under Section 313 of the Cr.P.C. Then, the case has

been kept for defense evidence and that, the accused has to cross-examine the complainant regarding contention taken by the complainant and also the financial capacity of the complainant regarding issuance of the Ex.P.1-cheque. In this regard, it is necessary for the accused to cross-examine the complainant to rebut the presumption in his favour. Hence, it is necessary for the accused to cross-examine the complainant. If he cross-examine the complainant, it will be easier for him to prove his case fairly. If he is not permitted to cross-examine the complainant he will be put to great loss and inconvenience. Hence, prayed to allow the application.

- 7.** The learned counsel for the opponent-complainant filed objection to the present application by contending that, the application filed by the accused is not maintainable under law or on facts; that it is filed by the accused only to drag on the proceedings and he has not come to the Court with clean hands. It is his contention that, the accused has not mentioned the reason in his application as to why he has not been cross-examined the complainant on previous dates; that the Court has already given sufficient opportunity to cross-examine the complainant i.e., from 02-02-2024 to 19-02-2025 and that, he has intentionally not cross-examined the P.W-1 and wasting the time with malice intention. It is his contention that, the application has been filed to drag on the proceedings and to cause delay in the disposal of the case and hence, prayed to dismiss the application with cost.

8. At this juncture, it is relevant to quote Section 311 of the Cr.P.C, which reads as under:-

“311. Power to summon material witness, or examine 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 examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

9. Perusal of the said provisions, would reveal that, the power is vested with the Court to re-call a witness and got marked the documents, if it appears that, the evidence of such a person and documents are essential to the just decision of the case. At this juncture, this Court is not going into the correctness or falsity of the averments of application. If opportunity to defend the case is not provided, it will cause prejudice to the party. Hence, Court feels that no hardship can said to be caused to the complainant even if the present application is allowed.
10. On considering the facts and circumstances of the case, the Court opinions that, under no circumstances can a person right to fair trial be jeopardized. Defending the case is right of the party. Denial of such right would amount to the denial

of fair trial. As per Section 311 of the Cr.P.C, Court may exercise its discretionary power. If the present application is not allowed, the accused will be put to hardship and the judgment may happened to be rendered on an inconclusive and inchoate presentation of facts and hence, ends of justice would be defeated.

- 11.** But, Court finds that, the present application is moved at the belated stage. Hence, in order to resolve this, Court finds that, it is just and proper to impose cost for re-opening the case for cross-examination of P.W-1. Hence, the above Point is answered in the **Affirmative**. Accordingly, I proceed to pass the following:-

ORDER

The application filed by the applicant-accused under Section 311 of the Cr.P.C, is hereby allowed on cost of Rs.500/-.

(Smt. Deepa.K.R)
I Addl. Senior Civil Judge
and J.M.F.C, Sagara.

For cross-examination of P.W-1 by 27-10-2025.

(Smt. Deepa.K.R)
I Addl. Senior Civil Judge
and J.M.F.C, Sagara.