

KAUK030002712020



**ORDERS ON APPLICATION UNDER SECTION 311 OF  
Cr.P.C.**

1. The application has been filed by the L/APP under section 311 of Cr.P.C. seeking to recall P.W.7 for the purpose of cross examination and to summon C.W.8.

2. In the application it is stated that, Chittakula Police had filed a chargesheet against the accused for the offences P/U/S 471, 465 and 420 of IPC. The I.O. had mentioned C.W.1 to C.W.16 as chargesheet witnesses. The case was posted for cross examination of P.W.7 and for the examination of C.W.8 on 09-11-2022. It is further submitted that, this Court has dropped P.W.7 and C.W.8 without issuing the order of proclamation against them and the order of dropping the said witnesses have negative impact on the case of prosecution. The evidence of the said witness is necessary for effective determination of the case in hand as such L/APP sought to allow the application.

3. Per contra, counsel for accused has filed an objection to the said application contending that on 06.12.2021 summons were issued to C.W.8 and 9 and amidst 12.05.2022 to 09.11.2022 around 7 times summons were issued to these witnesses who despite fail to appear before Court on the respective dates of hearing. It is further submitted that, C.W.8 and C.W.9 who were present in the morning session on 23.09.2022 remained absent for the afternoon session. Even though this Court warned C.W. 8 and

C.W.9 to be present, they remained absent as such the order of this Court dated 09.11.2022 is proper and hence prayed to dismiss the application.

4. Heard L/APP and counsel for accused on the application.

5. The points that arise for my consideration are:

1. Whether the prosecution has made out reasonable grounds for allowing the application?
2. What order?

6. My findings to the above points are as under:-

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

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

### REASONS

7. Point No.1: It is the stand of the prosecution that the evidence of C.W.8 and C.W.9 are much necessary for the final disposal and negative order on the said application will cause irreparable damage to the case of the prosecution.

8. It is the case of the prosecution that being aware of the fact that a lady by name Smt. Durgabhai Digambar Sohani was demised in Bombay, the accused created a forged sale deed showing that the property which was standing in her name was sold to him by that lady. The accused also forged her sign on those papers and got the same registered in the Sub-Registrar's office,

Karwar. The property regarding which the offence is committed is situated in Chittakula village, Karwar.

9. The witnesses regarding whom the L/APP has filed the instant application were PDO Grama Panchayat, Chittakula, Karwar and Village Accountant, Chittakula, Karwar as such their evidence is relevant to arrive at the just decision. Administration of the justice requires strictly adhering to the principles of natural justice, by way of providing fullest opportunity to both the parties to the proceedings.

10. It was observed by the Hon'ble High Court of Karnataka in *Vinayak S. Shetty v. The State of Karnataka* reported in MANU/KA/2066/2014 that fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to both the parties. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same.

11. It was observed by the Hon'ble Apex Court in *Mohanlal Shamji Soni v. U.O.I. and Another* reported in AIR 1991 SC 1346 that it is a cardinal rule of the law of evidence, that the best available evidence must be brought before the court to prove a fact, or a point in issue. However, the court is under an obligation to discharge its statutory functions, whether discretionary or obligatory, according to law and hence ensure that justice is done. The court has a duty to determine the truth, and to render a just

decision. The same is also the object of Section 311 of Cr.P.C., wherein the court may exercise its discretionary authority at any stage of the enquiry, trial or other proceedings, to summon any person as a witness though not yet summoned as a witness, or to recall or re-examine any person, though not yet summoned as a witness, who are expected to be able to throw light upon the matter in dispute, because if the judgments happen to be rendered on an inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated.

Therefore, I answer Point No.1 in Affirmative.

12. Point No.2: For the above reasons, I proceed to pass the following:-

**ORDER**

The application filed by the prosecution is under section 311 of Cr.P.C. is hereby allowed.

Issue summons to P.W.7 and C.W.8.

R/by 27.01.2023.

**Addl.Civil Judge&JMFC, Karwar.**