

KAUK030002712020



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

1. Counsel for accused has filed an application U/sec. 311 of Cr.P.C. seeking to recall C.W.4 to 7 for the purpose of cross-examination.

2. In the application it is stated that, earlier counsel for accused did not cross-examine C.W. 4 to 7 for being engaged in some other Court. Subsequently, a counsel has been changed witness cited supra are the important witnesses, they are well acquainted with the facts of this case. Hence, it is necessary to cross-examine them. If the application is not allowed, it will prejudice the rights of the accused, on the other hand, no harm will be caused to other side. With there averments, he urged to allow instant application.

3. Per contra, APP has filed objections to the said application contending that C.W.4 to 7 have already been examined, and C.W.7 was

cross-examined by the then counsel for accused. Only with intention to create difficulty for the prosecution and witnesses and to prolong the matter accused has preferred this application. That no grounds have been made out to justify omission to cross-examine the witness on that day itself. Besides, why there prosecution witnesses need to be cross-examined is not shown, and hence she prayed to dismiss the application.

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

5. The points that arise for my consideration are:

1. Whether the Counsel for accused 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: Partly in the **Affirmative**

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

REASONS

7. **Point No.1:** It is the contention of the counsel for the accused that earlier counsel did not cross-examine C.W. 4 to 7 as he was engaged in some other Court. However, cross-examination of these witnesses is just and necessary as they are well-acquainted with the facts of their case that injustice will be caused to the accused if he is not permitted to cross-examine witnesses cited supra.

8. On the other hand, prosecution sought to dismiss the said application.

9. 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. It is noticed that C.W.7 has been extensively cross-examined by the then Counsel for accused.

Therefore, I answer Point No.1 Partly in the Affirmative.

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

ORDER

The application filed by the Counsel for accused under section 311 of Cr.P.C. is hereby partly allowed.

Issue summons to C.W. 4 to C.W.6.

Counsel for accused shall ensure that, C.W.4 to 6 will be cross-examined at the every day of their presence.

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