

ORDER

The accused filed application under Section 311 of Cr.P.C. to recall DW 1/accused to lead his evidence.

2. In the application, it is stated that the case is posted for arguments. The 313 statement of the accused was recorded and the advocate for the accused has cross-examined the PW 1 and the case is posted for defense evidence. On the last date of hearing the prayer of of the Advocate is rejected and the case is posted for arguments. Now he is contesting the case. The accused has not availed the loan and has not handed over any cheque. Hence, he may be permitted to lead his evidence as DW 1. If the accused is not permitted to lead his evidence, there will be great and irreparable injury. No loss or injury would be caused to the other side if the application is allowed. Hence, he prays for allow the said application.

3. The learned counsel for complainant filed objection stating that the application is not maintainable as per law. The accused has already agreed to have availed the loan amount from the complainant and he has accepted that he has issued a cheque for the settlement of loan amount. Since the said cheque issued by the accused was

dishonoured, this case has been filed against him. During the cross of PW 1 the accused has not taken any defence for his side nor has he produced any single document and in his 313 statement, the accused has not stated that he would taken defense evidence. Now when the case is at the final stage and posted for the argument from his side, the accused has come up with this application. The accused is simply attempting to drag on the case and killing the valuable time of the court. Hence, prays to dismiss the application.

4. Heard and perused the materials on record.

5. In the application filed by the accused, it is stated that the 313 statement of the accused was recorded and the advocate for the accused has cross-examined the PW 1 and the case is posted for defense evidence. On the last date of hearing the prayer of of the Advocate is rejected and the case is posted for arguments. Now he is contesting the case. The accused has not availed the loan and has not handed over any cheque to the complainant institution. Per contra, the

learned counsel for the complainant stated that the accused has already agreed to have availed the loan amount from the complainant institution and he has accepted that he has issued a cheque for the settlement of loan amount. During the cross of PW 1 the accused has not taken any defence for his side nor has he produced any single document and in his 313 statement, the accused has not stated that he would taken defense evidence. The accused has been given five opportunities, but not availed the said opportunity. The accused is attempting to drag on the case.

6. The complainant has initiated the present proceedings against the accused for the offence punishable under S. 138 of N I Act. The counsel for the accused stated that the accused be permitted to lead his evidence as DW 1. The truth regarding the transaction needs to be ascertained and assessed for which accused needs to be examined. The complainant can establish his contention to cross-examine the accused and his right to cross-examine cannot be curtailed. The accused needs to be accorded with opportunity to lead his evidence and it will

assist the court in ascertaining the truth in order to arrive at just decision. Further, after taking into consideration of objection filed by the complainant if the heavy costs is imposed to the accused, then it will meet the end of justice. The application filed by the accused deserves to be allowed. Hence, I proceed to pass the following

ORDER

The application filed by the accused under Section 311 of Cr P C is hereby allowed with cost of Rs.300/-.

The accused is hereby recalled for lead the defense evidence.

For defence evidence.

By : 21.1.2026

sd/-

Sr.Civil Judge & JMFC., Ankola.