

ORDER ON APPLICATION FILED
UNDER SECTION 311 OF Cr.P.C

The advocate for the accused person has filed this application under section 311 of Cr.P.C. praying this Court to recall the PW1 and PW2 and permit him to cross examine the PW1 and PW2.

2. In the application, it is contended that now the case is posted for arguments and earlier the cross examination of the PW1 and PW2 has taken as nil. On 18/10/2022, the Hon'ble Court has taken the cross examination of the PW1 and PW2 as nil. But the cross examination of the PW1 and PW2 is very much necessary. The accused intends to cross examine those witnesses. The cross examination is very much necessary to bring real turth before the Court. Hence, he filed this application.

3. The learned APP filed her serious objections to the above application by submitting that the present application is not maintainable. Earlier the advocate for the accused had sought time to cross examine the PW1 and PW2 and as the advocate has not

mentioned the proper reason for adjournment, this Court had rejected the prayer and had taken the cross examination of the PW1 and PW2 as nil. Now, the evidence on behalf of the prosecution is completed. Moreover, in the application the applicant has not mentioned any proper reason to allow the application. This application is filed only with an intention to harass the first informant. Hence, she prayed to dismiss the application.

4. I have heard the arguments of learned Advocate for the accused person and learned APP.

5. Before going into the merits of the case, it is proper to cite the following provision of law. Section 311 of Cr.P.C reads as follows,

“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.”

6. Further in Swapan Kumar Chatterjee vs CBI, reported in (2019)14 SCC 328, the Hon’ble Supreme Court of India has held as follows,

9. Section 311 of the Code of Criminal Procedure, 1973 (for short “the Code”) provides for the power of the court to summon material witness or examination person present. It reads as follows:

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10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other

proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

12. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not

satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.”

7. From the above cited judgment and provision of law, it is clear that the power under section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection.

8. It is true that the case is posted for arguments. But the section 311 of Cr.P.C starts with, **“any Court may, at any stage of any inquiry, trial or other proceeding under this Code.....”**. Therefore, the stage of arguments comes within the ambit of the word used in the other proceedings in section 311 of Cr.P.C. If this court reject the present application on hyper technical grounds, obviously the accused will be put to great

hardship and if this application is allowed no injustice will be caused to the complainant.

9. Considering the fact, I am of the opinion that one more opportunity has to be given to the accused to cross examine the PW1 and PW2. If this application is allowed, no injustice will be caused to other side. However, inconvenience caused to the PW1 and PW2 can be compensated by imposing cost on the accused person. Accordingly, I proceed to pass the following:

ORDER

The application filed by the accused person under section 311 of Cr.P.C. is hereby allowed subject to payment of Rs. 3,000/- each as cost.

The cost amount must be paid to the PW1 and PW2.

The learned advocate for the accused is hereby allowed to cross examine the PW1 and PW2 without seeking for any adjournments for any reasons. If the learned advocate for the accused person fails to cross examine the PW1 and PW2 on

next date of hearing, the case will be posted for next stage.

For cross examination of the PW1 and PW2.

Issue SS to PW1 and PW2.

Call on 07/10/2023.

**Prl. C.J. & JMFC
Honnavar.**