

ORDERS ON APPLICATION
FILED U/S. 242(2) of Cr.P.C BY
THE LEARNED APP

The learned APP filed the present application under section 242(2) of Cr.P.C seeking for permission of this Court to produce the compact disk. This application is filed at the time of further chief examination of the PW1.

2. The learned APP has argued that the Investigation officer has filed the charge sheet against the accused persons for the offenses punishable under sections 143, 147, 323, 341, 447, 504 and 506 read with 149 of IPC. Further she argued about the facts of the case. Further she argued that the said incident was recorded by co-accused and sent the said video to a Whats App. Thereafter the first informant had downloaded the video and copies in the compact disk. Further she argued that the first informant at the time of investigation, has given the said compact disk to the investigation officer, but by oversight the investigation officer has not produced the compact disk along with the charge sheet. The lacuna is due to oversight. Hence, she filed this application.

3. The learned advocate for the accused persons has filed his objection and contended that the application is not maintainable and further he has contended that the CD is created and now the

prosecution is trying to produce the CD before the Court only with an intention to patch up the case. Therefore, he prayed to dismiss the application.

4. I have heard the learned APP and learned advocate for the accused persons.

5. I have perused the materials on record and the documents. The IO has filed the charge sheet against the accused persons for the offence punishable under sections 143, 147, 323, 341, 447, 504 and 506 read with 149 of IPC. In this case, the learned APP has argued that due to oversight, the IO has not produced the CD before the Court. Hence, now she wants to produce the CD before the Court.

6. On meticulous reading of the charge sheet of this case, it appears that the investigation officer nowhere has stated about the alleged compact disk. If the first informant has given the compact disk to the investigation officer, the investigation officer ought to have seized the said compact disk by conducting a mahazar. But, no such mahazar is brought before the Court.

7. Further, the compact disk is produced before the Court, but no certificate under section 65-B of Indian Evidence Act is produced before the Court.

8. Further if the Court allows the production of compact disk before the Court, then it will prejudice to

the accused. Because, if the said CD was produced before the IO, then the IO ought to have verified the authenticity of the said CD. But, this Court cannot verify the authenticity of the CD. It is clear that the CW1 had every opportunity to produce the CD and photos before the IO and thereby CW1 could have created an opportunity to check the authenticity of the CD by the IO. But, CW1 shows negligence and now he wants to produce the CD before the Court. If this application is allowed, obviously it will cause injustice and prejudice to the accused. With these observations, I proceed to pass the following order,

ORDER

Application filed under section 242(2) of Cr.P.C. filed by the learned APP is dismissed.

For further chief examination of the PW1, call on 04/12/2023.

Sd/-

**PrI. C.J. & JMFC,
Honnavar**