

KAUK720002072023



**IN THE COURT OF THE SENIOR CIVIL JUDGE & PRL. JMFC.,
KUMTA, AT: KUMTA, UTTARA KANNADA**

Dated this the 24th day of July, 2024

PRESENT

**Smt.B.S.Rayannawar, B.A., L.L.B.,
Senior Civil Judge
& Prl. JMFC, Kumta**

C.C.No.23/2023

Complainant: Sri. Shridhar Muralidhar Shanbhag
Aged about 53 years ` ,
Occ: Areca nut Business,
R/o Honnavar, Kumta Taluk (U.K.)

(By Sri. V.R.B. - Advocate)

V/s

Accused: Mahammad Meera Kasim Sab
Areca nuts business,
R/o Harsikatta, Siddapur,
Siddapur Taluk (U.K.)

(By Sri. S.J.N. - Advocate)

ORDER

Present application filed by the accused Under section 311 of Cr.P.C to recall PW.1 for the purpose of further cross-examination of PW.1.

2. In his application the accused has contended that, the complainant has filed a false case against him. That the complainant has not sold any areca as alleged in the complaint. The act used has filed the application for submitting the GSTR documents for alleged sale of areca nuts are alleged in the complaint, however the complainant has not submitted any documents as per GSTR about the selling of areca nuts, That, the complainant has submitted one EXCEL Sheet saying electronic Credit Ledger of the complainant with his GSTIN no.29AKRPS0392QIZZ, even assuming the document is true, in viewing the same the alleged date of transaction is 18-01-2019 two different GSTIN no.is showing, which means on that date there are two persons with GSTIN no has purchased the areca nuts from the complainant.

3. Further contended that, the cross examination of the complainant is necessary for revealing the truth and after cross-examination of the complainant the commercial tax dept officers to be called for to show the falsity of the complainant's case.

4. Further contended that, the complainant has not been cross-examined about the document very wisely submitted by him. In order to find the truth cross-examination is very necessary, now the case has been posted for defence evidence, Hon'ble Court may kindly recall the order of defence evidence and posted the case for further cross of PW1, as the cross-examination about the submitted document is missed due to some oversight, to give justice to the accused and complainant

the case has been posted for further cross of PW1. Hence, prayed to allow the application.

5. This application is opposed by complainant by filing its written objection contending that said application is not tenable under law, it is liable to be dismissed. Complainant has filed complaint under Negotiable Instrument Act, and there is a presumption under section 118- g that holder is a holder in due course – that the holder of a negotiable instrument is a holder in due course; when complainant has legal document, in order to make inconvenient the accused repeatedly filed applications. Accused has filed more than three applications under Section 311 of Cr.P.C only to harass the complainant, hence the application filed by the accused liable to be rejected.

6. Further contended that on 29.10.2021 the accused cross examined the complainant on the same grounds mentioned in the present application. The accused not submitted anything while he examined under section 313 of Cr.P.C. Though there are several decisions that the accused has to prove his case by rebuttal evidence, but the accused without leading his evidence has filing present application. Already the accused cross examined the complainant in length, but again filed this false application only to drag on the matter. On these grounds the complainant prays to reject the application.

7. Heard both learned counsel for complainant and accused.

8. Upon hearing arguments and on perusal of materials placed on records, following points arises for consideration.

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

9. My findings on the above points are as follows:-

Point No.1 : In the Affirmative.

Point No.2 : As per final order

For the following:-

REASONS

10. **Point No.1:** Admittedly now the present case is posted for defense evidence, at this stage accused filed present application to recall PW.1 for the purpose of further cross examination.

11. Admittedly, in compliance of order dated 11.07.2023 the complainant produced electronic credit ledger pertaining to GST. Though the accused filed objection to the memo filed by the accused that the the document produced by the complainant is not in compliance with the order of the court. But it was the contention of complainant that, except the said document he does not have any other documents. Hence the court in its order dated 01.04.2024 held that, if really the complainant has not complied the said order, the accused is at liberty to take the benefit of the same, and the case is posted for defence evidence. At this stage the accused filed this present application to recall PW.1 for the purpose of further cross examination. Applicant-

Accused contends that still there are several questions which are required to be asked to PW.1 with respect to the document. That the complainant has not sold any areca as alleged in the complaint. The act used has filed the application for submitting the GSTR documents for alleged sale of areca nuts as alleged in the complaint, however the complainant has not submitted any documents as per GSTR about the selling of areca nuts, That, the complainant has submitted one EXCEL Sheet saying electronic Credit Ledger of the complainant with his GSTIN no.29AKRPS0392QIZZ, even assuming the document is true, in viewing the same the alleged date of transaction is 18-01-2019 two different GSTIN no.is showing, which means on that date there are two persons with GSTIN no has purchased the areca nuts from the complainant, hence the cross examination of the complainant is necessary for revealing the truth. But the contents of the application is silent regarding on what aspects, accused intends to cross-examine PW.1, it is trite that accused need state each questions to be asked to PW.1 as it causes prejudice to him. It is incumbent on the accused to state on what aspects he still wants to cross-examination.

12. It is pertinent to note that PW.1 was cross-examined at length at the first instance. Again accused has filed an application Under Section 311 of Criminal Procedure Code, 1973 seeking recall of PW.1. Of course, it is well settle legal principle that discretion Under Section 311 of Criminal Procedure Code, 1973 is to be exercised to do complete justice. At the same time a duty is also casted on the court to balance the interest of both

sides. As already noticed accused has invoked the provisions of Section 311 of Criminal Procedure Code, 1973. Section 311 of Cr.P.C empower the court to recall of witness. Hence, as the accused not cross examined the PW.1 hence if the opportunity is given to the accused to further cross examine PW.1 no hardship will be caused to the complainant, on the other other hand if the application is not allowed hardship caused to the accused. Accordingly, point No.1 answered in the Affirmaive.

13. **Point No.2:** In view of my findings on point No.1, I proceed to pass the following:

ORDER

Application filed by the accused Under Section 311 of Cr.P.C. is hereby allowed on cost of Rs.300/-.

Further the accused is directed to further cross examine PW.1 without seeking any adjournments.

PW.1 recalled, for the purpose of further cross examination.

(Partly directly dictated to the stenographer to the computer and partly typed by own hands, corrected and then pronounced by me in the open Court on this the 24th day of July, 2024)

(Smt. B.S.Rayannawar)
Senior Civil Judge
& Prl. JMFC., Kumta.