

KAUK720002072023



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

Dated this the 30th day of November, 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 accused 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 and as per GST Act about the selling and purchasing of areca nuts. That the complainant has submitted one EXCEL sheet saying electronic Credit Ledger alleged to be belongs to him 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 quite different, which means on that date there are two persons with GSTIN no has purchased the areca nuts from the complainant. That earlier the accused has filed the application for recall of evidences of the complainant for further cross-examination however many dates the complainant has remained absent whenever the advocate of the accused present before the Court for making cross-examination. The cross-examination of complainant is very necessary not only prove the innocence of the accused but also find the truth before the Hon'ble Court.

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, 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 his 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, to misguide the court, the accused repeatedly filed applications. On 05.06.2024 the accused filed application under section 311 of Cr.P.C through application allowed by this court the accused not cross examined PW.1, earlier also the same application filed by the accused, already the complainant filed memo stating that except those G.S.T document they have no other documents, and already the accused cross examined on those documents, now again accused has filed this application under section 311 and 254(2) of Cr.P.C, repeatedly only to drag on the matter has filed this application, hence the same is liable to be dismissed.

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.

7. Further contended that accused already filed applications under Section 91 and 254(2) of Cr.P.C. for production of documents and this Court has passed the order and cross-examined in respect of said documents, the said fact is hidden by the accused. Accused already given reply to the notice and in the said notice reveals the areca nut business between the complainant and accused. On these grounds the complainant prays to reject the application.

8. Heard both learned counsel for complainant and accused.

9. 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?

10. 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

11. **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.

12. 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 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, 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.

13. 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, 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.

14. **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.500/-.

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.

(Directly dictated to the stenographer to the computer, corrected and then pronounced by me in the open Court on this the 30th day of November, 2024)

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