

KAUK720005132022



**In the Court of the Senior Civil Judge & Principal JMFC,
Kumta, At: Kumta, Uttara Kannada**

Dated this the 14th day of February, 2025.

PRESENT

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

C.C.No.165/2022

Complainant:

Agriculture and Rural Development
Bhatkala Co-operative Bank Ltd.,
Bhatkala, Gokarna Branch
Represented by Branch Manager,
Sri. Damodar J. Naik,
Occ: Branch Manager,
R/o. Gokarna, Taluk Kumta(U.K).

(By Sri. K.R.N., advocate)

V/s

Accused:

Sri. Rajesh Shantarama Naik,
S/o. Shantarama Naik, R/o. # 908,
Tarivada, Post: Manjaguni,
Pin code: 581353, Tq: Ankola (U.K).

(By Sri. R.G.N./V.S.P., advocate)

ORDER

Present application filed by the learned counsel for accused Under Section 311 of Criminal Procedure Code, 1973 seeking recall of PW.1 for the purpose of cross examination.

In the application it is stated that the accused denied the case of the complainant case, but he not able to cross examined the complainant as he not secured the documents at the time of cross of PW.1 and due to his ill health he could not able to cross examine PW.1, now the present case is posted for defence evidence. To his innocence and to brought truth before the court it is very much necessary to cross examine PW.1 hence if the application is allowed no hardship will be caused to the complainant. On the other hand if the application is not allowed hardship caused to the accused. Hence prays to allow the application.

2. Application opposed by accused complainant by filing written objections, contending that, the application filed by the accused is quite contrary to law and true facts of the case, as the application is not tenable and same may be dismissed with cost. The contents of the application and reasons assigned are

not admitted by the complainant. The accused purposely seeking the time since from the several dates. The order sheet of the case may perused in this regard. Under the circumstances accused is not entitled to cross examined the complainant.

That the accused is government servant and he is regularly attending his work and he has not produced any documents, regarding his ailments, under the circumstances the application may be dismissed with cost. On these reasons prays to dismiss the application with cost.

3. Heard both respective counsels for accused and complainant.

4. 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?

5. 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

6. **Point No.1:** Admittedly now the present case is posted for defence evidence, at this stage accused filed present application to recall PW.1, learned counsel for accused submits that the accused not admitting the case of the complainant, he got some defence and to prove his innocence it is very much necessary to cross examine PW.1.

7. Learned counsel for complainant submits that, already this court has given sufficient opportunity to the accused, but accused not cross examined PW.1, accused purposely seeking the time since from the several dates. The accused is a government servant, simply dragging the matter, under these circumstances accused is not entitled to cross examined the complainant, hence counsel for complainant prays to reject the application.

8. It is well settled 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 interests of both sides.

In the present case the accused intends to cross examine PW.1. perused order sheet after the evidence of complainant the accused not cross examined the complainant. Hence if the application is not allowed accused could not able to prove his defence, hence if the application is allowed no hardship caused to the complainant. Hence the accused made out grounds to recall the PW1 for cross examination. Accordingly, I answered point No.1 in the Affirmative.

9. **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/-.

PW1 is recalled, accused is directed to cross examine PW.1 on next date of hearing without seeking any adjournment.

(Dictated to stenographer, corrected and pronounced by me in the open Court on this the 14th day of February, 2025)

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