

KAUP010005712024



**IN THE COURT OF THE PRINCIPAL DISTRICT &  
SESSIONS JUDGE, PRESIDING OFFICER, SPECIAL  
COURT AT UDUPI**

**PRESENT:-** Sri. Shantaveer Shivappa  
B.A., LL.B., (Spl.)

Principal District & Sessions Judge,  
P.O., Special Court, Udupi

**Dated this 10<sup>th</sup> day of April, 2024**

**S.C. No.11/2024**

Complainant      The State - By Dy.S.P.,  
Udupi Sub-Division, Udupi

(By learned Public Prosecutor, Udupi)

***/Vs/***

Accused              Rajashekar Reddy and others

**ORDER ON APPLICATION FILED U/SEC.230 and  
311 of Cr.P.C.**

The brief facts of the case are as under:

The above named Accused are charge sheeted for  
the offence punishable U/Sec.120B, 143, 147, 148,  
449, 342, 504, 323, 324, 506, 307, 302, 212, 201

r/w.Sec.149 of I.P.C. The learned Public Prosecutor filed this petition contending that now the case is posted for further trial of the Accused persons. The witness shown in the petition Sri Shivananda H.C., No.58, of Udupi Traffic Police Station had received call detail records from the concerned Noodle Officer through e-mail and furnished print out to the Investigating Officer along with certificate U/Sec.65 of the Indian Evidence Act. But the said Head Constable is not cited as a witness in the charge sheet.

2. It is further contended that for just disposal of the case, it is necessary to examine the said witness. As such, this petition is filed seeking to issue witness summons to H.C.No.58 by name Shivanand of Traffic Police Station, RDC Section, Office of the Superintendent of Police, Udupi. In case the application is rejected, the case of the prosecution will be affected adversely. On the other hand, the Accused would not put to hardship or injury if the application is allowed and prays to allow the same.

3. The Accused No.3 to 7, 10, 12, 14, 15 and 18 have filed their separate objections similarly contending that this application is filed at a very belated stage. Hence, the petition is not maintainable either in law or on facts. The witnesses of the prosecution are already examined as at this belated stage a new witness cannot be summoned to give evidence. The prosecution cannot fill up the lacunas by examining other witness at this belated stage. The Accused No.3 to 7 are in Judicial Custody since from the date of their arrest. The prolonged trial had caused injustice and inconvenience to the Accused. If the petition is allowed the Accused would be put to hardship and sought for dismissal of the same.

4. Heard both the sides and perused the records.

5. The points that arise for the consideration of the Court are as under:

- 1) Whether the witness shown in the petition needs to be summoned to give evidence as prayed by the State?

2) What order?

6. The findings of the Court on the above points are as under:

1) In the Negative

2) As per the final order,  
for the reasons  
discussed as under:-

### **REASONS**

**7. Point No.1:** The learned Public Prosecutor for the State and learned Advocate for the Accused argued as per the petition and objections.

8. This Court is of the opinion that a perusal of the records goes to show that in this case all the witnesses are examined by the prosecution. Now, the stage is set for recording the statement of the Accused. A perusal of the records also reveal that the prosecution examined the witnesses from PW.1 to PW.104. At this belated stage, the prosecution has filed this petition to summon one more witness i.e., one Shivananda, H.C.No.No.58, of Udupi Traffic Police

Station with regard to issuance of certificate U/Sec.65B of the Indian Evidence Act.

9. This court is of the opinion that a perusal of the records shows that call detail records and the certificate U/Sec.65B of the Indian Evidence Act is already marked as Ex.P.300 in the deposition of the Investigating Officer. Further, this Court is of the opinion that the Investigating Officer had already deposed with regard to the call details and the conspiracy to commit the crime by the Accused persons.

10. The prosecution intends to examine a witness who has simply down loaded the call detail records received through e-mail and furnished the print outs to the Investigating Officer along with certificate U/Sec.65B of the Indian Evidence Act. In view of already marking of the document as Ex.P.300, no useful purpose would be served by examining the said witness. Further this court is of the opinion that the

State had failed to make out sufficient grounds to summon the additional witness as prayed.

11. Moreover, in this case Accused No.1, to 7 are in Judicial Custody and the Accused No.13, is being produced before this Court under body warrant. For the reasons discussed as above, this Court is of the opinion that this case has to be disposed of at the earliest. If at this stage this petition is allowed and additional witness is examined it will cause delay in disposal of the case. Further, the prosecution had failed to assign proper reasons for examining Shivananda, H.C. No. 58 of Traffic Police Station, Udupi. For the reasons discussed as above, the petition is devoid of merits and liable to be rejected. For the reasons discussed as above, the Point No.1 is answered in the Negative.

**12. Point No.2 :-** For the reasons discussed as above, the following:

**ORDER**

The Petition filed U/Sec.230 and  
311 of Cr.P.C. by the prosecution is  
hereby rejected.

No order as to costs.

(Dictated to the Stenographer Grade-I who transcribed  
and computerized, then corrected by me, print taken,  
pronounced in the open Court on 10<sup>th</sup> day of April, 2024)

**(Shantaveer Shivappa)**  
Principal District & Sessions Judge,  
Udupi.