

**ORDERS ON APPLICATION FILED BY THE ACCUSED**  
**UNDER SECTION 311 OF Cr.P.C**

The accused has filed this application under Section 311 of Cr.P.C. praying to re-examine the PW.1.

2. It is averred in the application that, the complaint filed a false case against the accused under Section 138 of the Negotiable instruments Act before this Honourable court. That the above case was posted for defence evidence and cross examination of PW1 has taken as nil. Regarding material points involved in the above case, under these circumstances it is very much necessary to recall PW1 Shiva Prasad for cross-examination on behalf of accused and the same is essential for the just decision of the case otherwise the accused will be put irreparable loss and hardship if PW1 is not recalled for cross-examination, no hardship will be caused to the other side if PW1

is recalled for the cross-examination. Hence it is very much necessary to recall PW1 for cross-examination by reopening the evidence of PW1 Shiva Prasad. Hence, prayed to allow the application.

3. Per contra, the counsel for complainant has resisted the application by filing objection denying the averments of the application. In the objection contended that, there is no proper reason to recall PW1 and the reason assigned in the application is not sufficient. The complainant lead evidence long back. The accused intentionally dragging the case for several dates for one or the other reason with an intention to harass the complainant. Therefore, sought for dismissal of the application.

4. The points that would arise for consideration of this court are:

1. Whether the application is deserves to be allowed?

2. What order?

5. Heard the learned counsel for the parties and meticulously perused the material on record. This court answers above said points as follows:

Point No.1: In the Affirmative;

Point No.2: As per final order for the following:

## **REASONS**

6. **Point No.1:** On perusal of order sheet this court has observed that, after posting the case for cross examination of PW.1, PW.1 was present and counsel for accused sought time for cross-examination. As the counsel has did not make any grounds for adjournment, this court consider the cross-examination of PW.1 as nil. The counsel for complainant has preferred the instant application to recall PW.1 and to re-open the case for cross examination of PW.1

7. As per the provision of 311 of Cr.P.C. it is the discretionary power of the court to recall and re-examine any person already examined at any stage of enquiry, if such person's evidence appears to be essential to the just decision of the case. Based on the provision, this court comes to the conclusion that, it is necessary to decide the case by recalling PW.1 for tendering himself for cross-examination.

8. It is settled principle of law that the accused must be given an opportunity to prove his defence and accused must be given an opportunity to cross-examine the witnesses. If the application is not allowed it will cause prejudice and injustice to

the accused. In the interest of justice and in order to avoid further protraction of proceedings. Therefore, for the aforesaid reason, this court answer Point No.1 in the ‘**Affirmative**’.

9. **Point No.2:** In view of discussion and the findings arrived at Point No.1, this court proceed to pass the following:

**ORDER**

The application filed by the accused under section 311 of Cr.P.C is hereby allowed on cost of Rs. 300/-.

The PW.1 is recalled for tendering for cross examination. The case is reopened for cross-examination of PW.1.

For cross of PW.1 finally as last chance by: 11.12.2025.

I Addl. Civil Judge and JMFC.,  
Karkala.