

**Order on application filed
by the complainant U/Sec.311 of Cr.P.C.**

Complainant has filed these applications U/Sec.311 of Cr.P.C. seeking to tender herself for cross-examination. Accused filed objection to the application.

2. In the application, it is contended that, complainant has filed this complaint against the accused under Section 138 of N.I. Act. Now the case is posted for 313 statement. Earlier complainant led her evidence and when the case was posted for cross-examination, her counsel colluding with the counsel for accused suppressed the stage of cross-examination of PW.1 and did not give proper instructions to them. As such, in view of absence of PW.1, the cross of PW.1 is taken as nil has not tender for cross-examination. The absence of PW.1 is not intentional one. Now complainant got another Advocate appointed and filed this application with an object to tender herself for cross-examination. If the application is allowed, no prejudice will be caused to other side. But if the application is not allowed, she will be

put to much hardship and injustice. Hence, prays to allow the application.

3. The accused has filed objection to the application and contended that, the application is not maintainable under law or on facts and same are liable to be rejected. The application is frivolous, vexatious and filed with malafide intention. The Hon'ble Court has given sufficient time to the complainant, inspite of it, complainant remained absent and did not tender herself for cross-examination, as such the case is posted for 313 statement. Complainant has filed this application with an intention to drag on the proceedings. Hence, prays to dismiss the application with exemplary cost.

4. Heard learned counsels for the parties.

5. The following points arise for my consideration:

1. Whether the application filed by the complainant u/s.311 of Cr.P.C., deserves to be allowed?

2.What order?

6. My findings on the above points is as under :

**Point No.1 : In the Affirmative.
Point No.2 : As per the final order
for the following;**

REASONS

7. **Point No.1:-** Heard the counsel on both side and I have perused the materials on record, which reveals that, when the case was posted for 313 statement, complainant has filed this application seeking to tender herself for cross-examination.
8. Per contra, accused has filed objection to the application and contended that, the application is filed in order to protract the litigation.
9. In the case on hand, on hearing and perusal of the records it appears that, this is a complaint filed for the offence punishable U/Sec.138 of N.I. Act. Order sheet reveals that, PW.1 has been cross-examined in part by the counsel for accused when the case is posted for further cross-examination, PW.1 has remained absent and further

cross is taken as nil as PW.1 has not tender for cross-examination. On the very next date of hearing, complainant has appointed another Advocate and filed this application on the ground that, she has not been given any instructions or information by her earlier counsel. In 138 proceedings, to prove the guilty of the accused the complainant shall establish his case beyond reasonable doubts. So the burden is on the complainant to establish the case in order to raise the presumption in her favour. Therefore it is necessary to allow the application to provide sufficient opportunity to complainant to establish her case and for fair trial. Moreover accused would get chance to further cross-examination the witness to prove her case. **Hence, I hold point No.1 in the Affirmative.**

ORDER

Application filed by the complainant u/s. 311 of Cr.P.C., is hereby allowed.

Consequently, the case is reopened and PW.1 is recalled for further cross-examination.

**Addl. Civil Judge & JMFC,
Hosapete.**

PW.1 present. Accused
absent. EP filed allowed.
Accused counsel prays time for
cross of PW.1.

Call on 23.4.2024.

**Addl. Civil Judge & JMFC,
Hosapete.**