

**IN THE COURT OF ADDL. CIVIL JUDGE & J.M.F.C.  
HOSAPETE.**

**Present:**        **Ashok R. H.,**  
Addl. Civil Judge & J.M.F.C.  
Hosapete.

**Dated this the 16<sup>th</sup> day of July, 2024**

**C.C.No.439/2021**

S.Taheer S/o. S.Iqbal, Age: 36 years,  
R/at: Near Anjuman Shadi Mahal,  
Aravind Nagar, Hosapete,  
Vijayanagara District.

(By Sri. M.N.K., Advocate)

**. . . . . Complainant**

**Versus**

Mohammed Ayaz Khan  
S/o. Late Mahboob Ali Khan,  
Age: 42 years, R/at: No.11,  
KN House, Kenchappa Garden,  
R.T. Nagar Post, Bangalore.

(By Sri. U.G., Advocate).

**. . . . . Accused**

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

The complainant has filed this application seeking to recall PW.1 and permit him to clarify the ambiguity which is crept in his cross-examination held on 30.08.2023.

2. It is stated in the application that in order to prove the case of the complainant, he has been examined as PW.1 and that he has been fully cross-examined by the accused. During the cross-examination held on 30.08.2023, it is elicited from PW.1 by the side of the accused that after filing of this case, on three various dates i.e., on 2.2.2023, 28.3.2023 and 27.4.2023, the accused has remitted an amount of Rs.2,00,000/-, Rs.50,000/- and Rs.50,000/- respectively to the bank account of the complainant. It is necessary for the complainant to clarify the ambiguity as to why the accused had remitted the above referred amount to his bank account. If the application is not allowed, the complainant would be put to irreparable loss which cannot be compensated. On these grounds, it is prayed to allow the application.

3. The accused has filed his objection contending that the complainant had led his evidence and PW.1 is cross-examined. The complainant has clearly admitted in the cross-examination about the transfer of money by this accused, to the account, which is for the transaction with respect to the cheque in question. Now the complainant wants to fill up the lacuna in his case by filing this application. The further evidence of the

complainant is not necessary. On these grounds, it is prayed to reject the application.

4. Heard and perused the materials placed on record.

5. The following points arise for consideration:

1. Whether the application filed by the complainant deserves to be allowed?

2. What order?

6. The answers of this court to the above points is as under:

Point No.1: In the Negative

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

**REASONS:**

7. **Point No.1:** The complainant has filed this complaint U/Section 200 of Cr.P.C., alleging that the accused has committed the offence punishable under Section 138 of N.I. Act. This Court has taken the cognizance of the offence and has issued summons to the accused. The accused has appeared before the Court. The substance of accusation was read over and accused has claimed to be tried. The complainant has got examined himself as PW.1 and he was cross-

examined by the side of the accused. In the cross-examination of PW.1 dated 30.08.2023, PW.1 has admitted the suggestion that on 2.2.2023 the accused has deposited Rs.2,00,000/- to his account. It is admitted that on 28.3.2023 the accused has deposited Rs.50,000/- to the account of PW.1 and on 27.4.2023 the accused has deposited Rs.50,000/- to the account of PW.1. Subsequently on 18.10.2023, PW.1 further cross-examined. The re-examination of PW.1 is taken as nil.

8. This being the circumstance, now the complainant states that it is necessary to recall PW.1 to clarify the ambiguity as to why the accused has remitted the above said amount to the bank account of the complainant. The application is resisted by the accused on the ground that the complainant intends to fill up the lacuna. As regards the settled position of law, the power conferred under Section 311 of Cr.P.C., is to be invoked by the Court to meet the ends of justice, for strong and valid reasons and it is to be exercised with great caution and circumspection. The Hon'ble Apex Court in **Rajaram Prasad Yadav Vs. State of Bihar and others reported in (2013) 14 SCC 461** has held that, *Insofar as recalling and re-examination of any person already examined, the court must necessarily consider and ensure that such recall and re-examination of any person, appears in the*

*view of the court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution.*

9. It is also a settled law that the powers under Section 311 of Cr.P.C., cannot be used to fill up the lacuna in the cross-examination of the prosecution and the exercise of power by the Court should not result in causing serious prejudice to the accused resulting in miscarriage of justice. The Court must satisfy itself that it was in every respect essential to recall a witness for further examination in order to arrive at a just decision of the case.

10. In view of the above principles, examining the case herein, no doubt, there is an admission by PW.1 regarding the deposit of money by the accused in three occasions. However, the reason for the said deposits of money is not suggested by the accused. PW.1 has also not explained the same in his cross-examination. In view of Section 138 of Indian Evidence Act, 1972, after cross-

examination of PW.1, the complainant could have re-examined PW.1 to clarify regarding the deposit of amount by the accused. The very law provides that re-examination shall be directed to explain of matters referred to in cross-examination. But there is no re-examination of PW.1. The said right has not been made use of by the complainant at the appropriate time. Further more, the cross-examination of PW.1 had commenced on 30.08.2023. It is noticed that the sworn statement of the complainant which was filed on 13.08.2021 itself has been treated as examination in chief of PW.1. Nevertheless, the complainant had every opportunity to depose in his examination in chief itself on the moment when he had entered into the witness box to tender himself for cross-examination on 30.08.2023. Thus only after the admission given by PW.1 regarding the receipt of money by the accused and having not explained anything in the re-examination, now the complainant has filed this after thought application. This clearly goes to show that the complainant intends to fill up the lacuna in his case. If the application were to be allowed, the accused would be put to prejudice and it would take away the valuable right of the accused that has accrued to him by way of admissions during the course of cross-examination of PW.1. It is again

reiterated that the evidence regarding the deposit of money by the accused to the account of the complainant will be appreciated by considering the entire cross-examination of PW.1 and it is not such that the said transaction is with regard to the cheque in question as contended in the objection. With these observations and reasons, this court is of the opinion that, the application is liable to be rejected. Accordingly, this court has answered Point No.1 **In the Negative.**

11. **Point No.2:-** In view of the above answer and by considering the facts and circumstances of the case, this court proceeds to pass the following;-

**ORDER**

The application filed by the complainant  
U/Section 311 of Cr.P.C., is hereby rejected.  
No order as to cost.

(Dictated to the stenographer, transcribed by her on the computer and corrected and revised by me and then pronounced in the open court on this day of 16<sup>th</sup> day of July-2024).

(Ashok R.H.)  
Addl. Civil Judge & JMFC,  
Hosapete.