

**ORDER ON APPLICATION FILED
U/SEC.311 OF CR.P.C**

The present application is U/sec.311 of Cr.P.C to recall PW1 for cross examination. It is stated that the counsel for the accused had no documents related to the case and thereby he has not cross examined the complainant and in the interest of justice, the complainant be recalled for cross examination.

2. On the other hand, objections are filed. It is denied that there was no opportunity given to the accused counsel, further it is stated that, during the recording of 313 statement, accused has admitted the incriminating evidence against him and further the said application is filed with malafide intention and prayed to dismiss the application.

4. Heard.

5. The points that arise for my consideration are as follows:

1. Whether the applicant has made out grounds to allow the application?
2. What order?

6. My findings on the above points as under:

Point No.1 In the Negative
Point No.2 As per final order,

REASONS

7. **Point No.1**:-I have perused the order sheet, on 13.06.2023 accused was enlarged on bail and posted on 01.07.2023, later on 01.07.2023 he remained absent and warrant was issued against him. On 04.09.2023 accused was present, recall application was filed, substance of accusation was read over to him, he pleaded

not guilty and claimed to be tried, complainant was present and he was examined and thereby since petition was not filed, cross of PW1 was taken as nil and statement of accused U/sec.313 of Cr.P.C was recorded. Accused has admitted the incriminating evidence against him and submitted no evidence on his behalf. When that is the case, the question of recalling PW-1 does not arise. It goes to show that, only with an intention to drag on the matter the application is filed. Further after the accused is enlarged on bail, he has not been present before this court on the subsequent date. Further the accused has not made out any grounds to allow the application, hence I answer point No.1 in the ***Negative***.

8. **Point No.2:-**In view of reasons on point No.1, I proceed to pass the following:

ORDER

Application filed U/sec.311 of Cr.P.C is hereby rejected.

For arguments.

Call on 21.09.2023

Prl Civil Judge & JMFC
Shahapur