

ORDER BELOW EXH.32

1. This is an application filed by accused for recalling C.W.1 under Section 311 of Cr. P.C.

2. **Brief contentions in the application are as under:**

Complainant has filed present complaint under Section 138 of N.I. Act. The case is partly heard and authorized signatory of complainant is partly cross-examined. The accused has good defence and in case he is provided opportunity to complete the cross-examination, he would revert the presumption under Section 139 of the N.I. Act. On last date of hearing, advocate for accused was in another court at same center and holding advocate did not request to keep back the case for further cross examination and the Court was pleased to pass the order of 'No cross' against accused. The accused is ready and willing to conduct and conclude the cross-examination at the time hence in the interest of justice he prayed to allow this application.

3. Complainant has filed his reply at (Exh.33) and objected the application. He has submitted that matter is kept for recording statement of accused under Section 313 of Cr. P.C. He next submits that accused intentionally avoided the proceeding for prolonging the trial. He further submits that the matter had been adjourned several times for cross. Hence, he prayed to reject the application.

4. Heard advocate for both sides.

5. Perused record. It appears that evidence affidavit of C.W.1 is filed on 20/08/2019. Thereafter, on 12/03/2020 part cross-

examination of C.W.1 was conducted by the accused. Since then matter is pending for further cross-examination of C.W.1. Accused and his advocate failed to take further cross-examination of C.W.1. No adjournment application was filed on 12/12/2023 therefore, an order was passed to proceed without further cross-examination of C.W.1. Considering this fact and ground mentioned by accused in the application, interest of justice requires that accused may be given fair opportunity to bring on record events taken place subsequent to filing of complaint. So application deserves to be allowed. At the same time, it cannot be ignored that there has been delay in the disposal of case due to accused, so some cost is necessary to be saddled on him. In the result, I pass following order :

ORDER

1. Application is allowed subject to payment of costs of Rs.2,000/- (Rupees Two Thousand Only) to the C.W.1.
2. C.W.1 be recalled for cross-examination on payment of cost amount.

Sd/-

(Shri. R.D. Dange)

Metropolitan Magistrate,

63rd Court, Andheri, Mumbai

Date : 03/04/2024