

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			C482 No. 1922 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Tarun Prakash Singh Takuli, Advocate, for the applicant. Mr. B.C. Joshi, A.G.A., for the State of Uttarakhand. Though an attempt has been made by the learned counsel for the applicant to elaborate upon the necessity of invoking the provisions contained under Section 311 of the Cr.P.C., for the purposes of recalling the witnesses to be examined by him, which relates to a complaint proceeding which has been registered as back as on 26th September, 2014, under Section 138 of the Negotiable Instruments Act. This Court cannot be oblivious of the fact, that the proceedings under the Negotiable Instruments Act, are summary in nature, which would predominantly be governed by Sub-section (3) of Section 143 of the N.I. Act. It is at this stage, when the proceedings under Section 138 of the N.I. Act, were being going on, the applicant was granted sufficient opportunity to cross examine CW-1, as would be apparent from the proceedings which were held on 15th October, 2015, and thereafter. The cross examination of CW-1 stood closed on the said date. It is, thereafter, that the applicant has filed an application under Section 311 of the Cr.P.C., on 8th February, 2019, all of a sudden, realizing from the plea, that certain questions were missed to be placed to CW-1, at the stage, when he was being examined on 15th October, 2015. The procedural law under Section 311 of the Cr.P.C. is not a tool to be utilized by the applicant to prolong the proceedings for no valid reasons and that too in contravention to the basic intention of the law, and that too, in the light of the present case, when apart from the fact, that ample of opportunity

			was granted to the applicant to cross examine CW-1, and which was availed by him also. In that eventuality, subsequently filing an application after a lapse of more than four years on 8th February, 2019, thereby invoking the provisions contained under Section 311 of the Cr.P.C., and that too, for no good valid reason given in it, will amount to be an abuse itself, because, the implications of Section 311 of the Cr.P.C., cannot be expanded to be misused to delay the proceedings, because the basic intention of Section 311 of the Cr.P.C. is, that a person could be summoned to be examined subject to the condition, that re-examination becomes necessary under a given set of case for summoning a witness to be examined. This latitude given under Section 311 of the Cr.P.C. would only be available in those cases, where there is a deprivation of the applicant to Section 311 application of cross examination, or in the application thus filed under Section 311 of the Cr.P.C., there is any plausible justifiable reason given by the applicant to invoke Section 311 of the Cr.P.C. Both these conditions don't satisfy in the instant case for the reason being, that the applicant has already availed the opportunity of cross examination of CW-1, as recorded on 15th October, 2015, coupled with the fact, that there is no justified reason given in the application under Section 311 of the Cr.P.C., on what question, he wanted to examine CW-1. The allegation is vague enough, which does not testify the reason given under Section 311 of the Cr.P.C. Invoking of same at a belated stage after closure of the opportunity of cross examination as back as on 15th October, 2015, by filing the same on 8th February, 2019, is a much belated realisation made by the applicant about his alleged deprivation of his opportunity to cross examine CW-1, and that too, when no reliable aspect has been given as to on which, he had failed to cross examine CW-1, at the stage when he was given an opportunity, which he has availed on 15th October, 2015. The provisions contained under Section 311
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			of the Cr.P.C. cannot be stretched to absurdity to delay the proceedings, for one reason or another or for no valid reasons as given in the application in the instant case. Thus, the rejection order as passed by the Court of Judicial Magistrate, Haldwani, District Nainital, that ample of opportunity was granted to the applicant to cross examine CW-1, which was rather availed by him, will not enable him to invoke Section 311 of the Cr.P.C. The learned counsel for the applicant argues, that the revisional court's order holding the revision to be not maintainable, since was arising out of an interlocutory orders, he contends, that in accordance with the judgment of Hon'ble Apex Court in the case of Honnaiah T.H. Vs. State of Karnataka and others as rendered in Criminal Appeal No. 1147 of 2022, in fact, the interpretation given to the interlocutory orders for sustaining a revision has to be legally construed, that all interlocutory orders are not final in nature. The interlocutory orders, which decide the right during the intervening stage of the proceedings are not interlocutory orders, and they can be subjected to revision under Section 397 of the Cr.P.C., but not the order of the manner in question, i.e. dated 16th January, 2023, where the Trial Court has declined to permit the cross examination of CW-1, when the opportunity was already exhausted and availed by the present applicant. Thus, the implications as derived by the learned counsel for the applicant from the judgment of the Hon'ble Apex Court in the case of Honnaiah T.H. (Supra), may not be applicable in principle under the facts of the instant case, because there was no complete deprivation as such. For the time being, even if it is presumed, that there was slackness on the part of the applicant to cross examine CW-1, that cannot be permitted to abuse the provisions contained under Section 311 of the Cr.P.C., because, it is not an absolute deprivation, but rather it is non availing of an opportunity, when it was provided to the applicant
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			way back in 2015. Even if, there was an error in cross examining CW-1, there application ought to have been filed within an appropriate time, and not after the lapse of 11 years and that too, or at the stage when according to the objection to the application under Section 311 of the Cr.P.C., as raised by the learned counsel for the respondent, the trial has already reached at a stage of recording the statements under Section 313 of the Cr.P.C. Thus, I do not find any merit in the C-482 Application. The same is accordingly stands dismissed. (Sharad Kumar Sharma, J.) Dated 27.09.2023 Shiv
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