

04.04.2025
Orders

ORDERS ON APPLICATION UNDER SECTION 311 OF THE CR.P.C

This is an application filed by the complainant to admit and identify a pen drive containing a personal conversation between the accused, the complainant's wife and the accused's lawyer, which was recorded by the complainant without the knowledge of the accused and his lawyer. The accused, in his cross-examination, admitted that the voice recording played in court was his voice and that the conversation took place between him and the complainant's wife.

2. The learned counsel for the accused has filed an objection to the interim application, contending that the application filed by the complainant is liable to be dismissed with heavy costs and the court may register a case against him because the complainant has recorded a personal conversation between the accused and his lawyer and it is a bad practice to undermine professional ethics. At least the learned counsel for the complainant should have anticipated the consequences arising from the identification of electronic records containing professional communication; therefore, for the reasons stated above and other reasons as stated in the objection, the learned counsel for the accused sought dismissal of the application.

3. On perusal of the entire records, the following points that arise for my consideration.

POINTS

1. Whether the application filed by the complainant under section 311 of the Cr.P.C. for marking the pen drive which contains the professional communication between the accused and his counsel deserves to be allowed ?

2. What order ?

4. Heard learned counsel for the complainant and learned counsel for the accused on interim application.

5. Upon hearing arguments and on perusal of material records placed before this court, my answers to the above said points are as under.

Point No.1 In the negative

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

REASONS

Point No.1:

6. The complainant has filed this complaint against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act. Based on documentary evidence, the court took cognizance of the offence. The accused is none other than a close relative of the complainant, and he used to take care of the complainant and his wife as if he were their son; the accused took money from the complainant. Now he is turned down by saying that he spent the money to take care of the complainant and his wife. Meanwhile, there was a negotiation held in the office of the learned counsel for the accused; at that time, the complainant recorded the conversation secretly without the knowledge of the accused and his counsel. Now the complainant wants to mark the pen drive as an electronic record. No doubt the electronic record can be admitted in

evidence, but if the electronic record contains the professional communication between the accused and his counsel, then the electronic record cannot be considered admissible in evidence.

7. On going through the materials on record, it appears to the court that the evidence on record is sufficient to draw the proper conclusion; a mere conversation between the wife of the complainant, the accused and the counsel for the accused does not have a serious impact on the case. It is an admitted fact that the accused in his statement under section 313 of the Cr.P.C. stated that he spent the amount for the well-being of the complainant and his wife, and to offer security, he had given the cheque to the complainant, but he misused the cheque. The accused in his cross-examination has admitted to the issuance of the cheque; therefore, it is not necessary to publicize the personal communication held between the accused and his advocate. Even if the accused admits his liability through oral communication that cannot be treated as admission, the secret voice recording is nothing but a violation of the personal liberty of an individual.

8. The complainant has stated that the voice recording of the accused is a material piece of evidence to prove his case. If the voice recording contains the personal conversation between the wife of the complainant and the accused, it is admissible in evidence, but if it contains professional communication between the accused and his counsel, it is not admissible in evidence. The court has played the voice recording in the open court, which contains the professional communication between the accused and his counsel, though the accused has admitted to his voice recording, but the counsel for the accused has seriously objected to admitting the electronic record because it contains the professional communication between him and the accused. Therefore, the application filed by the complainant deserves to be dismissed, accordingly **I answer point no.1 in the negative.**

Point No.2:

9. For the above said reasons and discussions, I proceed to pass the following:

ORDERS

The application filed by the complainant under section 311 of the Cr. P.C. is hereby dismissed because the electronic record contains the professional communication between the accused and his counsel.

For further defense evidence
call on. 09.04.2025

**XX Additional Chief Judicial Magistrate
Bengaluru**