

IN THE COURT OF THE ASSISTANT SESSIONS JUDGE, ALAPPUZHA

PRESENT: Smt. REKHA LAURIAN, ASSISTANT SESSIONS JUDGE

Friday the 14th day of November, 2024/23rd day of Karthika, 1947

Crl.M.P.1010/2025 in S.C.603/2021

(Filed on 20.09.2025)

Petitioner:-

State of Kerala represented by
The Sub Inspector of Police,
Alappuzha North Police Station.
(In Crime No. 124/2021)
By APP, Alappuzha

Counter Petitioner Accused:

Dinesan, S/o Sukumaran,
Vazhithalackal veedu,
South of Ayyankali Junction,
Avalookunnu P.O,
Ward No. 12, Aryad Panchayath

By Adv. P.Sudheer

This petition come up for hearing on 14.11.2025 and the court on same day passed the following:-

ORDER

This is an application filed u/s.311 of Code of Criminal Procedure by Learned Additional Public Prosecutor.

2. The petition averments in brief are as follows: - The application is filed for examining the additional witnesses. The victim Jyothimon was treated at Sahridaya Hospital, Alappuzha. His discharge summary dated 08.02.2021 and CT scan report dated 06.02.2021 are to be brought before the court for best disposal of the case. Dr. Hegde and Dr. Adarsh K.M who prepared said records are to be

examined. The said documents are also produced before the court. This is for the just disposal of the case. Hence the application may be allowed.

3. The objection filed by the accused reads as follows :- The application filed is not maintainable and as it is highly belated and copy of the documents and not served to the accused. Hence the application is to be dismissed.

4. Heard both sides. The learned Additional Public Prosecutor argued that it is stated in the wound certificate that is he was admitted and referred to take CT scan. So it is the duty of the prosecution to bring out the best evidence before the court. Further, the Doctor himself had testified before the court that there was fracture to the Cranium. The learned defence counsel argued that the complainant came before the court one year back and prosecution got ample opportunity to bring the best evidence. This is a highly belated application and is not in compliance with R.19(4) of Criminal Rules of Practice.

5. I considered the application, objection, records and oral submissions before the court. As per section 311 CrPC, the court may at any stage of the proceedings may summon any person as a witness or examine any person in attendance though not summoned as a witness or to recall and reexamine any person already examined. The victim was examined on 13.06.2025. During his oral testimony he has testified about the injury that was caused to him and the treatment he underwent at Sahridaya Hospital Alappuzha. As per Ext.P7 it is proved that CT Scan of the victim was taken as there was depression on the parietal bones. His IP number is also mentioned in Ext.P7. CT Scan report and discharge summary of the victim is sought to be brought before the court. this cannot be considered as filling the lacuna in the prosecution case. In Rajendra Prasad v. Narcotic Cell 1999 KHC 417 our Hon'ble Supreme Court held that "Code of Criminal Procedure – S.311 "Lacuna in the prosecution must be understood as the inherent weakness or a latent

wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.” Here it was the duty of the investigating officer to bring relevant medical records before the court. But he failed to do so. In *Dayalsing and others v. Uttaranchal* 2012 KHC 4416 Hon’ble court held that “whether the accused entitled for benefit from defect in the investigation. Held when the evidence of eye witnesses are cogent and truthful merely because of the investigating officer has failed to perform their duty in accordance with the requirements of law it will not in anyway benefit the accused person”. Considering the above facts of the case, I am inclined to allow this application.

6. In the result, application is allowed.

Dictated to Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 14th day November, 2025.

Sd/-

REKHA LAURIAN
ASSISTANT SESSIONS JUDGE

Appendix:-Nil

Id/-

ASSISTANT SESSIONS JUDGE