

IN THE COURT OF THE ADDL. SESSIONS JUDGE-I, MAVELIKARA

Present: Smt.V.G.Sreedevi, Addl. Sessions Judge-I

Wednesday, the 07th day of January, 2026/17th Pousham,1947

Crl.MP No.2511/2025 in SC 98/2025

(Filed on:11.11.2025)

(Crime No. 803/2014 on the file of the Nooranadu Police Station)

Petitioner : Sanjay Oraon, aged 44,
Accused S/o Sumithra Orae, Newline Chilorence,
Metaly Post, Jaipal Guri District,
West Bengal.
(By Adv.Jacob Oommen
& Adv.Jibin George)

Respondent : State of Kerala, represented by
Complainant Chief Secretary,
represented by District Collector,
Alappuzha, and Director General of Police,
represented by Dy SP, Chengannur,
represented by Addl.Public Prosecutor,
Mavelikara.
(By Adv. P.V.Santhosh Kumar,
Addl. Public Prosecutor, Mavelikara)

This petition have been finally heard on 17.12.2025 and the court on the 07.01.2026 passed the following.

ORDER

This petition is filed u/s.300 of Cr.P.C. (Sec.337 of BNSS) for discharging the accused.

2. Averments in the petition, in brief, are as follows:- On the basis of the statement given by one Japadas on 19.06.2014 that one person was found dead at Kudassanad on 18.06.2014, crime No.803/2014 was registered by the Nooranad Police against this accused. The accused faced trial in the said case as SC 1108/2014 and he was convicted and sentenced. Subsequently, the accused was acquitted by the Hon'ble High Court of Kerala vide judgment in Criminal Appeal No.910/2016 dated 21.06.2021.

3. Thereafter, re-investigation was ordered as per the order of the Hon'ble High Court. After that, the Dy.S.P., Chengannur, conducted investigation as per the direction of the Director General of Police and the accused in SC 1108/2014 who was in custody for seven years and thereafter acquitted by the Hon'ble High Court, was again arrayed as accused, and fresh charge-sheet was filed against him and now he is facing trial in S.C.98/2025 of the Additional District Court-I, Mavelikara.

4. A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence as per Article 20(2) of the Constitution. As per Section 300 of Cr.P.C., the corresponding Section of which, ie., Sec.377 of BNSS. 'Person once convicted or acquitted not to be tried for same offence'. Hence, prays for discharge of the accused.

5. The learned Additional Public Prosecutor vehemently opposed the petition and filed objection along with the report of the Dy.S.P., Chengannur. According to the learned Additional Public Prosecutor, the death of the victim-Kaliya in this case was due to the severe attack of the accused. Using a wooden piece, the accused repeatedly beat on the face and head of the victim.

6. It is reported by the Investigating Officer that the accused is the person who has committed the murder of Kaliya. The case was firstly investigated by the Inspector of Police, Mannar and the accused faced trial in SC 1108/2014. He was found guilty, thereby convicted and sentenced to undergo imprisonment for life and to pay fine of ₹10,000/-. Thereafter, by the judgment dated 21.06.2021 in Crl.Appeal No.910/2016,

the accused was acquitted by the Hon'ble High Court. The Hon'ble High Court directed to conduct re-investigation in the matter by a Superior Officer not below the rank of Deputy Superintendent of Police since the investigation conducted was unfair and manifested. Accordingly, as per the direction of the Deputy General of Police, the Dy.S.P., Chengnannur conducted re-investigation and filed final report against the accused. On investigation, it could be revealed that the accused is the person behind the death of Kaliya. On the alleged day of incident, both are in intoxicated mood, and the accused who was in inimical terms with Kaliya as he did not return the money borrowed from the accused, started to quarrel with him and using a wooden piece, the accused repeatedly beat on his head and face, causing his death. Hence, the discharge petition is only to be dismissed.

7. Heard both sides.

8. The only point that arises for consideration is:

Can the accused be discharged for the offence punishable u/s.302 of IPC charge-sheeted against him?

9. **The point:-** The prosecution case is that the accused committed murder of one Hafijul Mohammed @Kaliya due to the enmity that the said Kaliya was not preparing food and he

did not repay the amount borrowed by him. The accused and Kaliya were close friends. It is alleged that in between 03.45 p.m. and 05.00 p.m. on 18.06.2014, the accused, due to his enmity for the aforesaid reason, repeatedly beat on the face and head of Kaliya with a wooden piece which caused his death, while they were in the hall room attached to the building of Wood Craft Industries owned by CW1, with No.VI/583 near Ramanattupadi junction, Kudassanadu, Ward No.6 of Palamel Panchayath, Kudassanadu Muri, Palamel Village.

10. The offence was tried before this Court by my learned predecessor-in-office by examining witnesses 1 to 14 on the side of prosecution and one witness from the defence side and marking Exts.P1 to P24, D1 & D2 and MOs1 to 10. The accused was found guilty and he was convicted and sentenced to imprisonment for life. He was imposed with a a fine of ₹10,000/- which was ordered to be given to the wife of Kaliya as compensation, if the same was realized. Recommendation was also made to rehabilitate the legal heirs of Kaliya and also to pay compensation.

11. The accused who was in custody filed appeal before the Hon'ble High Court of Kerala as Criminal Appeal 910/2016 through State brief, and when the matter was heard, the

Hon'ble Division Bench after considering the entire evidence found that the investigation conducted was not at all proper and so many points have been raised with respect to the flaws in the investigation, and at last, the accused was acquitted because of want of proper, fair and effective investigation resulting in inculcating the accused in this case who was a close friend of the deceased.

12. Thereafter, re-investigation was ordered. Recommendation was also made to constitute a special investigation team headed by a Superior Police Officer not below the rank of Dy.S.P., to bring out the truth to light. Since the incident relates back to 2014, time limit was also fixed to complete the investigation. There was a further direction that departmental enquiry has to be conducted against the Police Officials who are responsible and follow up was ordered to be reported to the Hon'ble High Court.

13. After that, a special team was constituted by the order of the District Police Chief and the fact was reported to the learned Judicial Magistrate of 1st Class-II, Chengannur. Subsequently, investigation was conducted. In the re-investigation, without taking into account of the earlier evidence collected, same accused was charge sheeted. Any

how, the second final report was filed before the learned Judicial Magistrate of 1st Class-II, Mavelikara which was received on 11.11.2014. Thereafter, the case was again committed and that has been made over to this Court again.

14. When the case was posted for hearing on charge, the learned counsel for the accused vehemently contended that if a second trial is conducted for the same offence, the constitutional right of the accused under Article 20(2) would be violated and it amounts to double jeopardy and hence second trial cannot be conducted for the same offence.

15. In support of the said argument, the learned counsel for the accused has relied upon the decision of the Hon'ble Supreme Court in **AIR 1953 SC 325, Maqbool Hussain v. State of Bombay**, wherein, the Hon'ble Supreme Court has considered the question whether by reason of the proceedings taken by the Sea Customs Authorities, the appellant could be said to have been prosecuted and punished for the same offence with which he was charged in the Court of the Chief Presidency Magistrate, Bombay. It was a case in which the appellant arrived at the Santa Cruz Airport from Jeddah on 6th November, 1949. On landing, he did not declare that he had brought any gold with him, but, on search, it was found that he had brought

107.2 tolas of gold in contravention of the notification of the Government of India dated 25th August, 1958. The Hon'ble Supreme Court accepted the arguments of the petitioner to the effect that he will not be prosecuted twice for the same offence.

16. The learned counsel has also relied upon the decision in **Chandi Puliya v. State of West Bengal, 2022 (6) KLT OnLine 1043 (SC)**, which was decided by the Hon'ble Supreme Court on 12th December 2022. It was a case in which the appellant was tried for the offence under Sections 148, 149, 448, 364 and 506 of IPC in FIR 61/2002 dated 26.09.2002 of Keshpur Police Station. He was acquitted by the learned Sessions Court vide judgment and order of acquittal dated 21.05.2010. Thereafter, on 06.06.2011, after a period of nine years from the date of registration of the first FIR and one year from the date of acquittal, the second FIR came to be lodged against the appellant and others alleging inter alia that the appellant and other co-accused had caused the death of Ajay Acharya ie., the father of the first informant, the same person that they had alleged to have kidnapped and were acquitted. It appears that the second FIR was registered on the basis of the discovery of the skeleton and identification of the clothes and teeth of the skeleton ,by the son of the deceased eleven years

after the alleged incident.

17. A discharge application under Sec.227 r/w.300(1) Cr.P.C. was filed by the appellant before the learned trial Court and that was dismissed. It was challenged before the Hon'ble High Court and the High Court also confirmed the order passed by the trial Court. When the matter taken up before the Hon'ble Supreme Court on the ground of Sec.300 Cr.P.C. that he cannot be tried on account of the bar u/s.300 Cr.P.C., the Hon'ble Supreme Court held: *"The matter required to be remanded to the learned trial Court to consider the plea of the accused on applicability of Section 300(1) Cr.P.C. at the stage of discharge under Section 227 Cr.P.C. which is a stage prior to the framing of charge under Section 228 of Cr.P.C"*. In that case, a petition under Sec.482 Cr.P.C. to quash the criminal proceedings which were sought to be quashed on the very ground and the accused was relegated to avail remedy at the time of discharge by the Hon'ble High Court. That order has attained finality. After that, only the accused-appellant filed application for discharge under Section 227 r/w.300 Cr.P.C. So, the Hon'ble Supreme Court set aside and quashed the order of the Hon'ble High Court and the matter is remanded back to the trial Court with liberty granted to the trial court to decide the petition for

discharge.

18. In this case, the facts and circumstances are different than the one appreciated by the Hon'ble Supreme Court in both the aforesaid cases. In **2006 KHC 2747, Rupa Bania v. State of Assam**, the Gauhati High Court had an occasion to consider a similar question and in paragraph No.20, it is held: *"From a careful reading of Ukha Kolhe's case (supra), it is clear that an order for retrial is made in exceptional cases, and not unless the appellate court is satisfied that the court, trying the appellant, had no jurisdiction to try or that the trial was vitiated by serious illegalities or irregularities or on account of misconception of the nature of the proceedings and, following this misconception, there was, in substance, no real trial or that the prosecutor or the accused, as the case may be, was, for reasons over which he had no control, prevented from leading or tendering evidence material to the charge, and appellate court deems it appropriate, having regard to the circumstances of the case, that in the interests of justice, the accused should be put on trial again. An order for re-trial may, in a given case, wipe out from the record the earlier proceedings and expose the accused to another trial, which may afford the prosecutor an opportunity to rectify the infirmities disclosed at the earlier trial".*

19. In **AIR 1963 SC 1531, Ukha Kohle v. State of Maharashtra**, the Hon'ble Apex Court has considered the decision of the Hon'ble High Court of Calcutta in **AIR 1951**

Calcutta 305, Ramanlal Rathi v. The State wherein it is observed : "***If at the end of a criminal prosecution the evidence leaves the Court in doubt as to the guilt of the accused, the latter is entitled to a verdict of not guilty. A retrial may be ordered when the original trial has not been satisfactory for particular reasons, for example, if evidence had been wrongly rejected which should have been admitted, or admitted when it should have been rejected, or the Court had refused to hear certain witness who should have been heard***".

20. In this case, the accused faced trial and he was found guilty by my learned Predecessor-in-Office, and in appeal, he was acquitted. After acquitting the accused, the Hon'ble High Court found that the entire investigation was a farce and there existed manipulation from the inception of the registration of the crime. The accused has been acquitted on the ground of lack of evidence which is a direct result of the tainted and unfair investigation. There is inordinate delay in lodging the FIR. The material witnesses were not questioned. Statement under Sec.27 has not been recorded in the language in which it was given. Placing each and every shortcomings of the prosecution, the Hon'ble High Court ordered re-investigation and directed to constitute a special team lead by a Superior Officer not below the rank of Dy.S.P. and directed the Police

Chief for follow-up action. Departmental inquiry was also ordered to be conducted against the erring officer.

21. After the re-investigation, the special team filed the final report rectifying the shortcomings in the earlier final report. In the second final report also, the same person is the accused. Therefore, I am of the view that the bar under Sec.300 of Cr.P.C. will not be applied in this case. Therefore, this point is found against the petitioner/accused and in favour of the prosecution.

22. In the result,

The prayer of discharge is declined and the petition is dismissed.

(Dictated to the Confidential Assistant transcribed and typed by her, corrected by me and pronounced in open court on this the 7th day of January, 2026).

Sd/-

V.G.Sreedevi

Additional Sessions Judge-I

Appendix:Nil

Id/-

Additional Sessions Judge-I