

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-1, MAVELIKARA  
Present :- Sri. Japhinraj. J.B, Judicial First Class Magistrate – I  
Dated this the 21<sup>st</sup> day of December, 2024.

**CMP 2955/2024 in ST 535/2020**

Petitioner : Nalanda Builders, Rep. by its Authorized signatory Ghosh Thambi, S/o. Thambi, Ghosh Bhavan, Kannamangalam North, Chettikulangara. PO, Mavelikara.  
(By Adv. Stephen J Daniel)

Respondent : Suprabhatham Powers Tools, Mandiram Mukku, Thodiyoor North PO, Rep. By Proprietor Prasad. D, Suprabhatham, Kadakkal Market, Vallikunnam, Mavelikara.

The petition having been heard on 21.12.2024, the court on the same day, passed the following.

**ORDER**

This is a petition filed u/s 311 of Cr.PC. for recalling PW1.

2. **Petition averments, in brief, are as follows:** The petitioner is the accused in the above case filed under Section 138 of the NI Act. The case was posted on 02/08/2024 for examination of the complaint. However, on that day, the counsel for the petitioner could not appear before the court as he had to appear in Kottayam for a personal matter. The petitioner was represented by a junior counsel on that day and sought adjournment. However, since costs paid on an earlier occasion were not paid, the court proceeded with taking evidence and posted the case for examination under Section 313(1)(b) of CrPC. Cross-examination of the complainant is highly necessary for the just and proper adjudication of the matter and for the ends of justice. Hence, the petitioner seeks to recall and re-examine the complainant.

3. **Complainant filed objection raising the following contentions:** On 26/07/2024, the complainant was examined, and the case was adjourned

with a direction to pay costs of Rs. 750/- to the complainant. Thereafter, on 02/08/2024, the counsel for the accused did not appear, and the costs were not paid. Hence, the case was posted for Section 313(1)(b) of CrPC. Subsequently, the case was posted on 09/08/2024 and 29/08/2024. Since the accused did not appear, a warrant was issued against him. The petition is not filed with bona fides and hence ought to be dismissed.

4. Heard the learned counsel for the petitioner, and an opportunity of hearing was granted to the counsel for the respondent.

5. **The following points arises for consideration:**

1. *Whether the petition filed u/s 311 of Cr.P.C. has to be allowed?*

2. *Order and costs?*

6. **Point No.1:-** The petition is filed to recall the complainant and provide the accused an opportunity to cross-examine the complainant. On perusal of the proceeding sheet, it is evident that the complainant appeared before the court multiple times for evidence. On 23/02/2024, the complainant was present before the court and was examined in chief. Thereafter, as the counsel for the petitioner was not ready, the case was adjourned on costs. The complainant was again present on 14/06/2024, where the petitioner again sought adjournment. On 18/06/2024, the complainant was again present, and the petitioner once again sought adjournment. The complainant appeared on 27/06/2024, and the counsel for the petitioner was not ready. Hence, the case was adjourned with a direction to pay costs of Rs. 750. On the next posting, i.e., on 26/07/2024, the complainant was present, but the counsel for the petitioner was not ready to examine the complainant, nor ready to pay costs ordered on previous occasions. Hence, the court recorded 'no cross' and proceeded with the case. From the proceedings to date in this case, it is evident that the accused was granted more than enough opportunity to test the evidence of the complainant, and the complainant was put to much

difficulty in appearing before this court at every posting. Having said so, the nature of the petition is one in which this court is expected to show leniency towards the receipt of all evidence so that the truth is brought before the court. Keeping this principle in mind, the conclusion that can be reached is that the petitioner may be granted another opportunity, but subject to compensating the expenses suffered by the complainant.

7. **Point No.2:** In the light of my observations and findings on point No. 1, I find that the petition has to be allowed on the condition of payment of costs of Rs. 1500/- to the complainant within 15 days. Pay costs and file memo. In the event of costs not being paid within the time ordered, the petition shall stand dismissed.

Dated this the 21<sup>st</sup> day of December, 2024.

Judicial First Class Magistrate-I, Mavelikara.