

IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE-II, MAVELIKARA**Present : Anandhu.J.B, Judicial First Class Magistrate.****Monday, February 16, 2026****CMP 01/2026 IN CC 126/2024**

Petitioner/Accused : Mohammed Haneefa
Respondent/Complainant : Aaliya Fathima
Section of law : u/s 348 of BNSS

This case coming on for hearing before me on 05.02.2026 and on this day the court passed the following:

ORDER

1. Petition is filed by the accused in the case to recall the complainant, who was examined as PW1.

2. **The averments of the petition are as follows.** The case is registered for the offence punishable under Section 138 of Negotiable Instruments Act. The case is posted for further hearing. The counsel appointed by the accused has relinquished the vakkalath. New counsel has been appointed in the case for the accused. From the factual situation of the case and available materials on records, an effective cross-examination is absolutely essential in this case. If an effective cross-examination is not done, it would adversely affect the defense case and would end in miscarriage of justice. Recalling PW1 for further cross-examination is absolutely essential for the just decision of the case. The petition seeks to recall PW1 for the above reasons. Hence the petition.

3. **The contentions of the respondent are as follows:** The petition is not maintainable either in facts or in law. All the averments are denied by the respondents. The petition is highly belated, illegal, and vexatious. The evidence of the complaint was over by one year back. The final hearing of the case is completed and it is posted for judgment. The petition is filed on that stage. The PW1 was cross examined by the counsel for the accused twice. The petition under Section 311 of CrPC cannot be used as per the whims and fancies of the persons. The petition is totally silent under what point the earlier counsel did not cross examine the witness. The petition to recall the witness cannot be used to cross-examine the witness afresh. The petition cannot be used to fill up the lacuna of their case. The petition is without any merits and liable to be dismissed.

4. The question to be considered is whether the accused shall be allowed to recall PW1 for the reasons stated above.

5. Heard both learned counsels.

6. The petitioner is the accused in the case. The petition is filed to recall the complainant who was examined as PW1. According to the petitioner, the accused has changed his counsel and the previous counsel has failed to put certain questions important for the just decision of the case. It is alleged that recalling of PW1 is essential for the proper decision of the case and to establish the defence case. According to the petitioner, if the petition is not allowed, it would cause miscarriage of justice to the accused. The respondent, on the other hand, would contend that the petition is

highly belated and the reason stated in the petition is not sufficient to recall PW1.

7. The cases preferred by the respondent herein alleging offence punishable under Section 138 of the Negotiable Instruments Act. The evidence of the complainant was commenced on 28.11.2024, when the complainant was examined as PW1. Thereafter, on closing of the evidence of the complainant, the accused was examined under Section 313 of CrPC and thereafter the case was posted for defence evidence. On 16.01.2025, PW1 was cross-examined by the accused. Thereafter, on 22.09.2025, PW1 was recalled by this court as per the order in CMP No. 1071 of 2025. On that day, the complainant who was examined as PW1 was further examined in chief and also cross-examined. After the closure of the evidence, the case was finally heard and now the case is posted for the judgment. This petition is filed at this juncture.

8. The reason stated by the petitioner for recalling PW1 is that the accused has changed his lawyer and now entrusted another lawyer. The petitioner would allege that the previous counsel has not properly cross-examined PW1 and certain important questions were not put to her. According to the petitioner, a proper cross-examination is necessary for the just decision of the case. At the outset, the petitioner is silent as to what questions were not put to PW1 during her previous two cross-examinations. The only reason put forward by the petitioner is the change of counsel. Apart from that, the petition is silent as to the necessity of recalling PW1 for

further cross-examination. It is settled in law that mere change of lawyer is not a ground to recall a witness and further cross-examine.

9. In **AG v. Shiv Kumar Yadav and Another [2015 KHC 6560]**, Hon'ble Apex Court, in a similar factual scenario, where the scope of recalling the prosecution witnesses on the ground that the accused has changed his counsel, was assessed, and denying the relief to recall, has held as follows;

15. The above observations cannot be read as laying down any inflexible rule to routinely permit a recall on the ground that cross - examination was not proper for reasons attributable to a counsel. While advancement of justice remains the prime object of law, it cannot be understood that recall can be allowed for the asking or reasons related to mere convenience. It has normally to be presumed that the counsel conducting a case is competent particularly when a counsel is appointed by choice of a litigant. Taken to its logical end, the principle that a retrial must follow on every change of a counsel, can have serious consequences on conduct of trials and the criminal justice system. Witnesses cannot be expected to face the hardship of appearing in Court repeatedly, particularly in sensitive cases such as the present one. It can result in undue hardship for victims, especially so, of heinous crimes, if they are required to repeatedly appear in Court to face cross - examination.

10. Similarly, Hon'ble Apex Court, considering a similar factual scenario, in **State of Haryana v. Ram Mehar & others [2016 KHC 6560]** has held as follows;

Recalling of witnesses as envisaged under the said statutory provision on the grounds that accused persons are in custody, the prosecution was allowed to recall some of its witnesses earlier, the counsel was ill and magnanimity commands fairness should be shown, we are inclined to think, are not acceptable in the obtaining factual matrix. The decisions which have used the words that the Court should be magnanimous, needless to give special emphasis, did not mean to convey individual generosity or magnanimity which is founded on any kind of fanciful notion. It has to be applied on the basis of judicially established and accepted principles. The approach may be liberal but that does not necessarily mean "the liberal approach" shall be the rule and all other parameters shall become exceptions. Recall of some witnesses by the prosecution at one point of time, can never be ground to entertain a petition by the defence though no acceptable ground is made out. It is not an arithmetical distribution. This kind of reasoning can be dangerous. In the case at hand, the prosecution had examined all the witnesses. The statements of all the accused persons, that is 148 in number, had been recorded under S.313 CrPC. The defence had examined 15 witnesses. The foundation for recall, as is evincible

from the applications filed, does not even remotely make out a case that such recalling is necessary for just decision of the case or to arrive at the truth. The singular ground which prominently comes to surface is that the earlier counsel who was engaged by the defence had not put some questions and failed to put some questions and give certain suggestions. It has come on record that number of lawyers were engaged by the defence. The accused persons had engaged counsel of their choice. In such a situation recalling of witnesses indubitably cannot form the foundation. If it is accepted as a ground, there would be possibility of a retrial. There may be an occasion when such a ground may weigh with the Court, but definitely the instant case does not arouse the judicial conscience within the established norms of S.311 CrPC for exercise of such jurisdiction. It is noticeable that the High Court has been persuaded by the submission that recalling of witnesses and their cross-examination would not take much time and that apart, the cross - examination could be restricted to certain aspects. In this regard, we are obliged to observe that the High Court has failed to appreciate that the witnesses have been sought to be recalled for further cross - examination to elicit certain facts for establishing certain discrepancies; and also to be given certain suggestions. We are disposed to think that this kind of plea in a

case of this nature and at this stage could not have been allowed to be entertained.

10. Applying the above dictums of the Hon'ble Apex Court in the fact of his petition, it is to be concluded that the mere changing of a lawyer is not a ground to recall the main witness in the case. As stated above, the petition is silent about any other valid grounds for allowing him to recall PW1 and further cross-examine. The reason stated in the petition is not sufficient to recall the complainant, who was examined as PW1. Hence the petition is without any merits and only to be dismissed. Hence, I do so.

In the result, CMP is dismissed.

Typed by me in my laptop and pronounced in the open court on this the 16th February, 2025.

Judicial First Class Magistrate-II,
Mavelikara.