

IN THE COURT OF THE FAST TRACK SPECIAL JUDGE, HARIPAD

Present:- Hareesh G., Special Judge

Tuesday, the 24th day of February, 2026

Crl.M.P. No.03/2026 in S.C. No.440/2024

(Crime No.1172/2014 of Vallikunnam Police Station)

Petitioners/accused : 1. Savithri, aged 38/14, W/o Anukumar, Sreekrishnalayam, Elippakkulam Muri, Kattanam Village.

2. Anukumar, aged 44/14, S/o Kochunanu, Sreekrishnalayam, Elippakkulam Muri, Kattanam Village.

3. Suma, aged 27/14, W/o Jayakumar, Ajaya Bhavanam, Elippakkulam Muri, Kattanam Village.

(By Adv. M.M. Anas Ali)

Cr.Petitioner/Complainant : State of Kerala - represented by S.I. of Police, Vallikunnam Police Station.
(by Special Public Prosecutor, Haripad)

Application : Re-opening of prosecution evidence u/S.348 Bharatiya Nyaya Suraksha Sanhita, 2023.

Order : Dismissed.

This Crl.M.P having been finally heard on 19/02/2026 and the Court on this day passed the following:-

ORDER

- (1) This is an application submitted by the counsel for the accused u/S.348 of Bharatiya Nyaya Suraksha Sanhita, 2023 with a prayer to recall PW1, PW6 and CW8.
- (2) The facts stated in the application are as hereunder: the case is posted for final hearing; the erstwhile counsel appearing for the accused has relinquished the Vakalath and the present counsel has filed fresh engagement for the accused. The case is registered against the accused alleging their commission of the offences punishable u/Ss.323, 341 r/w S.34 of Indian Penal Code and S.23 of the Juvenile Justice (Care and Protection of Children) Act, 2000.
- (3) On 28/04/2025, PW1 was examined, but on that day, the counsel for the accused was absent; therefore, the witness was not cross-examined. On 18/06/2025, from the side of the prosecution, a witness was examined as PW3, but then the counsel for the accused put only one question to the witness in the cross-examination. In this case, the investigating officer (CW8) was not examined. It is highly necessary to elicit certain facts from PWs 1 & 3. Some material aspects are to be confronted with the said witnesses. There is no laches on the part of the accused in examining the prosecution

witnesses. Therefore, for the just decision of the case, PW1, PW3, PW6 and CW8 are to be recalled. Hence, the application.

- (4) Heard the counsel for the petitioners and the learned Special Public Prosecutor.
- (5) The gist of the prosecution case is that at 08.00 pm on 25/11/2014, the accused attacked CW1 with iron bar and knife and the defacto complainant sustained injury on her right index finger. In the said incident, the accused also attacked CW2, who was then a minor and thereby committed the offences punishable u/Ss.323, 341 r/W S.34 of Indian Penal Code and S.23 of the Juvenile Justice (Care and Protection of Children) Act, 2000
- (6) In this case, altogether six witnesses were examined from the side of the prosecution. PW1 is the doctor who has examined the injured. PW2 is the defacto complainant in this case. PW3 is the daughter of PW2. PW4 is the investigating officer (CW8), who laid the final report after completing the investigation. PW5 is an independence witness examined to prove the occurrence. PW6 is the Inspector SHO of

Vallikunnam Police Station; he recorded the FIS and registered the case.

- (7) Here, it is found that this is a second application filed on behalf of the accused to recall the witnesses. Though it is stated in the application that the investigating officer was not examined before the court, it is found that CW8 was examined before the court as PW4 and he was cross-examined by the then counsel for the accused. In this case, the person who registered the case examined before the court as PW6. He was also cross-examined by the then counsel. PW2 & PW3 were also cross-examined by the then counsel for the accused. PW1 was the doctor, who was examined before the court on 28/04/2025 and on that day, her examination was adjourned as the defence counsel was absent. Thereafter, the said witness appeared before the court on 23/06/2025 for cross-examination and on that day, the counsel appearing before the court submitted that there was no cross-examination.
- (8) Here, the proceedings of the case would show that the accused had enough opportunity to conduct the case. Now the application is filed on the ground that the case could not be conducted effectively. In the application, it is not stated

what are the materials particulars omitted to elicited out by the erstwhile counsel from the witnesses. It is to be noted that the laches and negligence on the part of the counsel appearing for the accused cannot be a ground for recalling the prosecution witnesses. The prosecution witnesses cannot be summoned to the court time and again as per the whims and fancies of the accused.

- (9) Here, the accused have no case that they were deprived of their opportunity to cross-examine the witnesses. Change of counsel is not a ground to recall the prosecution witnesses. From the conduct of the accused, it is found that they are thoroughly negligent in conducting the case.
- (10) In this case, the application contained only bald statements, which is not sufficient enough to invoke the Court to reopen the evidence and recall a witness. The application does not show sufficient reason for reopening the prosecution evidence. Hence, it is found that the application is devoid of merit and is liable to dismissed.

In the result, **the application is dismissed.**

(Dictated to the Confidential Asst. typed by her directly on the computer corrected and pronounced by me in open court on this the 24th day of February, 2026).

Haripad.

Sd/-
Special Judge,
Fast Track Special Court,

-//True Copy//-

Special Judge,
Fast Track Special Court, Haripad.