

IN THE COURT OF THE FAST TRACK SPECIAL JUDGE, HARIPAD

Present: Hareesh G., Special Judge

Tuesday, the 10th day of February, 2025

C.M.P.No.1/2026 IN S.C. No.491/2024

(Crime No.834/2023 of Kayamkulam Police Station)

Petitioner/Accused : Adv.Sri. Krishnakumar V. for and on behalf of accused No.2 - Rajesh, aged 39/23, S/o Rajan, Kanjirathinal Veedu, Thazhava North Muri, Thazhava Village, Kollam District.

Cr. Petitioner/Complainant : State of Kerala - represented by S.I. of Police, Kayamkulam Station.

(By Special Public Prosecutor, Haripad)

Proceedings : Application u/S.348 of Bharatiya Nagarik Suraksha Sanhita, 2023.

Order : ***Dismissed.***

This petition having been finally heard on 09/02/2026 and the Court on this day passed the following:-

ORDER

(1) This is an application filed u/S.348 of Bharatiya Nagarik Suraksha Sanhita, 2023.

(2) The application is put in by the counsel for the 2nd accused in the above numbered case. The facts stated in the application are as

hereunder: The case has been registered against the accused persons alleging commission of the offences punishable u/Ss.363, 328 r/W S.34 of the IPC and Sections 77 & 84 of the Juvenile Justice (Care and Protection of Children) Act, 2015. As per the application, there are omissions in the testimony of PW1, therefore, an effective cross-examination of the witness is necessary. If an effective cross-examination is not done, it would adversely affect the defence case and that would lead to miscarriage of justice. Therefore, PW1 is to be recalled for further cross-examination. Hence, the application.

- (3) From the side of the prosecution, no objection has been filed against the application.
- (4) Heard the learned petitioner counsel and the learned Special Public Prosecutor.
- (5) The prosecution case against the accused person is that at 01.45 pm on 11/08/2023, kidnapped PW1, who was a minor at that time in the vehicle bearing No.KL-65-F-1160 and took her to the ground belongs to the Gokulam Group in Ward 36 of Kayamkulam Municipality and then forcibly made PW1 to drink liquor at 03.15 pm on the said day. Thus, the accused have committed the offences.

- (6) In this case, PW1 was examined before the Court on 04/12/2025. Thereafter, altogether 15 witnesses were examined and now the case is posted for the examining of the investigating officer. Here, the application is filed with a bald statement that for the proper adjudication of the case, PW1 is to be recalled for subjecting her to an effective cross-examination. It is to be noted that the petitioner counsel has no case that he has not got opportunity to cross-examine PW1 effectively. Sufficient opportunity was given to the accused for cross-examining PW1. The petitioner counsel did not aver anything with respect to his inability to cross-examine PW1 effectively when she was in the witness box. Absolutely no reason was stated by the petitioner/counsel for his non-cross-examination of PW1 to elicit whatever facts he needed.
- (7) On going through the petition, it is found that it does not contain material particulars to recall PW1. It is to be borne in mind that a witness cannot be summoned to the Court as a matter of course. Here, as mentioned earlier, petitioner counsel has no case that he was deprived of his opportunity to cross-examine PW1. It seems from the petition that the same is filed as an experimental method. No sufficient and convincing reason was stated in the application for recalling PW1. Power to recall witness must be

exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. Therefore, it is found that PW1 cannot be recalled for further cross-examination as the petitioner/counsel failed to show sufficient reason for doing so. There is no merit in the application.

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 10th day of February, 2026.

Sd/-
**Special Judge,
Fast Track Special Court, Haripad.**

-//True Copy//-

Special Judge,
Fast Track Special Court, Haripad.