

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE, NO-II,
ALUVA**

Present: Smt. Anju Cletus, Judicial First Class Magistrate

Dated this the 02th day of February, 2026

CMP.No. 1849/2025 IN C.C 331/2015

Complainant/Petitioner : State of Kerala represented by Sub Inspector of
Police, Binanipuram P.S. (Crime No.339/2007)

(By APP. JFCM-II, Aluva)

Respondent/Accused : Davis, Aged 47/07, S/o George, Srambikkal House,
Edayar Kara, Kadungalloor Village.

(By Adv. Asokan K.V & Others)

Offence : U/s. 24 of Charitable and Religious Trust Act , 1920

ORDER

Petition filed by the accused under Section 311 of Cr.PC (348 BNSS).

2. Petition averments in brief are as follows. The accused had initially engaged Advocate B.A Aloor for conducting his case. However due to the physical ailments of the counsel he could not properly cross examine all witnesses who were examined from the side of the prosecution before the court. The prosecution witnesses are influential persons. Hence, all witnesses from PW1 to PW14 shall be recalled before the court for the accused to cross-examine them. The accused has already been examined under Section 313 of Cr.P.C on 14.08.2025.

3. The Assistant Public Prosecutor filed objection contending as follows. The accused seeks to reopen the evidence and recall all prosecution witnesses on the ground that his former counsel did not conduct cross-examination and that new

counsel has now been engaged. The change of counsel or omission by the earlier counsel is not a valid ground to recall witnesses. Once an opportunity for cross-examination was given, it cannot be reopened to fill up the lacunae. The Hon'ble Supreme Court in *Neha Begum v. State of Assam* by Order dated 02.09.2024 has held that Section 311 of Cr.P.C cannot be used to cure lapses of previous counsel or to fill lacuna in defence. Similar view was taken in *State (NCT of Delhi) v. Shiv Kumar Yadav (2016 2 SCC 402)* and *Rajaram Prasad Yadav v. State of Bihar and Anr. (2013 14 SCC 461)*. Hence, the present petition is liable to be dismissed.

4. Heard both sides.

5. This case was taken on files of the court in the year 2015. The case of the prosecution is that the accused without obtaining lawful sanctions from the authorities was running a geriatric home at Edayar from 1997 to 2007 in a temporary shed and thereby committed offence under s.24 of the Orphanage and other Charitable Homes (Supervision and Controls Act), 1960. Altogether 14 witnesses have been cited from the side of the prosecution in the final report, out of which 6 witnesses were examined by the prosecution before the court. CW2 and CW12 are no more. Examination of CW4, CW6 to CW8 and CW10 was given up by the prosecution. Steps under s.82 of Cr.P.C stands executed against CW13. The presence of CW13 could not be procured by the police

inspite of issuing coercive steps repeatedly and CW13 is reportedly no more. After closing the prosecution evidence, the accused was examined under s.313 of Cr.P.C. When the case was posted for defence evidence, the present petition was filed.

6. On verification of prosecution records, it is seen that out of the 6 prosecution witnesses who were examined before the court, 5 witnesses were cross-examined by the counsel for the accused. "No cross" has been recorded only for PW4(CW9). All other witnesses have been cross examined. It appears from the records that the accused was granted opportunities to cross examine every witness who was examined from the side of the prosecution.

7. The accused has not stated specific reasons for recalling each and every witness before the court at this stage. As rightly pointed out by the prosecution, recalling of witnesses cannot be claimed by the accused as of right without stating any purpose after he has availed opportunities for cross examination. The Hon'ble Supreme Court in *Neha Begum and Others v. the State of Assam and Another* 2024 6 Supreme 740 has observed "*other than a vague assertion that erstwhile lawyer engaged by the petitioners did not conduct proper cross-examination of the witnesses, no such specific ground was alluded on behalf of the accused persons, which could be considered to be a valid ground for the trial Court to invoke Power under Section 311 of Cr.P.C.*

Apparently, thus the prayer made by the petitioners in the application to recall and re-examine the witnesses was nothing but an attempt to fill in the lacuna. There is nothing on record to suggest that non-summoning of witnesses for further cross-examination could cause grave prejudice to the accused and that such a course of action was essential for a just decision of the case." Consequently, the prayer for recalling and reexamination of witnesses was disallowed.

8. In such circumstances, this court is not inclined to recall the witnesses except PW4 who were already cross examined by the accused. The case proceedings dated 30.12.2021 reads as follows. " Accused present. CW9 examined as PW4. Repeat summons to CW10 to CW12." The order dated 30.12.2021 do not reflect that the accused was represented by a counsel on that day. CW9 was examined as PW4 on that day and "no cross" has been recorded for the accused. So, this court considers that the accused shall be given one more opportunity to cross examine PW4. This court is not inclined to recall any other witnesses for the purpose of cross examination.

In the result, this petition is allowed in part as follows.

1. The prayer to recall CW9(PW4) for the purpose of cross examination is allowed subject to payment of cost of Rs.300/- to PW4 by the accused on appearance of the witness.

2. The prayer to recall all other witnesses for cross examination is dismissed.

(Pronounced by me in open Court on this the 02nd day of February, 2026)

Sd/-
**Judicial First Class Magistrate-II,
Aluva**

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**Judicial First Class Magistrate-II,
Aluva**