

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS-I,
PERUMBAVOOR**

Present:Smt.Nimisha Arun, Judicial Magistrate of First Class-I

Saturday the 30th day of May, 2026/ 9th Jyaishta 1948

CMP No.01/26 IN ST No.4624/16

Petitioner/Accused : Muhammed Rafeek, aged 40, S/o Meeran,
Vadakkepadath Veedu, Chalisserry, Malappuram.

(By Adv. Sanjeej E.S)

Respondent/Complainant: Stalin Joseph, aged 41, S/o Joseph, Enjackkal House,
Nedungapra, Payyal Kara, Asamannoor.

(By Adv.V.G.Jawahar)

This petition is coming today for a hearing, the court passed the following;

ORDER

This petition is filed by the petitioner/accused u/sec.311 of the Criminal Procedure Code 1973 for recalling/re-examining the witness (PW1).

2. The petitioner's case in brief is as follows:- The above case is filed u/sec.138 of the Negotiable Instruments Act. The petitioner/accused herein is innocent and not involved in the alleged offence. The above case was posted for evidence on 27.01.2026. On that day the complainant was examined as PW1. Two documents from the side of the petitioner/accused were marked as Ext.D1 and D2. According to the petitioner/accused there were some more relevant questions regarding the

execution and issuance of the cheque to be asked. Thereafter the case was adjourned to 25.02.2026. The petitioner/accused was under the belief that the matter was adjourned for further cross-examination. However on going through the proceedings it was seen that “Accused present. PW1 cross examined. Ext.D1 and D2 marked. Prays for further complainant evidence. Hence posted on 25.02.2026.”. Since there was no sitting on that day, the case was posted to 28.03.2026 and based on the submission made by the complainant, the evidence was closed. It is submitted that in fact the petitioner/accused prays for further cross-examination. Some important documents pertaining to the case needed to be produced. The complainant has filed several other similar cases against many other persons. Hence the details of all such cases also needed to be produced. Also, the complainant had obtained a judgment in his favour in another 138 case. In the said judgment the details of the property transaction also has been mentioned as deposed by the complainant. The questions regarding the pendency of all other cases were put to the complainant during examination. The complainant had admitted that the transaction is only for the amount in the cheque. However there is another version which he had made through a

sworn affidavit. All those documents have to be produced and marked. Therefore, the petitioner sought to recall PW1 and to re-examine him.

3. The respondent/complainant filed an objection as follows:-

The above petition is not maintainable either in law or on facts. It is again submitted that the documents sought to be produced by the petitioner/accused have no connection with this case. Hence the petition to reopen the evidence is without any legal basis. Moreover, the court has already given several opportunities to the accused to adduce evidence and cross-examination. The petitioner/accused has not stated specifically the subject of further cross-examination in the petition. It is again submitted that the documents marked as D1 and D2 have no relation with this case. According to the respondent/ complainant the accused is deliberately prolonging the proceedings without any bonafide reason. Hence prays for the dismissal of the petition.

4. Heard the learned counsel on both sides.

5. Perused the petition, objection and the case records. It is found that the petitioner got sufficient opportunity to cross examine PW1 on every point. The petitioner is well aware of the adjournment and its purpose. Moreover, the matter sought to be adduced in evidence further is not a new one. Thereby the reasons alleged in the petition for reopening the examination of PW1 is found not genuine. However in the interest of justice, this petition is allowed for giving opportunity to the accused to adduce further evidence . However the negligence/ latches on the part of the petitioner could not be neglected. Hence the petition is allowed on costs of Rs.1000/- to PW1. Pay cost and file a memo.

In the result, this petition is allowed.

Pronounced by me in Open Court this the 30th day of May, 2026.

sd/-

Judicial Magistrate of 1st Class-I
Perumbavoor