

IN THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS, ANGAMALY

Present: Smt. Samyuktha M.K., Judicial First Class Magistrate

Dated, this the 4th day of February, 2025

CMP No. 1762/2025 in CC No. 591/2018

Petitioner/Accused no.3 : Sharafudeen, S/o. Muhammed,
Puliyachal House, Attamala kara,
Vellamala P.O, Vellarmala village,
Wayanad District.

(By Adv. K. Sasikumar, Adv. P.C. Chitra &
Adv. Ann Mary Tomy)

Respondent/Complainant : State of Kerala rep. by the Inspector of Police,
Nedumbassery Police Station in Cr. No.
1079/2014 of Nedumbassery Police Station.

(By Smt. Divyadas, Asst. Public Prosecutor,
Court of JFCM, Angamaly).

Petition : U/s. 239 of The Code of Criminal Procedure,
1973.

ORDER

This is a petition filed by the petitioner/accused no.3, in CC 591/2018 on the file of this court, u/s. 239 of The Code of Criminal Procedure, 1973, seeking discharge.

2. Petition averments are as follows:

The petitioner is the accused no.3 in the above numbered case alleging offences punishable under Sections 419, 468, 471 of IPC and Section 12(1)(b)(d) of Indian Passport Act, 1967. The allegation against the petitioner/3rd accused is that he along with other accused 2 and 4 had conspired together for arranging Visa to Abdul Gafoor for going Malaysia. The accused nos.2 and 4 had assured Abdul Gafoor that

they will arrange Visa to him for going Malaysia and thereby received his passport G3160901 issued by the Regional Passport Office, Kozhikose. The allegation against the petitioner/accused no.3 is that in 2011 he introduced Abdul Gafoor to Abdul Wahab, the accused no.4. The accused no.4 had informed Abdul Gafoor that he will arrange Visa for going Malaysia. Thereafter, Abdul Gafoor entrusted his passport bearing No.G316901 to Abdul Wahab, the accused no.4. The accused no.4 had neither arranged Visa or returned the passport. In which Abdul Gafoor lodged a complaint at Meppadi police station and an FIR was registered and thereafter a new passport was issued to Abdul Gafoor. The petitioner/accused no.3 is totally innocent of the charges laid by the prosecution. The petitioner/accused no.3 had not introduced Abdul Gafoor to the accused no.4 during the year 2011. The petitioner/accused no.3 is a passport holder bearing No.E8958621 issued from Regional Passport Office, Kozhikode on 28.04.2004. The petitioner/accused no.3 went to UAE in the year 2008 and he was there till 2014 and was working as a driver in UAE since 2008. As per the state of CW10 Abdul Gafoor, CW11 Najma, CW12 Moideen, Abdul Gafoor the passport holder bearing no.G3161901 came to his native place from Gulf in 2011. The petitioner/accused no.3 who is the neighbour of Abdul Gafoor introduced Abdul Gafoor to Abdul Wahab, the accused no.4. The petitioner/accused no.3 has no complicity in the above alleged offences and charges laid against him by the Inspector of Nedumbassery Police Station. The petitioner/accused no.3 has not committed the offences u/s. 419, 468, 471 of IPC and Section 12(1)(b)(d) of Indian Passport Act. The 419, 468, 471 of IPC and Section 12(1)(b)(d) of Indian Passport Act, 1967 is falsely implicated and framed by the Inspector of Police, Nedumbassery Police Station. The charge sheet laid against petitioner/accused no.3 is not sustainable and maintainable either on law or facts of the case. The investigating officer utterly failed to bring substantive evidence connecting the petitioner/accused no.3 with the alleged offences mentioned in the charge sheet. Hence, seeks to discharge the petitioner/accused no.3 in the case.

3. Objection was filed by the Learned Asst. Public Prosecutor as follows: The above petition is not maintainable either on law or on facts. A bare reading of the prosecution records would go to show that, there are prima facie substances available with the prosecution records to proceed against the petitioner/3rd accused and frame charge against him. The statement of defacto complainant and other witnesses cited in the prosecution witness list would establish with clarity that, all prosecution allegations are backed with sufficient grounds. Thus a cursory analysis would demonstrate that, the accused is not entitled to discharge, as sought in the petition. Hence, seeks to dismiss the petition filed by the petitioner/accused no.3.

4. Heard both sides. Perused the records.

5. CC 591/2018 is a case, based on the final report filed by the Sub Inspector of Police, Nedumbassery Police Station against accused alleging offences under Sections 419, 468, 471, 420, 120B r/w 34 of IPC and Section 12(1)(b)(d) of Indian Passport Act, 1967. Case of the prosecution is that, all the accused, in furtherance of their common intention and by committing criminal conspiracy, the third accused as per the influence of accused no.4, made accused no.1 believe that, they would arrange visa to Malaysia and accused no.4 obtained the passport bearing no. G 3160901 issued from Kozhikode Passport office to Abdul Gafoor S/o. Moitheen, Vazhappurath Kandyil House, Vellarmala P.O., Wayanad District and affixed a photo of accused no.1 in the said passport and thereby accused no.2 to 4 created a forged passport for the purpose of cheating and gave to accused no.1 and thereby committed forgery for the purpose of cheating and accused no.1 used the said forged passport as genuine and by committing personation, tried to travel in Flight no. GW 0556 for going to Doha and was apprehended from Nedumbassery Airport on 26.06.2014 at 19.55 hours and thereby knowingly altered the entries in the passport bearing no. G 3160901, issued to another person Abdul Gafoor S/o.

Moitheen, Vazhappurath Kandyil House, Vellarmala P.O., Wayanad District and hence, all the accused had committed the offences as alleged.

6. On filing of final report after investigation, final report was taken on file as CC 739/2020 and cognizance was taken for offences punishable u/ss. 419, 468, 471, 420, 120B r/w 34 of IPC and Section 12(1)(b)(d) of Indian Passport Act, 1967, and summons was issued to accused. On 03.09.2025, the petitioner/third accused filed this discharge petition. Statement of 20 witnesses recorded u/s. 161 Cr.P.C.

7. The allegation raised against Accused No.3 / the petitioner herein is that, while functioning as a police officer, he had allegedly assisted the 1st accused in obtaining a passport in the name of another person by conducting police verification of the documents submitted by the 1st accused. Thus, the gravamen of the accusation against Accused No.3 is not that he actively fabricated or forged any document, but that he had failed to properly discharge his official duty of verifying the documents, which allegedly resulted in the issuance of a passport bearing No.G3160901 .

8. From the nature of the allegation itself, it is evident that the act complained of is directly connected with the discharge of official duties of Accused No.3 as a public servant. The allegation, at its highest, amounts to a willful omission or negligence in the performance of his official function. Therefore, prosecution of Accused No.3 without obtaining prior sanction from the competent Government authority is expressly barred under Section 197 of the Code of Criminal Procedure.

9. A perusal of the records would clearly reveal that no sanction as contemplated under Section 197 CrPC has been obtained for prosecuting accused No.3. In the absence of such mandatory sanction, the very institution of prosecution against him is vitiated in law, and the court is precluded from taking cognizance of

the alleged offences insofar as Accused No.3 is concerned.

10. Further, there is no material on record to indicate that Accused No.3 had acted beyond the scope of his official duty or that he had entered into any criminal conspiracy with the other accused persons. No overt act, mens rea, or material circumstance is attributed to Accused No.3 to suggest that he had knowingly or intentionally facilitated the commission of the alleged offences. The prosecution has also failed to allege that Accused No.3 derived any personal benefit or had any prior meeting of minds with the co-accused.

11. In the absence of sanction, and in the absence of any allegation or material suggesting active participation or criminal intent, even if accused No.3 is compelled to face the full-fledged trial, no conviction can legally be sustained against him for the alleged acts. Continuing the proceedings against accused No.3 would therefore amount to an abuse of the process of court.

12. Hence, this court finds that the point regarding the necessity of sanction under Section 197 CrPC is answered in favour of accused No.3 / petitioner herein. Consequently, accused No.3 / petitioner herein is entitled to be discharged from the above proceedings, and is accordingly discharged.

(Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court, this the 4th day of January, 2026)

Sd/-

Judicial First Class Magistrate
Angamaly.

/// True copy ///

Judicial First Class Magistrate
Angamaly.