

**IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE, MATTANCHERRY**

**Present: Sri. M.K. BALRAM, Judicial First Class Magistrate**

Dated this the 02<sup>nd</sup> day of September, 2025

**C.M.P 1294/2025 in CC No. 212/2022**

Petitioner/Complainant : Jayakar Mallya, S/o.Late  
Prabhakara Mallya, 8/1625A,  
A.K.Road, Mattancherry,  
Koovapadam, Kochi-682002  
(By Adv.S.Vaidyanathan)

Respondent/accused : Prema Balachandran,  
W/o.K.H.Balachandra Shenoy,  
aged 54 years, 38/3614, 1<sup>st</sup> Floor,  
Kalarikkal House, Ponoth Road,  
Snehasena, Kaloor,  
Ernakulam-682017  
(By Adv. Mariamma Joseph)

Offence : 138 of N.I.Act

Order : Allowed

This petition having heard on 02.09.2025, the court on the same day passed the following.

**ORDER**

This application is filed to reopen the complainant's evidence u/s.348 of Bharatiya Nagarik Suraksha Sanhita, 2023.

2. The averments in the petition in brief are as follows: This case was posted on 02.08.2025 for further evidence of the complainant and witness No.1 had informed the complainant that he is having some inconvenience on 02.08.2025 as he is out of station. On 02.08.2025, Counsel for the complainant was laid up due to viral fever and hence he could not appear before the Court and hence the case was entrusted to an another Advocate, but due to an inadvertent omission this matter could not be submitted before the Court and since the witness was not present the complainant's evidence was closed and the matter was posted for examination of accused u/s.313(1) (b) Cr.P.C. Proof affidavit of witness No.1 was already filed. There is no wilful negligence or laches on the part of the complainant and hence, complainant's

evidence needs to be reopened and summons has to be issued to witness No.1.

3. The accused filed objection to this application. The averments in the objection in brief are as follows:- The above case was posed on 02.08.2025 for further evidence of the complainant and on the same day, neither the complainant nor his Counsel appeared to adduce evidence and no absent application was filed. Moreover, there is no submission for adjournment and accordingly complainant's evidence was closed. The petition is not supported with any valid reasons. There is no proper explanation for the complainant's absence in the petition. Hence petition is dismissed.

4. Heard both respective Counsel.

5. **The following points arise for consideration:**

1. Whether the petition is liable to be allowed?
2. Order?

**Point No.1**

6. This case is filed by the complainant against the accused alleging commission of offences punishable u/s.138 of N.I.Act. The complainant was examined as PW1 on 26.03.2025. Thereafter the case was adjourned to 05.04.2025 for further evidence of the complainant. On 05.04.2025, the learned Counsel for the complainant sought time for further evidence and on the same day, summons was issued to witness No.2 and the case was posted to 17.05.2025. On 17.05.2025, the Branch Manager of SBI Panayapally Branch appeared before the Court and produced account statement of complainant along with certificate under Bankers Book Evidence Act. Thereafter, the learned counsel for the complainant submitted that there is no requirement of examination of Bank Manager and the statement alone needs to be tendered into evidence and upon hearing both sides and as no objection was submitted by the learned counsel for the accused, the bank statement with certificate was marked and on the same day, the learned counsel for the complainant further submitted that there

is no need to summon witness No.1 and he will be bring witness No.1 and upon this submission, the case was posted to 07.06.2025 for further evidence. Since there was no sitting on 07.06.2025, the case was posted to 02.08.2025 and on 02.08.2025 as no witness were present from the side of complainant, complainant evidence was closed and the matter was posted to 13.08.2025 for examination of accused u/s.313(1)(b) Cr.P.C.

7. The petition reveals that on 02.08.2025, the counsel for the complainant was absent due to viral fever and witness No.1 also informed him as to his inability to appear before the Court on 02.08.2025. The petition further reveals that even though the learned counsel for the complainant entrusted this matter with another Advocate, there was an omission from the part of the representing Advocate to represent the same before this Court. The learned Counsel for the complainant submitted that summons needs to be issued to witness No.1 as the witness is not willing to appear before the Court voluntarily. However, it is pertinent to note that no proof affidavit of witness No.1 is seen filed before this Court, even though it is mentioned in the petition that the same is filed. The learned counsel for the complainant submitted that it is mistakenly mentioned in the petition that proof affidavit of witness No.1 is filed. The learned counsel for the complainant submitted that witness No.1 is a witness to the pronote and his evidence is essential to prove the pronote. Considering all these aspects, I am of view that an opportunity needs to be given to the complainant to adduce evidence. I am of view that no prejudice will be caused to the accused as the accused will get an opportunity to cross examine the witness. Hence, I am of view that reopening of complainant's evidence and issuing summons to witness No.1 is essential to the just decision of the case. This point is answered in favour of the petitioner.

**Point No.2**

08. In the light of the findings in Point No.1, the petition is liable to be allowed.

09. In the result, the petition is hereby allowed and prosecution evidence is hereby reopened and issue summons to witness No.1 in the witness list.

*Dictated, corrected and pronounced in open court on this the 02<sup>nd</sup> day of September, 2025*

*Sd/-*

**Judicial I Class Magistrate,  
Mattancherry.**