

IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE, MATTANCHERRY

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

Dated this the 14th day of October, 2025

C.M.P 1394/2025 in C.C No. 902/2020

(Crime No.1308/2019 of Fort Kochi Police Station)

Petitioner/3rd Accused : Muhammed Afsal, aged 28, S/o.Asharaf Ali,
H.No.378, Raily Compound Nilgiris,
Tamil Nadu
(By Adv. Benedicta Vembly)

Respondent/Complainant: State represented by the Sub Inspector of
Police, Fort Kochi Police Station in Crime
No.1308/2019

(Rep. by APP Gr.II, Mattancherry.)

Offences : U/s.420 r/w 34 IPC

Order : Petition stands dismissed

This petition having heard on 13.10.2025, the court on this day passed the following.

ORDER

This is an application filed by the petitioner/3rd accused u/s.250(1) of BNSS.

2. The averments in the petition in brief is as follows: The petitioner is the third accused who is the husband of 4th accused. The third and fourth accused are joint owners of the mortgaged property and even years before mortgaging, the third and fourth accused were separated and third accused was living with his children at Ooty and there is no connection with the fourth accused. The petitioner is having no role in negotiating, executing or benefiting from the loan or mortgage agreement and the petitioner has not seen the defacto complainant and has not taken any money and has not signed the agreement. The case arises out of a loan/mortgage transaction which is purely civil in nature and does not constitute any criminal offences. Petitioner is falsely implicated on the ground of he being co-owner of the mortgaged property. Mere ownership or relationship cannot attract criminal liability in the absence of any acting participation and there is no mens rea or fraudulent intention on the part of petitioner. There is no material in this case to establish any criminal conspiracy,

cheating or misrepresentation from the part of petitioner. Petitioner was in Ooty and was not aware of this case until police officials contacted him. Hence the application is filed to discharge the petitioner.

3. Even though no written objection is filed, learned Assistant Public Prosecutor opposed the application stating that the petition is not maintainable and there are sufficient grounds to proceed against the accused.

4. Heard both sides.

5. The following points arise for consideration:

1. Whether the petition is liable to be allowed?

2. Order?

Point No.1

6. This application is filed under section 250(1) of BNSS. Section 250 of BNSS contemplates about an application for discharge to be filed before Court of Sessions. The offence alleged in this case is Section 420 r/w 34 IPC which is a warrant trial. Hence, an application u/s.250(1) of BNSS is not maintainable. However, I am of view that misquoting of section is not fatal to the case of petitioner. In the circumstances, this application is hereby treated as an application filed u/s.262(1) of BNSS.

7. The prosecution case is that the accused No.1 along with his wife accused no.2 and his son-in-law accused No.3 and his daughter 4th accused together with an intention to cheat CW1 and to obtain wrongful gain during 2017, the first accused made CW1 believe that the house belonging to the fourth accused situated just opposite to Pattalam Dronacharya Gate, Fort Kochi actually belongs to the first accused and is in his possession and thereafter entered into a mortgage agreement and totally obtained an amount of Rs.7,00,000/- in several intervals from CW1 and CW2. Thereafter while CW1 was residing in this house along with his family, the first accused asked

for an additional amount of Rs.1,50,000/- because of which, CW1 decided to evict and demanded back the mortgage amount. But the accused did not repay the amount to CW1 and thereby cheated her and thus the accused committed the offence punishable u/s.420 r/w 34 of IPC.

8. The prosecution of this case got initiated upon a typed petition filed by CW1 upon which FIR is seen registered on 14.11.2019. The presence of the petitioner/3rd accused is mentioned in this written petition of CW1 at the time when CW1 went to see the house. It is further mentioned in the petition that the first accused thereafter showed the house to CW1 and represented that the house belonged to him and is in his possession. It is further mentioned in the written petition that the first accused further stated that house number is not obtained as the same is near Dronacharya but the house and the property belonged to him and is in his possession. It is mentioned in the petition that all the accused stated to CW1 that, as there is some debt, they are giving the house for mortgage and it is believing upon the words of accused that CW1 gave Rs.7,00,000/-. It is further mentioned in the petition that CW1 came to know that this property belongs to the third and fourth accused only when CW1 initiated steps to attach the property when the first accused failed to pay back the mortgage amount.

9. The prosecution has produced the original agreement executed between the first accused and CW2. CW2 is the husband of CW1. The agreement is shown as mortgage agreement which is seen executed on 09.10.2017. It is seen mentioned in the agreement that the property with building No.CC 11/615A together with electric and water connection is in the exclusive ownership and possession of first accused. The agreement appears to be for a period of 11 months starting from 01.11.2017. The agreement further shows that the mortgage amount fixed to be Rs.7,00,000/-. An attested copy of sale deed No.3378/2015 of SRO, Kochi issued by the Manager of UCO Bank, Ernakulam Main Branch is produced which would go to show that the petitioner herein and the fourth accused purchased 1.21 ares property with building

No.CC 1/2762A (11/615A1) lying in survey No.900/2A-1 at Kochi Corporation from Rosary Prem. The prosecution case is that it is this property belonging to petitioner and fourth accused which is misrepresented as the property belonging to A1 and subsequently a mortgage agreement was entered into with CW2. The title deed of the property is not mentioned in mortgage agreement. The building number in the mortgage agreement is shown as CC 11/615A whereas building number is shown as 11/615A1 in the sale deed. There is no case put forward by the petitioner that building number 11/615A and 11/615A1 are different. Upon considering the prosecution records especially the written petition, the presence of petitioner is clearly mentioned at the time when CW1 and CW2 came to see the house. The entire prosecution records clearly indicates a prima facie case. There are sufficient grounds to proceed against the petitioner for the offence punishable u/s.420 r/w 34 of IPC. Hence, I find that this petition is not liable to be allowed. This point is answered against the petitioner.

Point No.2

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

In the result, the petition is dismissed.

Dictated, *corrected and pronounced in open court on this the 14th day of October, 2025.*

Sd/-
Judicial I Class Magistrate,
Mattancherry.