

**IN THE FAST TRACK SPECIAL COURT IDUKKI****Present:- Smt.Manju.V, Special Judge (Full Addl. Charge)**Friday the 31<sup>th</sup> day of October,2025 / 9<sup>th</sup> day of Karthika, 1947(S.E)**ORDER****Crl. MP : 21/ 2025****IN****Sessions Case No.362/2022**

Petitioner : Kunjumon, aged 55 years,  
S/o. John,  
Oliyamkunnel House,  
Pannippally Bhagam,  
Kappu Kara,  
Manjalloor Village,  
Ernakulam District.  
  
(By Adv.Sri.A. Cherian)

Respondent : State of Kerala, represented  
by the SHO, Karimannoor Police Station  
  
(By Sri. Shijomon Joseph,  
Special Public Prosecutor)

Proceedings : u/s.311 Cr.PC.

Order : Petition is dismissed

The petition is came for hearing on 31<sup>st</sup> day of October, 2025 in the presence of the above counsel for both sides and on the same day the court passed the following:

ORDER

1. This is a petition filed by the learned defence counsel u/s.311 Cr.P.C./s.348 of BNSS

2. The petitioner contends as follows:- The counter petition filed as CrI.M.P No.3/25 for recalling and re-examining the witnesses was dismissed by this court. It is contended that the inception of the incidents were two alleged telephonic conversations. It is alleged that on 21/9/21, the accused called the victim on 9:45 a.m. and as previously arranged between them, he picked her from the bus stop in a cab to his house and committed the offence. The second incident of sexual assault was happened on 22/12/2021. But the call record details of 21/9/2021 produced before this court reveals that there was no such calls on that day at that time from the handset and the call was made in the evening. On 22/12/2021, no calls were seen made as evident from Ext.P16, P29 and P30. CW2 (PW4 father of victim) made an earlier complaint to SHO and the withdrawal of the same need to be brought before this court. The prosecution established that the victim participated in birthday celebrations of her friend on one of the alleged days and on the other day she visited the grandmother of another friend. This contented that as none of those persons were among the witness list, the petitioner may be permitted to corroborate those incidents under the light of such facts. So it is necessary to recall and re-examine all the witnesses such as CW1 to CW3 and

CW20 (PW1, PW4, PW5 and CW15). It is also contented that in the previous petition, this court took the view that CW1 cannot be recalled for re-examination as if violates s.33(5) of the POCSO Act. Hence PW2, PW3 and PW20 may be recalled for conducting further cross examination as it is imperative for the just decision of the case.

3. Against the order of this court in CrI.M.P No.3/25, the petitioner moved CrI.M.C No.7171/2025 before the Hon'ble High Court of Kerala and the same was dismissed stating that the incompetence of the counsel is not a ground for recalling the witness, the same is similar to that of "change of vakalath is not a ground". The petition is moved not due to the change of vakalath, but for clarifying the actual errors that had occurred in the narration of the incidents which is necessary to prove the innocence of the accused. Hence it is prayed that PW2, PW3 and PW20 may be recalled for conducting further cross examination.

4. The learned Special Public Prosecutor filed objection stating as follows:-  
The earlier petition filed for the same purpose as CrI.M.P No.3/25, for recalling and reexamining the survivor and the same witnesses mentioned in the above petition was dismissed by this court. Against that order, CrI.M.C No.7171/2025 was filed before the Hon'ble High Court of Kerala and the said the petition was dismissed by the Hon'ble Court. Hence this petition is not maintainable and may be dismissed.

5. Heard both sides and perused the materials on record. The earlier petition filed as CrI.M.P No.3/25, for recalling and re-examining PW1, PW4, PW5, PW22, PW23 and PW19 was dismissed by this court. CrI.M.C No.7171/2025 filed against the said order was dismissed by the Hon'ble High Court. Therefore this petition again filed for recalling and re-examining PW2, PW3 and PW20. PW2 & PW3 are attestors of the Ext.P3 & P4 scene mahazar and PW20 is the police officer who recorded Ext. P1 FIS of the victim (PW1). After perusing the averments in the petition, I find that there is no sufficient ground to see that the recalling and re-examining PW2, PW3 and PW20 is necessary for the just decision of the case. In **AGV Shiv Kumar Yadav and another reported in 2015 KHC 4602** of the Hon'ble Supreme Court held that *"There is no inflexible rule to routinely permit a recall on the ground that cross examination was not proper for reasons attributable to a counsel. The principle that a retrial must follow on every change of a counsel, can have serious consequences on conduct of trials and criminal justice system"*. So I am not inclined to allow the petition.

In the result, the petition is dismissed.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in the open Court on 31<sup>st</sup> day of October, 2025.

Sd/-

MANJU. V

Special Judge (Full Addl.Charge)

// True Copy //

Copied by: Shaji.K  
Compared by:

Special Judge  
(Full Addl.Charge)

COPY OF ORDER  
IN  
Crl.M.P.No,21/25  
IN  
SC. 362/2022  
Dtd.31.10.2025