

**IN THE COURT OF SESSIONS, THALASSERY**

Present: Sri. K.T. Nisar Ahammed, Sessions Judge.

Thursday, the 19<sup>th</sup> day of March, 2026/ 28<sup>th</sup> Phalguna, 1947.

**CRIMINAL REVISION PETITION No.1 OF 2026**

(CMP.3883/2025 in STC.1321/2018 of Judicial First Class Magistrate Court, Mattannur)

Saneesh.P.K. S/o. Chandran, Aged 34 years, ] Revision Petitioner/  
Soumya Sadanam, Punnad, P.O.Punnad, ] Petitioner.  
Kannur District ]

Vs.

1. Kanoth Jithesh, S/o.Mohanan, Aged 41, ]  
Mowvanchery House, Punnad P.O, ]  
Keezhur Amsom, Punnad Desom, ] Respondents/  
Kannur District. ] Accused & State
2. State:Rep. by Public Prosecutor, ]  
Thalassery. ]

Criminal Revision Petition u/s.438 of BNSS 2023 to set aside the Order passed by the Judicial First Class Magistrate Court, Mattannur in CMP.3883/2025 in STC.1321/2018 dated 01.01.2026.

This Revision Petition coming on the 09<sup>th</sup> day March 2026, for final hearing before me in the presence of Sri. T,Sunil Kumar, Advocate for the Revision Petitioner; Respondent No.1, name called absent and Sri.K.Ajith Kumar, Public Prosecutor for the State/Respondent No.2; and having stood over for consideration till this day, the Court passed the following:-

**ORDER**

Revision against the order of Judicial First Class Magistrate, Mattannur in CMP.3883/2025 in STC.1321/2018.

2. The facts in brief are as follows:

The revision petitioner is the complainant in STC.1321/2018 filed u/s.138 of the Negotiable Instruments Act. The complainant adduced evidence. Then, after complying Section 313 Cr.P.C, an opportunity

was granted to the respondent/accused to adduce evidence and the matter was posted for hearing. The complainant had a case that he had given a loan to the accused by utilizing a loan of Rs.2,50,000/- taken from Kannur District Co-operative Bank on 02.11.2016. He availed the loan in the name of his mother Pushpavalli. The defence witness, Bank Manager has deposed before the court that the complainant did not avail loan from the bank. According to the complainant, in fact, the loan was taken in the name of his mother. So, in order to prove that aspect, he wants to examine further the defence witness/bank Manager. Accordingly, he filed the CMP.3883/25.

3. The respondent/accused opposed the petition on the ground that the complainant himself availed a loan of Rs.2,50,000/- from the bank and that was also utilized for giving loan to the accused. Now, he wants to adduce evidence that the loan was taken in the name of his mother. But, he had no such case when he was examined before the Court. Hence, the respondent/accused opposed the petition.

4. After hearing both sides, as per the impugned order, the learned Magistrate dismissed the petition.

5. Aggrieved by the above order, the complainant filed the present revision petition on following grounds: The impugned order is against law and weight of evidence. The reason given by the trial court is erroneous. The trial court ought to have found that reopening of the evidence and further examination of the defence witness/the bank Manager is very essential for a just decision of the case. The dictum laid down by the Hon'ble Supreme Court in 2013 KHC 4513 is not applicable to the case. Hence, the petitioner prays for allowing this revision and to set aside the impugned order.

6. Notice issued to the respondents. Though, notice served R1 remained absent. The trial court records were called for.

7. Heard.

8. Now, the points that arise for consideration are :

- 1) Whether there is any illegality or impropriety in the order ?
- 2) If so, what should be the order?

9. **Point No.1:-** The learned counsel for the revision petitioner has submitted that the impugned order is illegal and liable to be set aside. The petitioner filed CMP.3883/2025 only to re-open the evidence and to further examine the defence witness, the bank Manager. He was not given an opportunity to cross examine the witness. That witness has deposed before the court that the complainant did not avail loan from the bank in the relevant period. But, in fact, the complainant availed loan in the name of his mother Pushpavalli. So, in order to prove that aspect, he wants to further examine the defence witness. But, the learned Magistrate turned down his request. Hence, the learned counsel prays for allowing this revision.

10. Here, one can see that before the trial court, the revision petitioner/complainant had a case that he had given a loan to the respondent/accused by utilizing Rs.2,50,000/- availed from Kannur District Co-operative Bank, Iritty Branch. But, the respondent/accused examined the Manager of the Bank as defence witness. The defence witness has deposed before the court that the complainant did not avail any loan from the bank during the relevant period. Now, the petitioner/complainant wants to give evidence to the effect that in fact, he did not avail the loan, but it was availed in the name of his mother Pushpavalli and for which, he wants to examine the Manager of the Bank, who was already examined as defence witness.

11. Going by the impugned order, the learned Magistrate has relied on the ruling of the Apex Court in (2013 KHC 4513) Rajaram Prasad Yadav v. State of Bihar and Another where the Hon'ble Supreme Court has laid down the ground under which a petition u/s.311 of Cr.P.C can be allowed. Going by Section 311 of Cr.P.C, the Court can invoke Section 311 of Cr.P.C only in order to meet the ends of justice for strong and valid reasons. It is for just decision of the case. In the above ruling, the Hon'ble Supreme Court has held that the power must be exercised keeping in mind that the evidence that is likely to be tendered would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party. Here, one can see that the evidence proposed to be tendered by the petitioner/complainant is germane to the issue involved in this case. The issue is, whether the complainant had given a loan to the respondent/accused. He wants to adduce evidence that he had given loan by utilizing Rs.2,50,000/- availed from Kannur District Co-operative Bank in the name of his mother. Whether that evidence to be accepted or not is at the discretion of the trial court. Since he has already given evidence that he himself availed loan from the bank, it cannot be said that he cannot adduce any evidence contrary to that. Giving opportunity to adduce evidence and accepting the evidence adduced are two different aspects. In order to ensure a fair trial, whether it is for complainant or to the accused, I am of the opinion that the parties are to be given sufficient opportunity to adduce sufficient evidence. So, by considering the above aspect, I am of the opinion that the trial court ought to have allowed the petition and given a chance to the complainant to adduce further evidence. The trial court went wrong in dismissing the petition. I am of the opinion that the impugned order can be set aside and one chance can be given

to the petitioner/complainant to adduce evidence. But, of-course, on terms. The point is answered accordingly.

12. **Point No.2:-** In view of my findings on Point No.1, the revision petition is allowed. The impugned order is hereby set aside. The CMP.3883/2025 stands allowed on condition of payment of Rs.5000/- to the respondent/accused and also by payment of batta Rs.3000/- to the witness to be summoned for re-examination.

(Dictated to the Confidential Assistant transcribed and typed by her, corrected and pronounced by me in open Court, this the 19<sup>th</sup> day of March, 2026).

Sd/-  
SESSIONS JUDGE

Fair/Copy/Free copy of Order  
in Crl.R.P. No.01/2026  
Dated: 19.03.2026.