

IN THE COURT OF SESSION, THALASSERY

Present:- Sri.Vimal. J, Additional Sessions Judge-IV.
Friday , the 27th day of June, 2025/ 06th Aashada, 1947

CrI.M.P. No.2996/2025 in SC 251/2021

SHO Panoor Police Station Rep. By Public Prosecutor,] Petitioner/
Thalassery.] Complainant

Vs.

Prabhakaran, S/o. Gopalan Nambiar, aged 65 years,] Respondent/
Valussery (H), Chambad] Accused

This petition coming on the 18th day of June 2025 for final hearing before me in the presence of Smt. Reshma. A, Addl. Government Pleader & Addl. Public Prosecutor, Thalassery, Advocate for petitioner, Sri. P. Premarajan, Advocate for respondent; and having stood over for consideration till this day; the Court passed the following:

ORDER

This is an application filed under section 284 of Cr.P.C.

2. The prosecution contends that a commission may be issued for the examination of CW2 and CW4, as these witnesses are elderly and permanently confined to their homes. It is further stated that, due to their advanced age, they are unable to appear before this Court to give evidence. The learned counsel for the sole accused has filed a formal objection. I have considered the rival contentions.

3. The prosecution case is that the accused, along with eight other persons, formed an unlawful assembly and, using swords, dandas, and explosive substances, committed the murder of Thadathil Balan and U.P. Damu, and also caused hurt to CW1 to CW10 in furtherance of the common object of the unlawful assembly.

4. The present case is of the year 1979. All the accused persons who faced trial were acquitted as per the order in S.C. No. 60/1981. The case against the present accused was split up, as he was absconding, and was subsequently re-numbered as S.C. No. 251/2021. In the present case, CW1 to CW10 were cited as eyewitnesses. CW3, CW5, CW6, CW9, and CW10, who were cited as eyewitnesses, are no longer alive. This was submitted during the course of arguments. CW1, CW2, CW4, CW7, and CW8 are the remaining eyewitnesses. The incident occurred 46 years ago, and most of the eyewitnesses are now elderly. As per the Aadhaar card produced, CW2 is 80 years old. The learned Public Prosecutor submitted that he is over 80 years old and bedridden. Further, CW4, Balan T.P., is aged 89 years according to his Aadhaar card. He is also bedridden and unable to attend court to give evidence. Summons were issued to CW2 and CW4; however, they did not enter appearance before this Court. Consequently, coercive proceedings were initiated, and NBWs were also issued against CW2 and CW4. These were returned with the endorsement that the same could not be executed since both were indisposed. From the above, it is evident that CW2 and CW4 are unable to appear before this Court to give evidence.

5. Section 284 of the Cr.P.C is a special provision that empowers the Court to issue a commission for the examination of witnesses if the Court is satisfied that, in the interest of justice, such a commission is necessary, or when the attendance of such witnesses cannot be secured without undue delay, expense, or inconvenience. There is nothing on record to suggest that the averments in the petition are false or made with the intent to prejudice the rights of the accused. Therefore, for the aforesaid reasons, I am of the view that the petition can be allowed.

In the result, the petition may be allowed as follows.

1. *A commission for the examination of witnesses CW2 Thadavantavida Kumaran and CW4 Thundiparambath Balan is issued to the Chief Judicial Magistrate, who shall assign a Magistrate to record the*

evidence of CW2 and CW4 after issuing notice to both the prosecution and the accused.

2. *The examination of witnesses shall be conducted in accordance with the court procedures contemplated under Section 284 to 289 of the Cr.P.C.*
3. *The entire examination shall be completed on or before 23.08.2025.*

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 27th day of June 2025).

sd/-

ADDL. DISTRICT & SESSIONS JUDGE-IV

Sk/-

Fair/Copy of Order in
Crl.M.P. No.2996/2025 in
SC 251/2021
Dated: 27-06-2025.

