

**IN THE COURT OF SESSIONS KOTTAYAM DIVISION**

Present:Smt. Lilly K,Addl.Sessions Judge -I,

Thursday, the 21<sup>st</sup> day of May, 2026  
31<sup>st</sup> Vaishakha, 1948

**CrI.M.P.No.2/2026 in SC No.295/2020**  
(Crime No.29 / 2020 of Erumeli Police Station)

**Petitioner :**

**Anoop R Nair,**  
S/o. Raman Nair,  
Ambily Bhavan,  
Erthuvadakara P.O.,  
Vellavoor, Kottayam.

***By Adv.Ajeesh P Nair***

**Respondents:**

**1. S.H.O.**  
Erumely Police Station

**2.State of Kerala** represented  
by the Public Prosecutor,  
Kottayam.

***By Addl Public Prosecutor***  
***Smt. Meera.S.S***

Petition filed under Section 94(Section 91 of CrPC) and Section 348 of  
BNSS.

This petition having been finally heard on 19.05.2026 and the Court  
on 21.05.2026 passed the following :

**ORDER**

Application filed by the counsel for accused under Section 94( Section 91 of CrPC) and Section 348 of BNSS.

**2.** Averments in the petition are as follows. The case stands posted for examination of accused under Section 313 of CrPC. During examination of PW4, Rajesh, it was stated that he had given detailed statement to the police. PW31 Madhu, Investigating Officer has also deposed that he had recorded the statement of PW4 under Section 161 of CrPC. But the statement under Section 161 of CrPC recorded by PW31 was not served to the accused at the stage of Section 207 of CrPC. The accused did not get opportunity to confront the witness, under Section 145 of Indian Evidence Act with respect to the statement under Section 161 of CrPC. Only after examination of PW4, it was revealed that PW4 had given statement at the time of inquest. Hence the application to recall PW4 and to cause produce the 161 statement of PW4 recorded by the Investigating Officer.

**3.** Additional Public Prosecutor filed objection contending that the application has been filed without bona fides. PW4 was CW4 in the final report. The allegation that statement under Section 161 was not served at the stage of Section 207 of CrPC and the accused did not get opportunity to cross-exam the witness are false. PW31

had recorded the statement of PW4 under Section 161 as part of the Inquest proceedings. The witness had also given 164 statement before the Magistrate and the same was described in page number 4 of the final report. Such an argument was not raised even at the stage of preliminary hearing conducted on 16.10.2025. No statement under Section 161 of CrPC was suppressed by the prosecution and prosecutor sought to dismiss the application.

**4.** Heard both sides.

**5.** According to the counsel for the accused, the statement of PW4 recorded under Section 161 was not served to the accused at the stage of Section 207 of CrPC and such a statement was not attached to the final report also. The statement has to be cause produced as PW31 had admitted having recorded statement under Section 161 of CrPC with respect to witness no. 4 examined as PW4.

**6.** Learned Prosecutor opposed the application stating that the fact that 164 statement of the witness was recorded was clearly stated in the final report. The fact that PW4 was questioned at the time of inquest is revealed from the inquest report and from the final report. There was no suppression of 161 statement of PW4 and the learned prosecutor sought to dismiss the application.

**7.** As per the final report, CW4 was Rajesh son of Rajan. He

was examined as PW4. During cross-examination he stated that police had called him to the police station to take his statement. But he does not remember the date or the name of the officer who had taken the statement. The Investigating Officer was examined as PW31 and during cross-examination PW31 stated that the 164 statement of PW4 and other witnesses were recorded by the Magistrate. PW31 had also stated that the statement of PW4 was recorded and he was called to the police station. It was also stated that the statement of PW4 was submitted along with the final report. PW31 denied the suggestion that the statement of PW4 was not submitted along with the final report.

**8.** As per the final report Page number 5, contained the list of witnesses and the points to be proved. It was clearly stated that CW4 was Rajesh, son of Rajan and he had given statement under Section 164 of CrPC before the Magistrate and he had also given statement, at the time of Inquest Report, in column number X. The final report does not contain 161 statement of witness. But the Inquest Report Contain the 161 statement of PW4 Rajesh in column number X, copy of the Inquest Report was served to the accused at the stage of S.207 of CrPC. The name and address of (CW4)PW4 was clearly stated in column number X of the inquest report marked as Exhibit P2. PW4 was cross examined in detail. The statement that he was called to the police station for questioning

him, is not a ground to come to the conclusion that an additional statement in writing under Section 161 of CrPC was recovered by the Investigating Officer. The final report also do not reveal that additional 161CrPC statement of PW4 was recorded. The point to be proved was clearly stated against, the list of witnesses in the final report and it was clear that he was a witness who gave statement in column number X of the inquest report.

**9.** The accused was examined under Section 351 of BNSS. Application under Section 94 of BNSS for cause production of documents can be filed when the case is posted for defence evidence, after hearing under Section 255 of BNSS. PW4 was vehemently cross-examined by the defence lawyer. The final report and records in the case and the objection submitted by the Prosecutor clearly reveal that no additional 161 statement of PW4 was recorded by the police. Section 161 of CrPC does not mandate that a statement of witness should be recorded "in writing". It is the option of the Investigating Officer who "may" record the statement under Section 161 of CrPC in writing at the time of questioning a witness. The records do not reveal that there was any suppression of additional 161 statement of PW4, as alleged by the defence lawyer in the said circumstance. Copy of inquest report was served to the accused at the stage of 207 of CrPC and the entire witnesses were already examined. The application was filed

when the case was posted for examination of accused under Section 313 of CrPC, 351 of BNS.

**10.** As there is no additional 161 statement of PW4, recorded in writing by the police, there is no scope for giving direction to produce the additional 161 statement of PW4 as alleged by the defence lawyer. The 161 statement recorded in column number X of inquest report marked as Exhibit P2 was served to the defence lawyer. Learned counsel had no case that the copy of inquest report was not served to the accused at the stage of Section 207 of CrPC. In the said circumstances there is no ground to direct the prosecution to produce the “additional” 161 of CrPC statement of PW4 as alleged by the defence lawyer. Hence, the application is dismissed.

**In the result**, the application is dismissed.

*Dictated to the Confdl. Assistant, transcribed and typed by her, corrected and pronounced by me in open Court, on this the 21<sup>st</sup> day of May, 2026.*

Sd/-

**Lilly K.**

**Add. Sessions Judge - I  
Kottayam**

//True Copy//

By Order

Copied by:  
Compared By:

Sd/-  
Sheristadar