

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-I, PALA

**Present: Smt. Shermin S.S.,
Judicial First Class Magistrate -1, Pala**

Dated: 20th day of May, 2026

CMP. 5560/18 in CC.604/2017

Petitioner : Abhilash Joseph, aged 40 yrs, S/o Joseph,
Kizhakkekunnel House, Chakkampuzha P.O,
Vallichira Village, Meenachil Taluk.
(Rep. By Adv: Issac Sanjay)

Counter petitioner : State represented by Sub Inspector of police,
Ettumanoor in Cr.No.1034/13
(BY.Smt. Hima A.R, APP, Pala)

Offence : Punishable u/s.294(b), 323, 324, 326, 506(ii), 201
r/w 34 of IPC.

Prayer : To reconsider CMP.5560/18

Sentence/order : Petition dismissed.

ORDER

This is a petition filed by the counsel for the petitioner/ defacto complainant in CC.604/2017.

2. The averments in the petition in brief is as follows:- The petitioner is the defacto complainant in CC.604/17(Cr.No. 1034/13 of Ettumanoor police station). The main allegation of this case is that due to the previous enmity towards defacto complainant, on 02/08/2013 at 02.30 p.m, KSRTC Bus bearing Reg.No.KL-15-8215(RNC 29, Pala Depo) reached at KSRTC Bus Stand, Ettumanoor, in furtherance of their common intention, accused persons uttered obscene words towards CW1 inside above said bus. Accused no.1 beat CW1's

face, head and forehead using an *Idikatta* as a dangerous weapon. At that time accused no.2 beat CW1's head and face using the handle of umbrella which was in possession of accused no.2. When CW1 fell down, accused no. 1 & 2 kicked CW1's chest and stomach. They criminally intimidated to kill CW1. CW1 sustained grievous injuries including fracture to his nasal bone. He lost his balance when he walk. He also loss hearing ability of his left ear by the act of the accused persons. Thereafter accused persons hide the weapons used in the alleged offence. The petitioner/CW1 filed CMP.5560/18 in CC.604/17 u/s 302 of Cr.P.C before this court and that petition was dismissed on 11/02/2019. As per order in CrI.MC NO.2580/19 dated 06/11/2024 of the Hon'ble High Court of Kerala, set aside the above said order and directed to reconsider CMP.5560/18 by this Court. Hence the petition.

3. Notice issued to CW1/petitioner.

4. Heard both sides.

5. In the petition, petitioner submitted that according to the knowledge of the petitioner one of the accused in the case is a lawyer. Moreover, the petitioner wants justice to prevail in the matter and likes to conduct the prosecution in the case by engaging a lawyer on his behalf. On perusing the petition and after hearing, it is understood that there is no allegation in the petition that the Assistant Public Prosecutor is interested in the accused or interested against the petitioner. There is no contention in the petition that the Assistant Public Prosecutor is biased or acted against the petitioner. There is no exceptional reason justifying the replacement of Assistant Public Prosecutor by the private Council. In **Selena v state of Kerala 2009 2 KLT (SN)**, the **Honorable High**

Court of Kerala emphasize that in the interest of a fair trial a disinterested prosecutor is ideally suited to conduct a prosecution. Exceptional reasons are required to exclude the Public Prosecutor and appointed private council under section 302 CrPC. In the present petition no exceptional reasons are found by this court to appoint a private counsel instead of APP. Further section 301 Cr.P.C is very much available for the petitioner to aid the Assistant Public Prosecutor in conducting the trial and hence, I find no merit in the application.

In the result, this petition is dismissed.

Dictated to the Confidential Assistant transcribed and typed by her, corrected by me and pronounced in the open Court on this day, the 20th day of May, 2026.

Sd/-
Judicial First Class Magistrate-I
Pala.

//True Copy//

Judicial First Class Magistrate-I
Pala.