

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE II,
KANJIRAPPALLY**

Present :- Niyatha Prasad.,
Judicial First Class Magistrate – II, Kanjirappally

Dated this the 21st day of May, 2026

CMP No. 01/2026 in CC 100/2021

Petitioner : Sri. Shajahan K.S,
Assistant Public Prosecutor-II, Kanjirappally

Counter :A1. Jyothirdas @ Jyothish, aged 26/21,
Petitioner/Accused S/o Devadas, Thadathil (H),
A. K Kavala Bhagam, Mukkada P. O,
Manimala Village.

A2. Praveen E. P, aged 27/21,
S/o Prasad, Enchiyil (H),
A. K Kavala Bhagam, Mukkada P. O,
Manimala Village.

A3. Sonumon, aged 19/21,
S/o Santhosh, Chorikkavil (H),
Aalayamkavala Bhagam,
Mukkada P. O, Manimala Village.

(By Adv. Sri. D. Muralidhar)

Filed : U/s. 348 of Bharatiya Nagarik Suraksha
Sanhitha, 2023.

Order : Petition is allowed

The petition was finally heard on 12.05.2026, today the court passed the following:

ORDER

Petition filed under section 348 of Bharatiya Nagarik Suraksha Sanhitha, 2023 (hereinafter referred as “BNSS”).

2. Petitioner's case in brief is as follows: The petitioner is the Assistant Public Prosecutor of this court. The case was posted to 10.04.2026 for the appearance of CW8 and CW9 as last chance. CW8 is the doctor who examined CW1 and CW2 at Taluk Hospital, Kanjirappally and CW9 is the investigation

officer. Since they were continuously absent prosecution evidence was closed. The non appearance of CW2 is not willful but due to their health issues there is no willful latches or negligence from their part. For the just and fair decision of the case examination of CW8 and CW9 are highly necessary. Hence this petition.

3. The learned counsel for the accused/counter petitioner filed objection stating as follows:- The petition is not maintainable either in law or on facts and the reason stated in the petition is frivolous. No sufficient cause is stated by the accused to recall the witnesses. The attempt of the prosecution is to drag the proceedings which is causing irreparable loss and injury to the accused. Hence the accused/counter petitioner prayed for dismissing the petition.

4. Heard both sides, perused records.

5. The learned counsel for the accused/counter petitioner submitted that the prosecution is trying to protract the trial by filing an unnecessary petition. On perusal of records it is seen that summons to CW8 and CW9 was issued as early as on 10.11.2025 and warrant was issued against them on 08.01.2026. Even though warrant was issued against CW8 and CW9 through DGP and providing sufficient opportunities they did not turn up to adduce evidence. Hence on 10.04.2026 prosecution evidence was closed without examining them. The major contention of the accused is with respect to dragging the proceedings. However, the indefeasible right of the complainant to prove their case cannot be curtailed on the above said reason alone. Hence on overall consideration of the case in hand I am of the view that the petition can be allowed.

In the result, CMP is allowed.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 21st day of May, 2026.)

Sd/-
Judicial First Class Magistrate-II
Kanjirappally