

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

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

Dated this the 23rd day of April, 2026

CMP No. 01/2026 in ST 3459/2023

Petitioner/Accused : Muthukumar,
S/o Muthuveerappathevar,
No. 15 B, First Floor, KRR Nagar,
1st Street, Theni (Chief Executive Officer,
M/s. Growth India Exports, Theni)
(By Adv. Sri. Rahul Gopinath)

Counter Petitioner/
Complainant : Baby K. K,
S/o Kuruvila, Kandathil (H),
Pampavally (N) P. O, Erumely South Village.
(By Adv. Sri. Joby Jose)

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

Order : Petition is allowed

The petition was finally heard on 17.04.2026, today the court passed the following:

ORDER

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

2. Petitioner's case in brief is as follows: The petitioner is the accused in the above case. When the complainant was examined before this court as PW1, the accused was not ready to cross examine PW1. Hence no cross was recorded and the case was posted for the further evidence of the complainant. The accused has serious contentions against the complainant and hence the complainant has to be cross examined or else it will put the accused in irreparable loss and hardship. Hence this petition.

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

4. Heard both sides, perused records.

5. The learned counsel for the complainant/counter petitioner submitted that the accused is trying to protract the trial by filing an unnecessary petition. On perusal of records it is seen that on 01.11.2025, the case was posted for the evidence of the complainant, and he was examined as PW1. Cross examination was adjourned to 29.11.2025. But the complainant was absent on the next two subsequent postings and on 28.02.2026 when the complainant was present the accused was not ready to cross examine the complainant. Hence, no cross was recorded. The accused filed this CMP contending that non examination of PW1 is not willful and he has serious disputes in this case and hence the petition may be allowed. The major contention of the complainant is with respect to dragging the proceedings. However, the indefeasible right of the accused to prove his innocence 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 23rd day of April, 2026.)

Sd/-
Judicial First Class Magistrate-II
Kanjirappally