

IN THE COURT OF THE MUNSIFF, CHANGANACHERRY

Present :- Smt. Sarica A.R, Munsiff

Wednesday 27th day of August, 2025
5th Bhadra, 1947

I.A. No. 2/2025 in O.S. No. 8/2024

Petitioner :-

Jayasree, Himam House,
Neyyattinkara P.O,
Thiruvananthapuram.

By Adv. Kurian Joseph

Counter Petitioners :-

T.M Nazeer, Thazhathedathu House,
Kangazha P.O, Changanacherry.

By Adv. Sajeesh Shajahan

This petition is coming up for consideration before this Court on 27.08.2025 and the court on the same day passed the following :-

ORDER

The petitioner is the defendant in the case. The petition is filed under S.379(1), 215(1)(b) of Bharathiya Nagarik Suraksha Sanhita.

2) **Averments in the petition is that** a forged and fabricated document is produced to institute the suit against the petitioner. The 2nd document filed along with the plaint has in it "The second party T.M. Nazar in receipt of the money and hereby declares that he will not question the authority concerned in so doing in any legal proceeding in future" in the petition. This has been removed on purpose after which the document is produced. The original of this document is produced by the defendant before this court. On perusal of the original and the copy produced by the plaintiff, it is evident that the plaintiff has produced a fabricated document. The main paragraph in the document has been removed while taking a copy after which it has been produced before this Court. The gap in the document makes it evident. Hence this petition.

3) The respondent filed objection stating that the agreement dated 03-01-2024 is a cash receipt for receipt of ₹8 lakhs from the defendant, the copy of which submitted by the plaintiff in the court. The original of this document is with the defendant. It is only upon receipt of this petition that the plaintiff noticed the gap in the document. The plaintiff is aware that the original is with the defendant and that the same is not misplaced by the defendant. In such a situation that the plaintiff omitted a paragraph is not true. The possibilities of the defendant who

had the original, fabricating the original, cannot be overlooked. The documents produced by the plaintiff is a copy of that which was provided by the defendant. After giving a copy of the same to the plaintiff the defendant has added, "second party T.M. Nazeer in receipt of the money and hereby declares that he will not question the authority concerned in so doing in any legal proceedings in future" and has filed this petition. This omitted paragraph is of no relevance to this case of the plaintiff. The plaintiff has not fabricated the document and hence the petition ought to be dismissed.

4) Points arose for consideration are as follows:

- 1) Whether the petition to be allowed ?
- 2) Reliefs and costs ?

5) To prove the case of the petitioner, PW1 was examined. Exts.A1 to A3 were marked. To prove the case of the defendant, Exts.B1 and B2 were marked.

6) Heard both sides.

7) Points 1 and 2:- Ext.A1 is the original of the cash receipt dated 03-01-2024. As per this agreement in the 2nd page "the second party T.M. Nazeer in receipt of the money and hereby declares that he will not question the authority concerned in so doing in any legal proceedings in future" is seen mentioned.

Ext.A1 is the original produced by the defendant. Thereafter Ext.A2 the copy of the same agreement produced by the plaintiff at the time of filing of the plaint is perused. In this, as aforementioned, the paragraph in the 2nd page is missing. Thus, on perusal of Exts.A1 and A2 it is seen that the whole paragraph in the 2nd page of the cash receipt which forms the basis of the cause of action between the parties is missing in Ext.A2 which is the copy produced by the plaintiff for instituting the suit.

8) Thereafter on the basis of Ext.A3, the Power of Attorney holder, PW1, S/o the defendant deposed on her behalf. PW1 deposed that Ext.A1 was prepared in Neyyatinkara at the office of his lawyer after which it was brought to his residence and signed there by the parties. He submitted that there was no specific reason for not numbering the paragraph or not having witnesses for this document. He stated that the copy of this document was provided to the plaintiff from a photocopy shop in Neyyattinkara and that it was made sure that all parts of the document is correctly obtained in the copy. He admitted that Ext.A1, the original was in the possession of his mother, the defendant and that the photocopy of the same was given to the plaintiff.

9) The counsel for the respondent produced Exts.B1 and B2 the documents which were the basis for Ext.A1. However, the same has no relevance in this petition as this is a petition for enquiry for forgery with respect to Ext.A2. Here Ext.B2 is the same as Ext.A1. PW1 deposed that it was at the time when the defendant approached the court for obtaining the copies of the document filed by the plaintiff with the suit that he understood as to this difference in Ext.A2 from the original. He stated that Ext.A2 is not the copy of Ext.A1 and that it was not the copy of Ext.A1 handed over by him to the plaintiff. He deposed that by removing this last paragraph to be the plaintiff is at an advantage as, in Ext. A1 the plaintiff has himself admitted to financial dealings with his demised brother and that his mother, the defendant, was asked to deposit ₹8 lakhs to the account of his demised brother, after which the plaintiff is attempting to unlawfully obtain ₹8 lakhs more from the mother, the original defendant.

10) The counsel for the petitioner argued that a full paragraph in Ext. A2 is seen removed compared to the original which is Ext.A1. This paragraph is of importance as it is in this paragraph that is clearly states that there will not be any further legal proceedings between these parties with respect to this transaction. The counsel for the respondent argued that

Ext.A1 cannot be considered a receipt as it ought not to have been in a judicial stamp paper but endorsed with proper revenue stamp and that Ext.A2 is a copy of Ext.A1 taken through his mobile phone. He submitted that one cannot overlook that it could have been act of the defendant to add a new paragraph through a DTP and page marker application to evade from the liability. Thus, both the counsels have submitted that there is a forgery being committed either in Ext.A1 or Ext.A2 and that the same ought to be determined.

11) Prima facie it is seen that the plaint is instituted with Ext.A2, the original of which is Ext.A1 produced by the defendant in which a whole paragraph is seen removed. From the documents submitted by both the counsels and their arguments, it is seen that the counsels have admitted that there has been a forgery. While the plaintiff claims that the defendant has subsequently added a new paragraph, the defendant claims that the plaintiff has removed a paragraph to institute this case. As Exts.A1 and A2 are documents produced before the court with allegation of forgery, which is prima facie evident, this indeed necessitates an enquiry.

12) S.195 of the Code of Criminal Procedure deals with the offences relating to documents given in evidence wherein under S.195(b)(i). It is stated that no court shall take cognizance of

any offences punishable under S.193 to 196, 199, 200, 205 to 211 and 228 when such offences are alleged to have been committed in or in relation to any proceeding in any court except on a complaint in writing of that court. Thus, in this situation upon an enquiry conducted, it is evident that forgery has been committed and the same necessitates the enquiry.

13) For offences enumerated in S.195(i)(b) complaint must be made by the concerned court and as held in ***Mahadev Bapuji Mahajan v State of Maharashtra AIR 1994 SC 1549***. Section 195(1)(b)(ii), as it now stands, clearly shows that this provision for complaint by Court would cover not only the party to proceeding but also others and it is reasonable to hold that the offences alleged to have been committed by such persons in respect of the documents would include offences alleged to have been committed in respect of the documents produced or given in evidence after the initiation of the proceeding in which they were produced, but also the offences alleged to have been committed before the initiation of the proceeding and produced in Court in the proceedings after its initiation.

14) In ***Patel Lalji Bhai Somabhai vs. The State of Gujarat (1971 (2) SCC 376)***, after examination of the controversy in considerable detail it was observed that as a general rule the Courts consider it expedient in the interest of justice to start

prosecutions as contemplated by Section 476 (of the old Code which now corresponds to Section 340 Cr.P.C.) only if there is a reasonable foundation for the charge and there is a reasonable likelihood of conviction. In this case, it is evident that a whole paragraph is either removed in Ext. A2 or added in Ext. A1, forming the basis of an offence of forgery. The requirement of a finding in this is expedient because of the close nexus between the offence and the proceeding.

15) The underlying purpose of enacting Section 195(1)(b) and (c) Section 476 is to control the temptation on the part of the private parties to start criminal prosecution on frivolous vexations or un- sufficient grounds inspired by a revengeful desire to harass or spite their opponents. These offences have been selected for the court's control because of their direct impact on the judicial process. It is the judicial process or the administration of public justice which is the direct and immediate object or the victim of these offences. As the purity of the proceedings of the court is directly sullied by the crime and the court is considered to be the only party entitled to consider the desirability of complaining against the guilty party.

16) **In Iqbal Singh Marwah & Anr V. Meenakshi Marwah & Anr (ILR 2005 (2) Ker. 347)**, it was held that Section 195(1)(b), as the Section is conditioned by the words 'Court is

of opinion that it is expedient in the interest of justice' shows that such a course will be adopted only if the interest of justice requires and not in every case. In the instant case, the whole cause of action revolves around this Ext. A1 and Ext. A2.

17) Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(i)(b). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status in a money suit as in the instant case.

18) **In the light of these precedents,** a preliminary enquiry was conducted by this court and a finding is entered into that there has been forgery committed with respect to Exts. A1, A2 documents which necessitates an enquiry. Therefore, IA 2/2025 allowed. The documents will be transferred to JFCM - 1, Changanacherry along with a formal complaint to the learned

Magistrate in JFCM - 1, for criminal prosecution for the offence of forgery with respect to documents provided in evidence under Section 195(i)(b), before this court.

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

Sarica A.R
MUNSIFF

APPENDIX

Exhibit marked for the Petitioner:-

A1	03.01.2024	Original Cash Receipt
A2	03.01.2024	Copy of Cash Receipt
A3	26.06.2025	Power of Attorney

Exhibit marked for the Respondent-

B1	03.01.2024	Original Cash Receipt
B2	03.01.2024	Copy of Cash Receipt

Court Exhibits Nil

Witness examined for the Petitioner

PW1	02.07.2025	Sreekanth
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Witness examined for the Respondent- Nil

Sd/-
MUNSIFF

Copied by:
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