

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE –CHITTUR**

**Present: Sri. Sivadas S**

**Judicial First Class Magistrate ,Chittur.**

**Dated this the 24<sup>th</sup> day of October , 2025**

**CMP.No. 2790/2025 IN ST 71/2020**

Naveen C Ozhiyal, aged 43/19 years,  
S/o Chandrasekharan, House no. 31, : Petitioner/ Accused  
Smrithi, Kochappilli, Appachan Road,  
Padivattam, Ernakulam.  
(By: K. Raji Prabhakaran, Advocate)

Amal Sadhique, aged 23/19 years, : Respondent/ complainant  
S/o Muhammed Ansari, Nadharsha house,  
Police Street, Pudunagaram, Chittur.  
(By: Sri. k. Siyavudheen, Advocate )

**ORDER**

This is a petition to re-open the evidence of complainant and to re-call PW1.

2. The original complaint is a complaint filed under Section 138 of Negotiable Instrument Act.

3. The allegation in the petition in brief are as follows: He is the accused in this case. On 02.07.2025 the complainant was examined as PW1. On that day the petitioner has not appeared before this court due to back pain and hence he cannot give instruction to his counsel. So no cross was recorded and the evidence of respondent/complainant was closed. The respondent/complainant has to be cross examined in this case in order to have a just decision in this case otherwise irreparable injury and hardship will be caused. So he has prayed to re-call PW1 and to allow this petition.

4. On filing this petition notice was given to the respondent/complainant. They filed objection in which they have stated that the petition is not maintainable in law. It is

filed on a experimental basis. They have not produced any document to prove that he was laid up due to back pain and so he was not able to travel from Kochi and to give advice to his counsel. They want to drag the matter. There is no necessity to re-call PW1. No ground is stated to recall PW1. So they prayed to dismiss the petition.

5. Heard both sides.

6. The following points arise for consideration and decision.

1. Whether there are any sufficient grounds to re-call PW1? If so, what is the proper order?

7. The learned counsel for the petitioner/accused argued that this court has got ample power to recall PW1. As the accused has not given instructions he could not cross examine the witness. Cross examination of PW1 is very much essential. Unless PW1 is cross examined it will cause irreparable injury and hardship to him and so he prays to allow this petition.

8. The learned counsel for the respondent/complainant argued that sufficient opportunity was granted to the petitioner/accused to cross examine the witness, but he has not availed the opportunity and so no cross was recorded and thereafter the case was posted for respondents evidence. The reason shown to recall PW1 is not a reason to recall PW1. At the time of engaging of the case the counsel will be given instruction about the case. So on that ground itself the petition has to be dismissed. Only to drag the proceedings they have filed this petition. He has not produced document to prove that he was laid up due to back pain. So he prayed to dismiss the petition.

9. This is a case filed u/s.138 of Negotiable Instruments Act against the accused and in

this case the complainant was examined as PW1 and Ext.P1 to P3, P3(a) and P4 were marked. As the accused has not given instructions to the counsel he could not cross examine the witness and the case was posted for further evidence of complainant. On that day the accused has filed this petition to recall PW1. Section 348 of BNSS says that at any stage of any enquiry, trial or other proceedings the court can recall and re-examine any person already examined if his evidence appears to be essential for the just decision of the case. In this case the petitioner/ accused has pleaded not guilty and has claimed to be tried. Even though no documents are produced by the accused to prove that he was laid up due to back pain. So the petitioner/ accused has to cross-examine the respondent /complainant in order to prove his case. Unless and until the petitioner/ accused was given a chance to cross-examine PW1 it will cause much prejudice to the petitioner/accused. The petitioner/accused can be given a chance in order to prove his case. But considering the fact that this petition is filed at a belated stage, I find that the petition can be allowed on cost of Rs. 2000/- to the respondent/applicant. The cost will have be paid within 7 days. If the cost is not paid this petition shall be deemed to be dismissed.

10. In the result, petition is allowed and to recall PW1 with the following conditions.

- 1)Petitioner/accused shall paid cost Rs.2000/- to the respondent/complainant.
- 2)It shall be paid within 7 days from today. If the cost is not paid this petition shall be deemed to be dismissed.

Dated this the 24<sup>th</sup> day of October, 2025

Sd/-  
Judl. First Class Magistrate-I  
Chittur

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