

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE –CHITTUR

Present: Sri. Sivadas S

Judicial First Class Magistrate ,Chittur.

Dated this the 16th day of September, 2025

CMP.No. 2907/2025 IN ST 1068/2021

Jacob Nechad, aged 67/21 years, : Petitioner/Accused
S/o Thomas, Rice Mill, Ambattukulambu,
Vandithavalam Village, Chittur.
(By: Sri. T. Mahesh, Advocate)

Shaji, aged 37/21 years, S/o Syed,
Panthalamoochi house, Vandithavalam,
Chittur. : Respondent/ Complainant
(By: Sri. R. Jayakrishnan & K Sooraj, Advocate)

Offence : Punishable under Ss. 138 of Negotiable Instrument
Act

ORDER

This is a petition filed by the petitioner/ accused to recall PW1 under section 348 of BNSS.

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

3. The allegation in this petition in brief are as follows: He is the accused in this case. On 05.07.2025 the complainant was examined as PW1 and Ext. P1 to P5 were marked. But on that day as his counsel has another case as OP 825/2025 in Hon'ble Family Court Palakkad, he was not able to appear before this court to cross examine the witness. The cross examination of PW1 is highly necessary otherwise it will cause irreparable injuries to him. So he prayed to re-call PW1.

4. Notice of this petition was given to the respondent/ complainant. Respondent/complainant filed objection. In the objection it is stated that there is no necessity to recall PW1. There are no bonofides for the petition and merely to drag the proceedings the petitioner/accused has filed this petition. The reasons shown in the petition is not correct. So the complainant prays to dismiss the application.

5. Heard both sides. Perused the records.

6. The learned counsel for the petitioner/accused argued that at the time of examination of the complainant he was absent as he has appeared in another case as OP 825/2025 in Hon'ble Family Court, Palakkad he could not cross examine PW1. Accused is contesting the case. So unless PW1 is recalled for cross-examination the accused will be put to unnecessary hardship.

7. On the contrary the learned counsel for the respondent/complainant argued that sufficient opportunity was given for the defence to cross examine PW1 but as the defence counsel has not cross examined PW1, no cross was recorded. Now they have filed this petition only to drag the proceedings. There is no justifiable reason for recalling PW1 and hence he argued that the petition is liable to be dismissed.

8. 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 P5 were marked. As the counsel for the accused was absent no cross examination was recorded 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. 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. Hence I find that the petitioner/accused can be given a chance to cross examine PW1 and to prove his case, but considering the inconvenience caused to PW1 I find that he will have to be compensated for the same. I am inclined to allow this application but on cost of Rs. 1000/- to complainant. The cost shall be deposited by petitioner/accused within 7 days from today. If the cost is not paid this petition shall be deemed to be dismissed.

9. In the result, petition is allowed and PW1 is recalled with the following conditions.

- 1)Petitioner/accused shall paid cost Rs.1000/- to the 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 16th day of September, 2025

Sd/-
Judl. First Class Magistrate-I
Chittur

- true copy -

Judl. First Class Magistrate-I
Chittur