

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE –CHITTUR

Present: Sri. Sivadas S

Judicial First Class Magistrate ,Chittur.

Dated this the 4th day of March, 2026

CMP.No. 1/2026 IN ST 1073/2020

Bibin Kenoky C K, aged 45/19 years, : Petitioner/Accused
S/o Kamalhasanan, M/s Kenoky Educational
Services, Welcome Plaza, Nellipuzha,
Mannarkkad, Palakkad.

Present Address:

Bibin Kenoky C K, S/o Kamalahasanan,
Chembarathiyil House, Thimbalam,
Valanchery Taluk, Malappuram.
(By: Sri. K.N. Shibu, Advocate)

Guruswamy, aged 51/19 years, : Complainant/Respondent
S/o Ramaswamy, Devangapuram,
Chittur.
(By: R. Jayakrishnan & K Sooraj , Advocate)

ORDER

This is a petition filed under Section 311 of The Code of Criminal Procedure, 1973 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 26.11.2025 the complainant was examined as PW1. On that day the petitioner has not appeared before this court as he was admitted in the hospital 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. He filed objection in which he stated that the petition is not maintainable in law. It is filed on an experimental basis. They have not produced any document to prove that he was admitted in hospital. 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. The reason shown to recall PW1 is not a sufficient reason to recall PW1. Only to drag the proceedings they have filed this petition. He has not produced document to prove that he was admitted in hospital. 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 P5 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 311 of The Code of Criminal Procedure, 1973 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 admitted in the hospital, the petitioner/accused will have to cross examine PW1 in order to disprove the case of complainant. 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 inconvenience caused to PW1, I find that he will have to be compensated for the same. I find that the petition can be allowed on cost of Rs. 2000/- to the respondent/applicant. The cost will have to 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 PW1 is recalled on 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 4th day of March, 2026

Sd/-
Judl. First Class Magistrate-I
Chittur

- true copy -