

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE - III,
NEYYATTINKARA**

**Present: Sri. Albin J. Thomas,
Judicial First Class Magistrate - III**

Dated : Tuesday, 02nd June, 2026/ 12th Jayaishtha, 1948

CMP 8418/2025 in CC 441/2019

Petitioner/ Accused	:	Sunukumar, Aged 30, S/o Krishnankutty, Aikkaramoola Puthen Veedu, Kottukalkonam, Anthiyoor, Balaramapuram Village.
		Represented by Adv. Reshma.R.S
Respondent	:	State-represented by Grade Assistant Sub Inspector of Police, Balaramapuram police station in crime No.105/2019.
		(Represented by Sri.Vishnu Thampi, APP)
Petition	:	U/s.239 of Cr.PC
Sentence/ order	:	Petition is dismissed.

This CMP was heard today and this court passed the following:

ORDER

1. This is a petition filed under Section 239 of Cr.PC seeking discharge of the accused.
2. Averments in the petition are as follows: Petitioner is the accused in this case. There was an existing civil dispute between defacto complainant and the petitioner. Subsequently, the defacto complainant obtained an injunction order against the petitioner from Munsiff's Court, Neyyattinkara. By the said order, the court prohibited the petitioner from increasing the width of the pathway or destructing the building situated in the property of the complainant. The allegation against the accused is that he trespassed

into the property of defacto complainant and caused damage to the window of the building which was made in wood. Thereafter, it was alleged that the accused threatened witnesses no. 2 and 3 by wielding a chopper towards them. However, such an incident was not occurred and the case was registered only to support the civil case. There is no evidence against the petitioner and he is entitled for a discharge.

3. Heard the learned counsel for the accused and the learned APP. The learned APP stoutly objected the application.

4. The point that arise for consideration is:

1. Whether the accused is entitled for a discharge?

5. **The Point:** The specific allegation against the accused is that due to his previous enmity towards defacto complainant, he trespassed into the property of defacto complainant and caused damage to the window of the building in the property of defacto complainant. Thereafter, the accused wielded chopper towards witness no. 2 and 3 and threatened to kill them.

6. The learned counsel for accused argued that there is no prima facie materials against the accused. The case was instituted only due to previous enmity and to support the civil case between the accused and the defacto complainant. There was no recovery of broken pieces of the window of the building in the property of defacto complainant by the police. Moreover, there is delay in launching the FIS before the police and registering the FIR.

7. At this juncture, it is relevant to have a look at the criteria for determining an application under Section 239 of CrPC. The Hon'ble High Court of Kerala in **Jacob P. Paul @ Thampi v. State of Kerala (2025 KHC 430)** held that *"10. What S.227 and S.239 CrPC contemplates is that if upon consideration of the record of the case and the documents submitted therein and after hearing submission of the accused and prosecution in his behalf, the judge considers that there is no sufficient ground for proceeding against the accused, the accused shall be discharged. At the stage of consideration of discharge under S.227 CrPC or S.239 CrPC as the case may be, the court is not prepared to undertake a threadbare analysis of the materials gathered by the prosecution. The court has only to see whether there are sufficient grounds to proceed against the accused and to see whether the materials are sufficient to enable the court to initiate a criminal trial against the accused."* A reading of the dictum of Hon'ble Court shows that at this point, the Court has to consider only whether there are sufficient grounds to proceed against the accused and the grounds are sufficient to initiate a criminal trial against the accused.
8. The major contention raised by the learned counsel for accused is that the witnesses no. 2 and 3 did not lodge any police complaint against the accused for wielding a chopper towards them. I have perused the statement of witnesses no. 2 and 3. Both of them specifically stated that the accused wielded chopper towards them. There is no mandate that they should lodge separate complaint against the accused. The further

contention raised by the accused is that there is no recovery of the broken pieces of the window of the building in the property of defacto complainant. A perusal of the scene mahazar produced along with the final report shows that there is specific mention that the window was seen broken when the the Investigating Officer, prepared the scene mahazar. The counsel for accused further argued that there is delay in lodging FIS and FIR. However, it is to be considered only after the trial, since the Investigating Officer and the defacto complainant has to be given an opportunity to explain the reason for delay in loading FIS and registering the FIR.

9. A perusal of the records produced along with the final report shows that there are prima facie materials to initiate trial against the accused. The contentions raised by the accused can be determined only after the trial and not at a pre-trial stage. From the above discussion, this Court is of the considerate opinion that the accused is not entitled for a discharge under Section 239 of Cr.PC and the petition is only liable to be dismissed.

In the result, the CMP is dismissed.

Pronounced by me in open court on this the 02nd day of June, 2026.

Sd/-
JUDICIAL FIRST CLASS MAGISTRATE – III,
NEYYATTINKARA

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NEYYATTINKARA