

IN THE COURT OF THE JUDICIAL I CLASS MAGISTRATE-I,  
ATTINGAL.

Present:- **Sri. Jawhar H**  
Judicial First Class Magistrate-I, Attingal

Dated this the 23<sup>rd</sup> day of August, 2025.

**C.M.P.No. 806/2025 & C.M.P.No. 808/25 in CC No. 1586/2015**

Petitioner/Complainant : Santhakumari, aged 56 years, D/o. Kunjiraman,  
Charuvila Veedu, Karoorkonam, Manamboor P O,  
Thiruvananthapuram.

*(By Adv. V Shaji )*

Respondent/Accused : Saritha, aged 38 years, D/o. Sobha, Kalabham  
Veedu, Near Avanavancherry Paruthiyil Temple,  
Elamba P O.

*(By Adv. Thattathumala S Anilkumar)*

Read : Petition filed U/Ss. 94 & 348 of BNSS.

Order : Petitions are dismissed

**COMMON ORDER**

This is the common order in two petitions filed by the accused under section 94, and 348 of bnss

2. It is contended by the petitioner that while the complainant herein was examined as PW1 before court she deposed that the amount alleged in the complaint was advanced to the accused by utilising the money given by her father, who was a diary farmer of Manambore Sheera Sahakarna Sangham who died 10 years ago. According to the petitioner, those aspects stated by the counter petitioner herein are utter falsehood and in order to establish the innocence of the petitioner, the respondent is to be directed to produce the death certificate of her father and hence this petition.

3. The respondent filed objection stating that the petitioner herein had

accepted her signature in Exhibit P1 cheque and no question was put to PW1 as to whether the death of the father was registered and as to whether the death certificate is available with the complainant. It is also stated in the objection that the attempt of the petitioner is nothing but to prolong the matter.

4. Heard both sides.
5. The points that arise for consideration are:
  - (i) Whether the petition is allowable
  - (ii) Order and relief?

6. **Point number 1:** On a perusal of the evidence of PW1 before this court, it is true that she stated that she advanced the amount to the accused, utilising the amount given to her by her father during the sale of cows. She further stated that it was subsequent to the death of her father that the amount was handed over to her by her brothers. The name of the brothers were also stated by PW1 as Sasidharan and Sudevan. In such a scenario, whether the date of death of the father is having any relevance is the question to be answered. It is true that during the cross examination it was admitted by PW1 that the amount was given to her around 15 days after the death of her father. It is the admitted case that Ext.P1 contains the signature of the accused. There is no denial from the part of the petitioner herein regarding the signature which is seen in Ext.P1. The defence version is that the financial transaction was one which was in existence between the husband of the complainant and the accused. In such a scenario, when the stage of the case is considered, it stands posted for further hearing and judgment after completion of the argument from either side. The petitioner herein was having ample opportunity at the time of cross examination of PW1 as well as after examining her under Section 313 of the CrPC and at the time of defence evidence. Interestingly, in the case at hand, more than 3 months time was given for defence evidence after examination of the accused under Section 313 CrPC. At this juncture, it can be seen that the learned counsel for the defence submitted that the accused have no defence evidence and the case was subsequently posted for hearing and both the sides

were heard.

7. On considering the rival contentions, this Court is of the considered opinion that the Death Certificate of the father of the complainant is of no relevance for the just decision of this case. And hence the petition under Section 94 does not have any merits and is liable to be dismissed.

8. The second application is one filed under Section 348 of BNSS seeking to reopen the defence evidence and to summon the Secretary of Manambore Sheera Sahakarana Sangham, to establish as to whether the father of PW1 was a diary farmer. In this case, it is to be born in mind by evaluating the evidence of PW1 that the accused never challenged the source of the complainant to advance the amount alleged in the complaint. In the absence of a challenge regarding the source of the complainant, the complainant is not duty bound to establish the source. In such a scenario, the application to reopen evidence and to summon the Secretary of the Manampoor Sheera Sahakarana Sangham, does not warrant at all in this case and is not at all necessary for the just decision of the case and no prejudice whatsoever will be caused to the accused if the petition is not allowed. It is settled law that the evidence cannot be reopened on the mere asking, but only in situations wherein the same is required for the just decision of the case. Hence, the petition filed under Section 348 of BNSS also fails, based on the objection that, a strong and valid reason should be recorded for the exercise of the power fulfilling a just decision. It is also pointed out in the objection that this petition is also filed for prolonging the case. Hence this Court deems it fit not to allow this petition. In the result, both the petitions are dismissed.

9. **Point No.2:** For the reasons above mentioned, the petitions are dismissed.

Pronounced by me in open court on this the 23<sup>rd</sup> day of August, 2025.

(Sd/-)

Judicial I Class Magistrate-I,  
Attingal

