

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE -I.
SULTHAN BATHERY

Present:- Smt. Safeena C.C,
Judicial First Class Magistrate-I,
Sulthan Bathery.

Saturday 15th day of November 2025
The 24th day of Karthika, 1947

CMP 2210/2025 IN ST 473/2018

Petitioner/ Accused : Muhammed Sherief, aged 58 yrs,
Pazhivila House, Thdikkad Post,
Anchal, Kollam.
(By Adv. M.K. Suresh Kumar)

Respondent/Complainant : Proprietor, Steelman's Engineering
and Contractors, Sulthan Bathery, Mr
Sunil Joy, S/o Joy, Mannadiyil
House, aged 48 yrs, Sulthan Bathery,
Wayanad, Kerala.
(By Adv. Viji Varghese)

Order : Petition allowed.

O R D E R

The petitioner filed an application under Section 311 of the Cr.P.C. to reopen the evidence and to re-examine the witness, Sabu K. P., S/o Poulose, Kalarickal House, Noolpuzha, Nenmeni Amsom, Desom, Sulthan Bathery.

2. The petition averments are that, on the side of the accused, one Sabu K. P., S/o Poulose, Kalarickal House, Noolpuzha, Nenmeni Amsom, Desom, Sulthan Bathery Taluk, was examined as DW1 on 07/10/2024, and the witness deposed before this Hon'ble Court that both the accused and the witness were working for M/s Omicron

Engineering, Aurangabad, and were entrusted with the task of purchasing a second-hand vehicle for transporting labourers; the witness is in possession of the details of the work executed by the said company and the accounts maintained by the complainant, and such documents are required to be produced before this Court, and it is therefore essential to reopen the evidence and recall the witness for the purpose of producing the said documents and adducing further evidence, failing which the accused will suffer irreparable loss and damage; in the above circumstances, it is most humbly prayed that this Court may be pleased to reopen the evidence and permit the re-examination of the witness, Sabu K. P., S/o Poullose, Kalarickal House, Noolpuzha, Nenmeni Amsom, Desom, Sulthan Bathery Taluk, and direct him to produce the documents relating to the work executed by M/s Omicron Engineering, Aurangabad, as well as the account details maintained by the complainant, which are in his possession, and thus render justice.

3. A counter statement was filed by the first accused stating that the complainant was examined on 13.02.2023, and subsequently, on 07.10.2024, the witness mentioned in the witness list was examined and his evidence was recorded. It is contended that the accused has filed the present petition with the malicious intent of prolonging the proceedings and causing hardship to the complainant. It is further contended that the petition is not maintainable, as it has not been filed by the accused directly before this Hon'ble Court. Hence, it is prayed that the petition be dismissed; otherwise, the petitioner/respondent will suffer irreparable loss and hardship. Therefore, it is prayed that this Hon'ble Court may be pleased to dismiss the petition with costs.

4. Heard both sides.
5. Point arises for consideration: -
 - i) Whether the petition is likely to be allowed?
 - ii) Orders?

Point No. i:-

6. Upon perusal of the case records, it is seen that the offence alleged against the accused is under Section 138 of the Negotiable Instruments Act and that the evidence, including the S.313 examination of the accused, has already been completed. The present petition has been filed under Section 311 Cr.P.C. seeking to reopen the evidence and recall DW1, Sabu, for the purpose of producing certain documents which, according to the petitioner, are essential for a just adjudication of the case. The complainant/respondent opposes the petition, contending that it is filed with the intention of delaying the proceedings and that sufficient opportunities had already been granted to the accused.

The scope of Section 311 Cr.P.C. has been clearly laid down in *Hanuman Ram v. State of Rajasthan* (AIR 2009 SC 69) and *State of Haryana v. Vinod Kumar* (2023 KHC 3805), wherein it is held that the power to summon or recall a witness is discretionary and must be exercised only when such evidence is essential for a just decision of the case, and not for filling lacunae. In the present case, considering that the documents sought to be produced are stated to be material and that recalling the witness would not cause serious prejudice to the opposite party, this Court is of the view that allowing the petition, subject to costs, would serve the ends of justice. Hence, Point No. I is found in favour of the petitioner.

Point No. ii:-

In light of the findings on Point No. I, this petition is liable to be allowed on payment of costs of Rs. 1,000/-, which shall be paid at the time of his presence for examination.

(Pronounced by me in open court on the 15th day of November 2025)

sd/-

JUDICIAL FIRST CLASS MAGISTRATE-I

//True copy//

JUDICIAL FIRST CLASS MAGISTRATE-I
SULTHAN BATHERY