

IN THE COURT OF SESSIONS, KALPETTA DIVISION

**Present :- Sri.Biju.T., Special Judge, (Special Court for the trial of
Offences Under SC/ST (Prevention of Atrocities) Act Cases,
Mananthavady.**

Tuesday the 03rd day of February, 2026
(The 14th day of Magha, 1947)

CRIMINAL MISCELLANEOUS PETITION No.04/2026

SC 278/2019

Cr.No.294/2018 of Vellamunda Police Station.

State of Kerala represented by Dy.S.P., SMS Wayanad, Mananthavady through Special Public Prosecutor, Mananthavady.	:	Petitioner/ State
Santhosh, Aged 46/2018, S/o Paraman, Palathinkal House, Residing at Dileni House, Arattuthara Post, Mananthavady Taluk.	:	Respondent/Accused

This petition is coming on this day for hearing before me in the presence of Sri.Sraddhadaran M.G., Special Public Prosecutor for the petitioner /State and Sri.K.S.Mohandas, Advocate for the respondent / accused and upon hearing and perusing the petition, the court passed the following:-

O R D E R

This petition is filed by the learned Special Public Prosecutor for the State to recall PW42.

2. The offences alleged against the petitioner are U/ss. 302 r/w 301 of the IPC and U/s.3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

3. **The gist of the petition is as follows:-** It is averred in the report that earlier the prosecution was conducted by the learned Special Public Prosecutor, Adv.Joshy Mundakkal. His tenure as the Special Public Prosecutor ended on 14.07.2025. It is learnt from CPO 3135, Vinu V Mathew, the aid prosecution assistant that Adv.Joshy is appearing on behalf of the accused at present. In this case, on 18.11.2025. CWs.35, 79 and 60 were cross examined by Adv.Joshy Mundakkal. After Adv.Joshy Mundakkal ceased to be a Special Public Prosecutor, his appearance for the accused before the court is against the judicial discipline. The statement given by PW42 to the investigating officer is stated in the last paragraph of this petition. It is mentioned in the petition that the accused, however, procured the cyanide from the shop of PW42. Those things are omitted to ask by the learned Additional Public Prosecutor. It is necessary to brought out those facts before the court. Otherwise, the prosecution will be put into irreparable loss and hardships. Hence, this petition is to recall PW42.

4. No counter filed by the accused.

5. Heard both sides.

6. PW42 was examined before this court on 18.11.2025. PW42 stated before the court in the chief examination that he is a goldsmith. But, he is not a license holder. Since he has no license, he was not keeping elements with him. Since PW42 did not support the case of the prosecution, he was declared hostile. Even though permission has been granted, nothing has been asked to the witness by the learned Additional Public Prosecutor, except a suggestion that the witness is telling lie to help the accused in this case.

7. When permission is granted, it is for the Public Prosecutor to actively examine the witness. However, nothing has been asked to test the veracity of the witness. No paragraph number is shown in the petition. In the petition, the last paragraph discloses the statement given by the witness to the investigating officer. However, no questions were asked to PW42 with respect to the statement given by him to the investigating officer, after declaring the witness as hostile. The other paragraphs of this petition are not necessary to decide the petition. In the prayer portion, it is stated that the learned Additional Public Prosecutor for the State omitted to ask some questions to PW42. It is an inadvertent mistake committed by the learned Additional Public Prosecutor for the State. Hence, it is not stated in the petition that it is necessary to recall PW42. If the witness is not recalled, the prosecution will be put in to irreparable loss and hardship. Hence, in the interest of justice, the petition is to be allowed. Otherwise, ends of justice will not be met.

Resultantly, the petition is allowed. PW42 is recalled. Issue summons to PW42 to 07.02.2026.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court, this the 3rd day of February, 2026).

SPECIAL JUDGE

Typed by: Manuel M.P.

Compared by: Abdul Rasheed E.K.

Order in CMP 4/2026
SC 278/2019