

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE II,
KANJIRAPPALLY**

Present :- Niyatha Prasad.,
Judicial First Class Magistrate – II, Kanjirappally

Dated this the 09th day of June, 2025

CMP 1134/2024 in CC 315/2023

Petitioner/1st Accused : Sujith K. P, aged 38/22,
S/o Purushothaman,
Kochuparmbil (H), Mithrakkari Bhagom,
Muttar P. O, Muttar Village,
Kuttanad Taluk.
(By. Adv. Sri. Shamon Shaji)

Respondent : The State represented by the Sub-Inspector
of Police, Manimala Police Station in
Crime No. 957/2021.
(By APP -II, Kanjirappally)

Offence : U/ss. 420, 465, 468, 471, 484, 488, 201 r/w
34 of IPC

Order : CMP is dismissed.

ORDER

This is an application filed u/s. 239 of Criminal Procedure Code 1973
(herein after referred as Cr.PC).

2. The petitioner is the 1st accused in crime No. 957/2021 of Manimala Police Station and is alleged to have committed the offences punishable u/ss. 420, 465, 468, 471, 484, 488, 201 r/w 34 of Indian Penal Code (herein after referred to as IPC).

3. Prosecution case in brief is as follows: The accused persons in furtherance of their common intention to cheat CW1, CW2 and Government had forged a transit pass as if issued in the name of CW2 from Kottayam Mining and Geology department and excavated earth from the property lying near St. Sebastian

Church at Manimala using an excavator and transported the same in two tipper lorries bearing reg. No. KL 66C 2500 and KL 66 B 2529. Further, the first accused had concealed the machines used for preparing the forged pass so as to destroy the evidence in this case. Thereby committing the offences punishable u/ss. 420, 465, 468, 471, 484, 488, 201 r/w 34 of IPC.

4. The petitioner's averment is that, the offences alleged against the petitioner is not maintainable. From the statement of witnesses and the documents produced, none of the offences mentioned in the final report is made out against the petitioner. There is no evidence on record to show that the petitioner had ever used forged pass as genuine and used the same for the purpose of excavation and transportation of earth. Neither the documents produced nor the statement of witnesses, would go to show that the petitioner is prima facie connected to the allegations. Hence the petitioner/1st accused maybe discharged.

5. Heard both sides. Perused the available records.

6. The specific case of the prosecution is that, the accused persons in furtherance of their common intention to cheat CW1, CW2 and Government had forged a transit pass as if issued in the name of CW2 from Kottayam Mining and Geology department and excavated earth from the property lying near St. Sebastian Church at Manimala using an excavator and transported the same in two tipper lorries bearing reg. No. KL 66C 2500 and KL 66 B 2529. Further, the first accused had concealed the machines used for preparing the forged pass so as to destroy the evidence in this case.

7. The learned APP argued that there are sufficient materials on record to proceed against the petitioner and hence the petition has to be dismissed. *Per contra* the learned counsel for the petitioner argued that there are no sufficient grounds for proceeding against the petitioner and continuing with the one will only result in abuse of process of law and waste of judicial time.

8. The factors that can be considered by the court in a discharge petition has been laid down by the honorable High Court of Kerala in **Nandakumar v. Central Bureau of Investigation** reported in **2016 (3) KLT 11**. It was held that; *“It is a trite law that what can be looked into by the concerned court at the time of exercising the powers under S.239 Cr.P.C. or S.227 Cr.P.C. are the contents of the final report and the documents sent along with it under S.173 Cr.P.C”*. Hence, this court is only verifying the final report and the documents to see whether there is ground for presuming that the accused has committed the offence in order to frame charge against him.

9. The learned counsel for the petitioner/1st accused made arguments in tune with his averments raised in the petition. For brevity the same is not reproduced in black and white. The specific contention of the petitioner is that, he had never made any preparations to forge the pass or used the same as genuine to excavate earth with the intention to cheat CW2 or the Government.

10. The test to determine whether an accused is to be discharged or not is whether the material on record disclose any grave suspicion against the accused that he had committed the offence. The court cannot be expected to be a post office or a mouth piece of the prosecution by accepting the charge sheet filed by the police and mechanically framing charge against the accused. The materials on record should be enough to form an opinion in the mind of the court that the accused might have committed the offence. For that, court should examine the final report submitted by the police with a view to find out the existence of all the ingredients to constitute the offence and the court should not presume that the prosecution story is the gospel truth. The learned counsel for the petitioner pointed out that if two views are possible and one of them give rise to suspicion only and distinguished from grave suspicion, the court is empowered to discharge the accused irrespective of the result of the trial. Counsel for the petitioner referred to the decision of the Hon'ble Supreme Court in **Vishnukumar Shukla and anr v. State of UP and anr (Crl Appeal No.3618/2023 dated 28.11.2023)**. It is observed

that “On a careful conspectus of the legal spectrum, juxtaposed with our view on the facts and merits expressed herein before, we are satisfied that there is no suspicion, much less strong or grave suspicion that the appellants are guilty of the offence alleged. It would be unjustified to make the appellants face a full fledged criminal trial in this back drop.”

11. In **Union of India v. Prafulla Kumar and anr** reported in **AIR 1979 SC 366** it was held that “If, upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, the judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so.” The words no sufficient ground for proceeding against the accused clearly shows that the judge is not a mere post office to frame charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether there is a case for trial.

12. I have gone through the final report as well as the statement of witnesses in this case. The involvement of the petitioner herein in this case is clearly stated by CW3. Moreover, the common intention shared by the petitioner/ 1st accused herein is a matter of evidence and the same can only be proved or brought out by taking evidence in this case. Prima facie, the allegations against the accused persons herein are very serious in nature and without taking evidence in this case, it is unable to bring out the actual truth and the involvement of each accused herein. Hence, this court is of the view that, the petitioner/1st accused is not entitled to get discharged in this case.

In the result,

CMP is dismissed.

Pronounced in open court on this the 09th day of June, 2025

Sd/-

**JUDICIAL FIRST CLASS MAGISTRATE – II
KANJIRAPPALLY**