



2026:KER:39029

CRL.MC NO. 4309 OF 2026

1

“C.R”

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 4TH DAY OF JUNE 2026 / 14TH JYAISHTA, 1948

CRL.MC NO. 4309 OF 2026

CRIME NO.189/2011 OF Kodenchery Police Station, Kozhikode

AGAINST THE ORDER DATED 15.05.2026 IN CRMP 7/2026 IN SC
NO.496 OF 2020 OF ADDITIONAL DISTRICT COURT (SPECIAL COURT FOR
TRIAL FOR MARADU CASES) KOZHIKODE

PETITIONER/ACCUSED NO.1:

JOLLYAMMA JOSEPH @ JOLLY
AGED 50 YEARS
W/O SHAJU ZACHARIAS, PONNAMATTAM-HOUSE, KODATHAI
BAZAR, THAMARASERRY-TALUK, KOZHIKODE DISTRICT, PIN -
673573

BY ADVS.
SRI.K.P.PRASANATH
SHRI.T.A.AJMAL HUSSAIN
SHRI.ARUNRAJ S.
SHRI.HIJAS T.T.
SMT.SUNITHA K.G.
SMT.ANITHA V.A.
SHRI.ASWIN T. P.
SHRI.RAHUL C. CHELLAPPAN



2026:KER:39029

CRL.MC NO. 4309 OF 2026

2

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY DEPUTY SUPERINTEND OF POLICE DCB KKD
(RL) & KODANCHERY P.S., KOZHIKODE DISTRICT THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM,
PIN - 682031

OTHER PRESENT:

SR.PP.SRI.C.S.HRITHWIK

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
04.06.2026, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



“C.R”

C.S.DIAS,J.

=====

CrI. M.C.No.4309 of 2026

Dated this the 5th day of June, 2026

ORDER

The petitioner is the first accused in S.C. No. 496 of 2020 on the file of the Special Additional Sessions Court (Marad Cases), Kozhikode (“Trial Court” for short), which arises from Crime No. 189 of 2011 registered by the Kodanchery Police Station, alleging the commission of the offences punishable under Sections 110, 120B, 465, 467, 468, 471, 475, 302 and 201 r/w S.34 of the Indian Penal Code, and Section 2 r/w S.6(2) of the Poisons Act, 1919.

2. The petitioner contends that the charge sheet in the crime was filed as early as on 01.01.2020. Although she had preferred an application for discharge, the same was dismissed. The trial in the case commenced on 06.03.2023. The prosecution has thus far examined Pws.1



to 132 and marked Exts.P1 to P285 in evidence. At the stage when the case stood posted for the examination of CW249, the prosecution filed Annexure-A1 application under Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS', for short), (corresponding to Section 311 of the Code of Criminal Procedure, 1973 (CrPC), to summon and examine Smt. Remya K.K., Assistant Director (Documents), Regional Forensic Science Laboratory, Kannur, as an additional witness and to mark the Forensic Science Laboratory Reports bearing Nos.As-51/2019 to As-54/2019. Though the petitioner filed objections to the said application, by Annexure-A2 order, the Trial Court allowed the application and issued summons to the proposed witness. According to the petitioner, the prosecution's attempt is to fill the lacunae in the case, that too at the fag-end of the prosecution evidence. It is contended that, neither the details of the disputed documents nor the fact that the documents had



been forwarded to the Forensic Science Laboratory ('FSL', for brevity), nor that the reports were awaited, has been disclosed in the charge sheet. The impugned order is illegal and unsustainable in law

3. I have heard the learned counsel appearing for the petitioner and the learned Public Prosecutor.

4. The learned counsel for the petitioner argues that the application came as a total surprise to the defence. He submits that the charge sheet does not state anything about the disputed documents, their transmission to the FSL, or the receipt of the FSL reports. The application, filed after the examination of several witnesses, is nothing but an attempt to cure the fundamental defects in the prosecution case. It is further argued that the prosecution had sufficient opportunity to produce the witness and documents before the commencement of the trial and that the belated attempt to introduce an additional witness casts serious doubt upon the authenticity and credibility of



both the witness and the documents sought to be proved. If the proposed witness is examined, it would cause grave prejudice to the petitioner and undermine her right to a fair trial.

5. On the contrary, the learned Public Prosecutor stoutly opposes the petition. He submits that the Investigating Officer had, on 11.12.2019, moved the committal court seeking permission to forward the relevant documents to the FSL, and that the application was allowed. As the statutory period for filing the charge sheet was about to expire, the same was filed before receipt of the FSL reports. It is further submitted that the forwarding of the documents to the laboratory is specifically reflected in the charge sheet. The reports were subsequently sent directly to the Trial Court and form part of the records. According to the learned Public Prosecutor, the omission to include the expert's name in the witness list was purely inadvertent. No prejudice whatsoever



would be caused to the petitioner since she would have full liberty to cross-examine the expert witness. Therefore, the impugned order warrants no interference.

6. I have carefully perused the case diary. The records reveal that the Investigating Officer had, on 11.12.2019, submitted an application before the committal court seeking permission to forward the notarial register, conference minutes, the disputed Will, and the specimen signatures of the fourth accused to the FSL for expert opinion. The request was allowed, and the documents were duly forwarded. The final report was filed on 31.12.2019, prior to the receipt of the FSL reports. Subsequently, the FSL forwarded the reports to the court, and they remain on record.

7. The materials on record reveal that the contention of the petitioner that the charge sheet does not have any indication regarding the forwarding of documents to the FSL is factually incorrect. At the same time, it is not in



dispute that the prosecution omitted to include the author of the FSL reports in the witness list. The omission appears to have been noticed only during the course of trial, whereupon the present application was filed.

8. In the above context, I refer to the observations of the Hon'ble Supreme Court in **Rajendra Prasad v. Narcotic Cell** [1999 KHC 417], which reads thus:

"7. It is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers under S.311 of the Code or under S.165 of the Evidence Act by saying that the Court could not 'fill the lacuna in the prosecution case'. A lacuna in prosecution is not to be equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage 'to err is human' is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such lapses or mistakes during the conducting of a case cannot be understood as the lacuna which a court cannot fill up.

8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.



9. The very same decision Mohanlal Shamji Soni v. Union of India (supra) which cautioned against filling up lacuna has also laid down the ratio thus:

"It is therefore, clear that the Criminal Court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the Court must obviously be dictated by exigency of the situation, and fair play and good sense appear to be the only safe guides and that only the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case".

9. The materials available on record demonstrate that the documents sought to be proved through the proposed witness are not new materials sought to be introduced for the first time. The prosecution had already initiated the process of obtaining expert opinion before filing the charge sheet, and the resulting FSL reports are part of the records. Consequently, the omission to cite the author of the reports (expert) as a witness can only be regarded as an inadvertent lapse and not as an attempt to fill an inherent lacunae in the prosecution case.

10. The powers conferred upon a criminal court under Section 348 of the BNSS, corresponding to Section



311 CrPC, are wide and enabling in nature. The provision authorises the court, at any stage of an inquiry, trial or other proceeding, to summon any person as a witness, examine any person present though not summoned, or recall and re-examine any witness already examined. The overarching purpose of the provision is to ensure that the court is equipped with all relevant evidence necessary to arrive at a just decision.

11. It is well settled that the concept of a fair trial encompasses fairness not merely to the accused but equally to the prosecution and to society at large. Therefore, the mere omission to include the name of a witness in the witness list cannot, by itself, constitute a valid ground to deny the prosecution an opportunity to adduce evidence relating to a material fact already borne out by the record.

12. In **Tamilmaran K. P. v. State by Deputy Superintendent of Police [2025 KHC 6400]**, the



Hon'ble Supreme Court, while considering the power of a court under Section 311 CrPC, in paragraphs 47 to 51, has held that the powers under S.311 CrPC can be either exercised on an application moved by either side to the case or suo motu by the Court. In case a person is not listed as a witness in the charge sheet, but later the prosecution desires to cite that person as an additional prosecution witness, then the prosecution can move an application to bring this person as a prosecution witness. It is then for the Court to decide whether such a person is required as a witness or not. If the Court finds that such a person should have been examined as a prosecution witness and he/she was omitted from the list of witnesses due to some oversight, mistake or for any other reason, the Court may allow the application and as such a person can be examined as a prosecution witness. Thereafter, the normal course of examination-in-chief, cross-examination, etc., would follow as per the procedure.



13. Having considered the facts and circumstances of the case, the impugned order, the materials on record, and the law on the point, I am satisfied that there is no illegality, impropriety or error in the impugned order. The records disclose that the prosecution had sought and obtained permission to forward the relevant documents to the FSL even prior to the filing of the charge sheet; the FSL reports are already part of the records; and the proposed evidence is germane to the adjudication of the lis. Equally significant is the fact that the petitioner will have a full and effective opportunity to cross-examine the expert witness and challenge the correctness, reliability and evidentiary value of the FSL reports sought to be proved. No demonstrable prejudice would therefore be caused to the petitioner.

For the foregoing reasons, I find no ground warranting interference with the impugned order in exercise of the inherent jurisdiction of this Court under



2026:KER:39029

CRL.MC NO. 4309 OF 2026

13

Section 528 of the BNSS. The Criminal Miscellaneous Case fails and is accordingly dismissed.

Sd/-

C.S.DIAS, JUDGE

mtk/dkr



2026:KER:39029

CRL.MC NO. 4309 OF 2026

14

APPENDIX OF CRL.MC NO. 4309 OF 2026

PETITIONER ANNEXURES

Annexure-1	A TRUE COPY OF THE PETITION IN CRL.M.P. NO. 7/2026 DATED 07/05/2026
Annexure-2	A TRUE COPY OF THE ORDER IN CRL.M.P. NO. 7/2026 DATED 15/05/2026