



2026:KER:34799

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 19TH DAY OF MAY 2026 / 29TH VAISAKHA, 1948

CRL.MC NO. 2639 OF 2026

CRIME NO.37/2012 OF POOVAR POLICE STATION, THIRUVANANTHAPURAM

AGAINST THE ORDER DATED 27.02.2026 IN CRMP 3/2026 IN S.C. NO.1329 OF 2014

OF THE ADDITIONAL DISTRICT COURT & SESSIONS COURT - VII / IV ADDITIONAL

MACT / RENT CONTROL APPELLATE AUTHORITY , THIRUVANANTHAPURAM

PETITIONERS/PETITIONERS/ACCUSED NOS.1 TO 4 & 6 TO 8:

- 1 LAWRENCE,
S/O VARGHESE, RESIDING AT PANIAMMA HOUSE, MIARIANAD DESOM,
KADINAMKULAM VILLAGE, POOVAR DESOM, THIRUPURAM VILLAGE,
THIRUVANANTHAPURAM DISTRICT, PIN - 695303
- 2 SHAJI,
S/O VARGHESE, RESIDING AT VARAVILATHOPPU, POOVAR DESOM,
THIRUPURAM VILLAGE, THIRUVANANTHAPURAM DISTRICT,
PIN - 695303
- 3 SUDARSANAN,
S/O OUSEPH, RESIDING AT PALLAM PURAYIDAM, POOVAR DESOM,
THIRUPURAM VILLAGE, THIRUVANANTHAPURAM DISTRICT,
PIN - 695303
- 4 PAUL AUGUSTIN,
GRACE VILLA, POOVAR DESOM, THIRUPURAM VILLAGE,
THIRUVANANTHAPURAM DISTRICT, PIN - 695303
- 5 OUSEPH,
S/O SILVA, HOUSE NO: V/344, PALLAM PURAYIDAM, POOVAR DESOM,
THIRUPURAM VILLAGE, THIRUVANANTHAPURAM DISTRICT,
PIN - 695303
- 6 AMRITHANAYAKOM
S/O PAULOSE, HOUSE NO: V/107, VARAVILATHOPPU PURAYIDAM,
POOVAR DESOM, THIRUPURAM VILLAGE, THIRUVANANTHAPURAM
DISTRICT, PIN - 695303
- 7 SALTON,
S/O AMRITHANAYAKOM, TSUNAMI COLONY, MOTHER TERESA NAGAR,
POOVAR, HOUSE NO: V/107, VARAVILATHOPPU, POOVAR, THIRUPURAM



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VILLAGE, THIRUVANANTHAPURAM DISTRICT, PIN - 695303

BY ADV SRI.J.R.PREM NVAZ

RESPONDENT/COUNTER PETITIONER/STATE:

**STATE OF KERALA,
REPRESENTED BY ITS PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, PIN - 682031**

PP - SRI.M.P.PRASANTH

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
19.05.2026, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**“C.R”****ORDER****Dated this the 19th day of May, 2026**

This Criminal Miscellaneous Case has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside Annexure.A2 order dated 27.02.2026 in CrI.M.P. No.3 of 2026 in S.C. No.1329/2014 on the files of the Court of the Additional Sessions Judge-VII, Thiruvananthapuram. The petitioners herein are accused Nos.1 to 4 and 6 to 8 in the above case.

2. Heard the learned counsel for the petitioners and the learned Public Prosecutor, in detail. Perused the impugned order and relevant materials available.

3. In this case, the grievance canvassed by the learned counsel for the petitioners is that, during cross-examination of PWs 1 to 3, when the defence counsel attempted to use previous statements of the said witnesses for the purpose of contradicting the witnesses by opting the process of cross-examination, the same was disallowed by



the learned Sessions Judge for the reasons that "*the contra statements claimed to have be contained in the previous statement recorded u/s.161 Cr.P.C. of this witness, when tried to put to the witness, the same was disallowed in view of the mandate of sec. 162 Cr.P.C.*".

4. On perusal of the reasons found by the learned Sessions Judge to disallow the use of previous statements recorded under Section 161 of Cr.P.C. holding the view that the said procedure is not permitted under Section 162 of Cr.P.C, it is noticeable that the learned Sessions Judge failed to understand what is intended by Section 162 of Cr.P.C. and what is the use of statements recorded under Section 161 of Cr.P.C. by an Investigating Officer during investigation. It is the undisputed law that, a statement recorded under Section 161 of Cr.P.C. is not evidence by itself and the use of the same during evidence is limited within the mandate of Section 162 of Cr.P.C. The limited purpose is well settled. That is to say, use of statements recorded under Section 161 of Cr.P.C./previous statements recorded by an Investigating Officer has been provided in Section 162 of Cr.P.C. and the use is limited to contradict



the witness in the manner provided under Section 145 of the Indian Evidence Act. Therefore, use of a statement recorded under Section 161 of Cr.P.C. to contradict a witness is not at all prohibited by Section 162 of Cr.P.C. and the restriction is its use as evidence in a case to prove a fact in issue. Therefore, the reasons stated by the learned Sessions Judge to disallow the use of previous statements/statements recorded under Section 161 of Cr.P.C. for the purpose of contradicting a witness is not permitted under Section 162 of Cr.P.C. is absolutely wrong and the same would not sustain in the eye of law.

5. In fact, it is the absolute right of the accused to use previous statements during cross-examination of the maker of the same for the purpose contradicting the maker to shake the veracity of the evidence spoken by him and to make it as untrustworthy of credit, and the same is the main purpose of cross-examination as well. Therefore, the reasons for disallowing use of previous statement for the purpose of contradicting the witnesses during cross-examination found to be illegal and the order would require interference.



6. Accordingly, this CrL.M.C. stands allowed with direction to the learned Sessions Judge to recall PWs 1 to 3 and permit the petitioners' counsel to cross-examine them by using previous statement, in tune with the mandate of Section 148 of the Bharatiya Sakshya Adhinyam, 2023 [corresponding to Section 145 of the Indian Evidence Act, 1872]. The learned Sessions Judge is also directed to expedite the trial by allowing the petitioners to cross-examine PWs 1 to 3, as indicated above, within a period of three weeks from the date of receipt of copy of this order. For this purpose, the petitioners are directed to co-operate with the Court, without fail.

Registry is directed to forward a copy of this order to the Sessions Court, forthwith, for information and further steps.

Sd/-
A. BADHARUDEEN
JUDGE



APPENDIX OF CRL.MC NO. 2639 OF 2026

PETITIONER ANNEXURES

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| Annexure A1 | THE TRUE COPY OF THE APPLICATION IN CRL.MP. NO. 3/2026 IN SC 1329/2017 FILED BY THE PETITIONERS BEFORE THE VII TH ADDITIONAL SESSIONS COURT THIRUVANANTHAPURAM DATED 27/2/2026 |
| Annexure A2 | THE FREE COPY OF THE ORDER IN CRL.MP. NO. 3/2026 IN SC 1329/2017 PASSED BY THE VII TH ADDITIONAL SESSIONS COURT THIRUVANANTHAPURAM DATED 27/2/2026 |
| Annexure A3 | THE TRUE COPY OF THE DEPOSITIONS OF PW1 |
| Annexure A4 | THE TRUE COPY OF THE DEPOSITIONS OF PW2 |
| Annexure A5 | THE TRUE COPY OF THE DEPOSITIONS OF PW3 |
| Annexure A6 | THE TRUE COPY OF THE DEPOSITIONS OF PW4 |