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CRL.MC NO. 7404 OF 2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 15TH DAY OF SEPTEMBER 2026 / 24TH BHADRA, 1948CRL.MC NO. 7404 OF 2026

AGAINST THE ORDER DATED 31.08.2026 IN CMP NO.10 OF 2026 OF
JUDICIAL FIRST CLASS MAGISTRATE COURT, CHOTTANIKKARA ARISING
OUT OF THE ORDER/JUDGMENT DATED IN CC NO.456 OF 2022 OF
JUDICIAL FIRST CLASS MAGISTRATE COURT, CHOTTANIKKARA

PETITIONER/1ST ACCUSED:

ROJI AUGUSTINE,
AGED 53 YEARS
S/O AUGUSTINE, MOONGANANIYIL HOUSE, MUTTIL P.O.,
MUTTIL SOUTH VILLAGE, WAYANAD DISTRICT, PIN - 673122

BY ADVS.
SRI.S.SREEKUMAR (SR.)
SRI.VISHAK.K.JOHNSON

RESPONDENTS/STATE AND DEFACTO COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, ON BEHALF OF THE STATION
HOUSE, OFFICER OF AMBALAMEDU POLICE STATION, PIN -
682031.
- 2 M.M. ALIYAR,
S/O MOHAMMED, MANAGING PARTNER, MALABAR TIMBER
INDUSTRIES, KARIMUKAL P.O., ERNAKULAM DISTRICT, PIN -
682303.
- 3 THE FOREST RANGE OFFICER,
OFFICE OF FOREST RANGE OFFICER, MEPPADY RANGE,
MEPPADY, WAYANAD, PIN - 671014.



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BY ADVS.

SRI.ASAF ALI, DGP

SHRI.TOM JOSE (PADINJAREKARA), SC, NJEEZHOO GP

SRI.AJITH VISWANATHAN

SMT.VRINDA BABU

SHRI.SARATH VISWANATHAN

SHRI.AMAN MANZOOOR

SHRI.KEVIN JOSE SHIBU

SHRI.JOSEPH FRANCIS

THIS CRIMINAL MISC. CASE HAVING COME UP FOR FINAL HEARING
ON 08.09.2026, THE COURT ON 15.09.2026 PASSED THE FOLLOWING:



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C.S.DIAS,J.

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Crl. M.C.No. 7404 of 2026

Dated this the 15th day of September, 2026**ORDER**

Aggrieved by Annexure A9 order passed by the Court of the Judicial First Class Magistrate, Chottanikkara, Ernakulam ('Trial Court', for brevity) in C.M.P. No.10/2026 in C.C. No.456 of 2022, dismissing the application filed by the petitioner, the 1st accused in the above case, to stay the proceedings in the case until the final report is filed in O.R. No.1/2021 registered by the Range Forest Officer, Meppady Range, and pending before the Court of the Judicial First Class Magistrate, Sulthan Bathery, Wayanad, this petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS', for short).

2. The concise relevant facts leading to the impugned order and necessary for determination of this petition are as follows:



(i) The 2nd respondent (*de facto* complainant), the Managing Partner of Malabar Timber Industries, approached the first accused for the purchase of timber. The first accused allegedly represented to the 2nd respondent that he had the required stock of timber with all requisite permissions issued by the Forest Department. Acting upon the representation, the 2nd respondent transferred Rs.1,40,00,000/- to the bank account of the first accused. The first accused thereafter delivered 54 timber logs accompanied by a Form-IV pass issued by the Deputy Forest Officer under the Kerala Forest Produce Transit Rules, 1975. However, he failed to furnish the permit required under Rule 3(b)(iv) of the Kerala Promotion of Tree Growth on Non-Forest Land Rules, 2006.

(ii) The 2nd respondent informed the Chief Conservator of Forests (Northern Circle) about the incident, who constituted a Special Investigation Team (SIT) to investigate the matter. The SIT found that the first accused



had failed to maintain mandatory records, including stock, purchase and sales registers, and that the timber had been illegally felled from forest land and transported using fabricated documents. The timber was accordingly seized from the depot of the 2nd respondent. Consequently, O.R.No.1 of 2021 was registered against the accused persons, including the petitioner, alleging the commission of offences punishable under Sections 27(1)(d), (e), (iii), (iv), 40, 39, 52 and 61A of the Kerala Forest Act, 1961 and Rules 12 and 23 of the Kerala Forest Produce Transit Rules, 1975.

(iii) In the meantime, the 2nd respondent filed a private complaint before the Trial Court, which was referred to the Ambalamedu Police Station, who in turn registered FIR No.594/2021 (Annexure A3) and filed the charge sheet (Annexure A4), alleging that the petitioner and accused 2 and 3 have committed the offences punishable under Sections 406 and 420 r/w S.34 of the



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Indian Penal Code ('IPC', for short). The case is numbered as C.C. No.456/2022.

(iv) The petitioner filed a discharge petition before the Trial Court. By Annexure A6 order, the Trial Court partly allowed the petition, finding sufficient grounds to proceed against the accused only for the offence under Section 420 r/w S.34 IPC, and not under Section 406. The petitioner challenged the order before this Court in Crl.R.P. No.560/2026, which was dismissed by Annexure A7 common order.

(v) After Annexure A7 common order was passed, the petitioner filed Crl.M.C. No.7039/2026 before this Court to stay the proceedings in C.C. No.456/2022 until the final report is filed in O.R. No.1 of 2021. By Annexure A8 order, this Court dismissed the petition, directing the petitioner to work out his remedies in accordance with law.

(vi) Thereafter, the petitioner filed an application before the Trial Court under Section 233 BNSS, to stay the



proceedings in C.C. No.456/2022 until the final report is filed in O.R.No.1 of 2021. However, the Trial Court dismissed the application by the impugned order.

3. I have heard Sri. S. Sreekumar, the learned Senior Counsel appearing for the petitioner, Sri. Asaf Ali, the learned Director General of Prosecution, and Sri. Tom Jose Padinjarekara, the learned Counsel appearing for the 2nd respondent.

4. Sri. S. Sreekumar submitted that the impugned order is erroneous and irrational. According to the learned Senior Counsel, the two cases are intrinsically intertwined and, therefore, if the Trial Court proceeds with C.C. No.456/2022, before the final report is filed in O.R. No.1 of 2021, it would cause serious prejudice the petitioner. Particular emphasis was placed on the Land Conservancy Act proceedings initiated against the landowners from whose property the timber was cut and removed. According to the learned Senior Counsel, the above proceeding



establishes that the timber is not forest produce and, consequently, the offences alleged in O.R. No.1 of 2021 are not attracted. Therefore, the seizure is bad in law. Consequently, the timber has to be returned to the 2nd respondent, which will render the proceedings in C.C.No.456 of 2022 otiose. Hence, all further proceedings in C.C. No.456/2022 may be stayed until the final report is filed in O.R. No.1 of 2021.

5. Sri. Asaf Ali and Sri. Tom Jose Padinjarekara vehemently opposed the petition. They contended that the petitioner is deliberately protracting the proceedings in C.C.No.456/2022 by raising frivolous and untenable contentions at every stage. The findings of this Court in B.A. No.2109 of 2021, the application filed by the petitioner for pre-arrest bail, and in Annexure A7 common order, dismissing the revision petition, stares at the petitioner. Since this Court has already found that there are grounds to proceed against the petitioner for the offence under



Section 420 IPC, there is no necessity or justification for awaiting for the filing of the final report in O.R. No.1 of 2021. It was further submitted that the petitioner is a history sheeter. He is an accused in 37 crimes of a similar nature. They contended that Section 233 BNSS has no application to the present case, since the two crimes are registered for distinct sets of offences by two different police stations and are pending before two different courts. Hence, there is no error or illegality in the impugned order warranting interference by exercising the inherent powers of this Court. Sri. Asaf Ali relied on the decision of the Hon'ble Supreme Court in **State of Bihar v. Murad Ali Khan and others** (1988 KHC 1071) in support of his contention that Section 233 BNSS is not applicable to stay the proceedings in two separate police-charged crimes.

6. The principal contention of the petitioner is that, since O.R. No.1 of 2021 is intrinsically intertwined with C.C. No.456/2022, further proceedings in the latter case may be



stayed until the final report is filed in the former case, as permitted under Section 233 BNSS.

7. The question for consideration, therefore, is whether the pendency of the investigation in O.R.No.1 of 2021 attracts Section 233 BNSS, to stay the proceedings in C.C. No.456/2022.

8. Section 233 BNSS, which is the analogous provision to Section 210 Cr. P.C., reads as follows:

"233. Procedure to be followed when there is a complaint case and police investigation in respect of same offence--(1)When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 193 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Sanhita."



9. Section 233 BNSS applies where a complaint case and a police investigation relate to the same offence. In such a situation, when the Magistrate is informed during the inquiry or trial that a police investigation concerning the offence, that is the subject matter of the complaint case is in progress, the Magistrate shall stay the proceedings and call for the police report. If, on the basis of that report, cognizance is taken against a person, who is an accused in the complaint case, the complaint case and the case arising from the police report are to be tried together as if both had been instituted on a police report. The provision is intended to avoid parallel proceedings in respect of the same offence and thereby protect the accused from unnecessary harassment.

10. While considering the scope of Section 210 Cr.P.C., the Hon'ble Supreme Court in **Pal @ Palla v. State of Uttar Pradesh** (2010 KHC 4710) has observed thus:

"22. S.210 CrPC provides the procedure to be followed when there is



a complaint case and police investigation in respect of the same offence. Sub-section (1) of S.210 provides that when in a case instituted otherwise than on a police report, namely, a complaint case, the Magistrate is informed during the course of inquiry or trial that an investigation by the police is in progress in relation to the offence which is the subject matter of inquiry or trial held by him, the Magistrate is required to stay the proceedings of such inquiry or trial and to call for a report on the matter from the Police Officer conducting the investigation. Sub-section (2) provides that if a report is made by the Investigating Officer under S.173 and on such report cognizance of any offence is taken by the Magistrate against any person, who is an accused in a complaint case, the Magistrate shall inquire into or try the two cases together, as if both the cases had been instituted on a police report. Sub-section (3) provides that if the police report does not relate to any accused in the complaint case, or if the Magistrate does not take cognizance of any offence on a police report, he shall proceed with the inquiry or trial which was stayed by him, in accordance with the provisions of the Code”.

11. The principles laid down by the Hon’ble Supreme Court makes the requirement clear: Section 233 BNSS is attracted when the complaint case and the police investigation concern the same offence.

12. The condition is not satisfied here because, undisputedly, O.R.No.1 of 2021 and C.C.No.456/2022 arise from police reports registered by two different police stations, alleging distinct sets of offences, and are pending before two different courts. The fact that the transaction concerning the timber forms the factual background of both



proceedings does not, by itself, make the offences the same for the purpose of Section 233 BNSS. C.C.No.456/2022 concerns the alleged offence of cheating, and whereas O.R.No.1 of 2021 concerns the alleged violations of the provisions of the Kerala Forest Act and the Kerala Forest Produce Transit Rules. The former may have arisen out of or been triggered by the events which led to the latter, but factual connection is not equivalent to the statutory identity of offences contemplated by Section 233 BNSS.

12. The strongest contention of the petitioner is that the proceedings under the Land Conservancy Act, concerning the land from which the timber was allegedly cut and removed, establish that the timber is not forest produce, and that the outcome of O.R.No.1 of 2021 may consequently affect the prosecution under Section 420 IPC. Even assuming that the result of the forest proceedings may have evidentiary or factual relevance to the defence of the petitioner, that circumstance cannot alter the statutory



requirements of Section 233 BNSS. The provision does not contemplate staying the proceedings merely because evidence in one proceeding may have a bearing on another. Nor does the initiation of proceedings under the Land Conservancy Act, by itself, conclude the character or legal status of the timber. Those questions may fall for consideration in the appropriate proceedings and cannot be prejudged in the present petition.

13. It is pertinent to note that the petitioner has filed Crl.M.C.No.960 of 2021 before this Court to quash the occurrence reports in O.R.No.1 of 2021. By order dated 26.02.2021, this Court had directed the investigating officer not to file the final report in the said crime without obtaining orders from this Court.

14. When this petition was taken up for consideration along with the above-mentioned case, Sri. Asaf Ali submitted that the investigation in O.R. No.1 of 2021 has been completed, but that the final report had not been filed



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because of the interim order passed in Crl.M.C. No.960 of 2021. In view of the submission, this Court, by order dated 08.09.2026, vacated the interim order and directed the investigating officer to file the final report in the said crime on or before 18.09.2026.

In the backdrop of the foregoing facts, the materials on record and the law governing the issue, I find no error or illegality in the impugned order warranting interference. The petition is accordingly dismissed, and the impugned order is upheld. As C.C.No.456/2022 is a case of the year 2022, the Trial Court is directed to commence the proceedings in the case from 22.09.2026 and dispose of the same in accordance with law, as expeditiously as possible, and in any event within an outer time limit of six months commencing from 22.09.2026, untrammelled by any observation made in this order.

Sd/-
C.S.DIAS, JUDGE

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APPENDIX OF CRL.MC NO. 7404 OF 2026

PETITIONER ANNEXURES

- Annexure A1 A TRUE COPY OF THE OCCURRENCE REPORT IN OFFENCE NO. 1 OF 2021, PENDING BEFORE THE HON'BLE JUDICIAL FIRST-CLASS MAGISTRATE COURT, SULTHAN BATHERY, DATED 09/02/2021.
- Annexure A2 A TRUE COPY OF THE CMP NO. 561/2021 DATED 09/07/2021 OF THE JUDICIAL FIRST-CLASS MAGISTRATE COURT CHOTTANIKKARA ALONG WITH AFFIDAVIT
- Annexure A3 A TRUE COPY OF FIR NO. 594/2021 DATED 13/07/2021 OF AMBALAMEDU POLICE STATION
- Annexure A4 A TRUE COPY OF FINAL REPORT IN CC 456/2022 OF THE FILES OF JUDICIAL 1 ST CLASS MAGISTRATE COURT, CHOTTANIKKARA DATED 15/07/2022
- Annexure A5 A TRUE COPY OF COUNTER AFFIDAVIT FILED BY THE 2 ND RESPONDENT THE RANGE FOREST OFFICER (FULL ADDITIONAL CHARGE) MEPPADI IN CRL MC NO. 960/2021 BEFORE THE HON'BLE HIGH COURT OF KERALA DATED 19/02/2021
- Annexure A6 A TRUE COPY OF ORDER IN CMP NO. 191/2024 IN CC NO. 456/2022 BEFORE THE HONBLE JUDICIAL MAGISTRATE OF FIRST CLASS, CHOTTANIKKARA DATED 27/02/2026
- Annexure A7 A TRUE COPY OF ORDER IN CRL REV PET NO. 560/2026 BEFORE THE HON'BLE HIGH COURT OF KERALA ERNAKULAM, DATED 23/07/2026
- Annexure A8 A TRUE COPY OF THE ORDER IN CRL MC NO. 7039 OF 2026 BEFORE THE HON'BLE HIGH COURT OF KERALA DATED 20/08/2026
- Annexure A9 CERTIFIED COPY OF ORDER IN CMP NO. 10/2026 IN CC NO. 456/2022 BEFORE THE HONBLE JUDICIAL MAGISTRATE OF FIRST CLASS, CHOTTANIKKARA DATED 31/08/2026