



2025:KER:77918

CRL.MC NO. 9203 OF 2025

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“C.R.”

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 22ND DAY OF OCTOBER 2025 / 30TH ASWINA, 1947

CRL.MC NO. 9203 OF 2025

CRIME NO.83/2017 OF Pathanapuram Excise Range Office, Kollam

AGAINST THE ORDER/JUDGMENT DATED IN SC NO.1297 OF 2020
OF ASSISTANT SESSIONS COURT/SUB COURT AT PUNALUR, KOLLAM.

PETITIONER/ACCUSED NO.2:

RAMESHAN,
AGED 59 YEARS
S/O CHELLAPPAN ACHARI, SREE SAILAM, KURA P.O.,
THALAVOOR, PATHANAPURAM TALUK, KOLLAM DISTRICT, PIN
- 691557

BY ADVS.
SRI.K.V.ANIL KUMAR
SMT.RADHIKA S.ANIL
SHRI.NIJAZ JALEEL

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULUM, PIN - 682031



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THIS CRIMINAL MISC. CASE HAVING COME UP FOR FINAL HEARING ON 16.10.2025, THE COURT ON 22.10.2025 PASSED THE FOLLOWING:

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“C.R.”

C.S.DIAS,J.

Crl. M.C.No.9203 of 2025

Dated this the 22nd day of October, 2025

ORDER

The petitioner, the second accused in S.C.No.1297 of 2020 on the file of the Assistant Sessions Judge, Punalur (Trial Court), arising from Crime No.83 of 2017 registered by the Pathanapuram Excise Range, Kollam, stands charge sheeted for committing the offence punishable under Section 55(g) of the Kerala Abkari Act. The prosecution evidence has been completed, and the case stands posted for questioning the accused under Section 351 of the Bharatiya Nagarika Suraksha Sanhita, 2023 (for brevity, 'BNSS'), corresponding to Section 313 of the Code of Criminal Procedure ('Cr. P.C'). The petitioner is currently employed abroad. He has been



granted permanent exemption from personal appearance before the Trial Court. Owing to the petitioner's inability to obtain leave and travel to India at this juncture, his Counsel filed Annexure B application seeking permission to allow the counsel to answer the questions on behalf of the petitioner. By the impugned Annexure C order, the Trial Court dismissed the application on the ground that the application was unsupported by an affidavit and was contrary to the principles laid down by the Hon'ble Supreme Court in **Keya Mukherjee v. Magma Leasing Limited and another** [(2008) 8 SCC 447]. Annexure C order is illegal, improper, and irregular.

2. I heard Sri. K.V. Anil Kumar, the learned Counsel for the petitioner and Sri. C.S. Hrithwik, the learned Senior Public Prosecutor.

3. The Trial Court has granted permanent exemption to the petitioner from appearing for the trial.



The case has now reached the Section 351 BNSS questioning stage. It is at this point that the petitioner's Counsel sought permission to answer the questions on behalf of the petitioner.

4. Section 351 of BNSS reads as follows:

“351. Power to Examine accused

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

PROVIDED that in a summons case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial



for, any other offence which such answers may tend to show he has committed.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.

(emphasis given)

5. Section 351 of the BNSS expressly enables the Court to, in a suitable case, permit the accused to file a written statement in lieu of oral examination, which is sufficient compliance with the statutory requirement.

6. In **Basavaraj R.Patil and others v. State of Karnataka and others** [(2000) 8 SCC 740], while considering the question whether the accused can be permitted to file his written submissions under Section 313 of the Cr. P.C, the Hon'ble Supreme Court has held as follows:

“23. Section 243(1) of the Code enables the accused, who is involved in the trial of warrant case instituted on police report, to put in any written statement. When any such statement is filed the Court is obliged to make it part of the record of the case. Even if such case is not instituted



on police report the accused has the same right (vide Section 247). Even the accused involved in offences exclusively triable by the Court of sessions can also exercise such a right to put in written statements [Section 233(2) of the Code]. **It is common knowledge that most of such written statements, if not all, are prepared by the counsel of the accused. If such written statements can be treated as statements directly emanating from the accused, hook, line and sinker, why not the answers given by him in the manner set out hereinafter, in special contingencies, be afforded the same worth.**

24. We think that a pragmatic and humanistic approach is warranted in regard to such special exigencies. The word shall in clause (b) to Section 313(1) of the Code is to be interpreted as obligatory on the Court and it should be complied with when it is for the benefit of the accused. **But if it works to his great prejudice and disadvantage the Court should, in appropriate cases, e.g., if the accused satisfies the court that he is unable to reach the venue of the court, except by bearing huge expenditure or that he is unable to travel the long journey due to physical incapacity or some such other hardship relieve him of such hardship and at the same time adopt a measure to comply with the requirements in Section 313 of the Code in a substantial manner.** How this could be achieved?

25. If the accused (who is already exempted from personally appearing in the Court) makes an application to the court praying that he may be allowed to answer the questions without making his physical presence in court on account of justifying exigency the court can pass appropriate orders thereon, provided such application is accompanied by an affidavit sworn to by the accused himself containing the following matters: (a) A narration of facts to satisfy the court of his real difficulties to be physically present in court for giving such answers. (b) An assurance that no prejudice would be caused to him, in any manner, by



dispensing with his personal presence during such questioning. (c) An undertaking that he would not raise any grievance on that score at any stage of the case.

26. If the court is satisfied of the genuineness of the statements made by the accused in the said application and affidavit it is open to the court to supply the questionnaire to his advocate (containing the questions which the court might put to him under Section 313 of the Code) and fix the time within which the same has to be returned duly answered by the accused together with a properly authenticated affidavit that those answers were given by the accused himself. He should affix his signature on all the sheets of the answered questionnaire. However, if he does not wish to give any answer to any of the questions he is free to indicate that fact at the appropriate place in the questionnaire [as a matter of precaution the Court may keep photocopy or carbon copy of the questionnaire before it is supplied to the accused for answers]. If the accused fails to return the questionnaire duly answered as aforesaid within the time or extended time granted by the court, he shall forfeit his right to seek personal exemption from court during such questioning.

27. In our opinion, if the above course is adopted in exceptional exigency it would not violate the legislative intent envisaged in Section 313 of the Code.”

7. The above principles have been reiterated and reaffirmed in **Keya Mukherjee v. Magma Leasing Limited** (supra).

8. Although the COVID-19 pandemic disrupted



the conventional functioning of courts, it catalysed an unprecedented digital transformation of the justice delivery system, ushering in a new era of hybrid and virtual proceedings.

9. Recognising this transformative change and necessity of technology for ensuring affordable and easy access to justice, this Court, in exercise of its powers under Articles 225 and 227 of the Constitution of India, promulgated the Electronic Video Linkage Rules for Courts (Kerala), 2021 and the Electronic Filing Rules for Court (Kerala), 2021 (for brevity, hereinafter, referred to as the 'Linkage Rules' and 'Filing Rules').

10. Rule 3 of the Linkage Rules empowers the use of the electronic video linkage facility at all stages of a judicial proceeding. Under Rule 6 of the said Rules, a party to the proceedings or a witness can make an application in the form prescribed in Schedule II for a



video linkage. Likewise, under Rule 8(2) and (3) of the same Rules, in criminal cases, where the person to be examined is a prosecution witness, court witness or defence witness, the counsel has to inform the court, the location of the person, the time, the place and the availability of the technical facilities. Where the person to be examined is the accused, the prosecution shall confirm the accused's location at the remote point. The manner in which the signature is to be obtained on the transcript is provided under Rule 8 (16) of the Rules. Notably, Rule 11 of the Linkage Rules empowers the Court, in its discretion, to authorise the detention of an accused, framing of charges and the recording of the statement of the accused under Section 313 Cr. P.C. through the electronic video linkage. Likewise, Rule 6 of the Filing Rules enables a document to be electronically filed with the digital signature of the Advocate and the Party-in-



person.

11. More than two decades ago, the Hon'ble Supreme Court in **State of Maharashtra v. Dr Praful B. Desai [(2003) 4 SCC 601]** declared that the recording of evidence through video conferencing satisfies the requirements under the Cr. P.C.

12. Post the promulgation of the above Rules, this Court has in several cases permitted cross-examination of witness, framing of charges and recording of plea through the electronic video linkage as per the Linkage Rules (Read the decisions in **Alex C.Joseph v. State of Kerala** (2025 (1) KHC 174), **Abhil C.R v State of Kerala** (2025 KHC 1650 and **Satheesan v. State of Kerala** (2025 KHC 2154). The above precedents signify judicial endorsement of technological integration in the procedural law in line with contemporary necessities.



13. It is also relevant to note that sub-section (2) of Section 251 of BNSS explicitly permits charges to be read and explained to an accused either physically or through audio/video electronic means.

14. The confluence of Section 351 BNSS with the Linkage and Filing Rules embodies the progressive legislative and judicial policy to integrate technology to enhance access to justice.

15. In light of the above discussions, I don't find any legal impediment in permitting the petitioner to answer the questions under Section 351 BNSS either by adopting the procedure laid down in Section 351 (5) BNSS and Basavaraj R.Patil's case or by getting his answers recorded via the electronic video linkage under the Linkage Rules and getting the statement signed as per the procedure under Rule 8 (16) of the Rules. It would be up to the petitioner to choose the method.



Accordingly, the criminal miscellaneous case is allowed in the following manner:

- (i) Annexure C order is set aside.
- (ii) The petitioner's Counsel shall, within two weeks from today, file a memo before the Trial Court, electing the method of examination under Section 351 BNSS.
- (iii) If the petitioner opts for the method laid down in Basavaraj R.Patil's case, the Trial Court and the petitioner are directed to follow the procedure laid down in paragraph 26 of the said decision.
- (iv) Alternatively, if the petitioner opts for the electronic video linkage, the Trial Court shall examine the petitioner as per the procedure under Rule 8, and get the statement signed as per the procedure under Rule 8 (16) of the Linkage Rules.

The Trial Court shall, thereafter, proceed with the case, in accordance with law.

Sd/-

C.S.DIAS, JUDGE



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APPENDIX OF CRL.MC 9203/2025

PETITIONER ANNEXURES

Annexure-A	A TRUE COPY OF THE FINAL REPORT IN CRIME NO. 83 / 2017 OF PATHANAPURAM EXCISE RANGE
Annexure-B	A TRUE COPY OF THE APPLICATION CRL.M.P. NO. 168/2025 IN S.C. NO. 1297/2020
Annexure-C	A TRUE COPY OF THE ORDER DATED 23.09.2025 IN CRL.M.P. NO. 168/2025 IN S.C. NO. 1297/2020

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