



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

FRIDAY, THE 17TH DAY OF JULY 2026 / 26TH ASHADHA, 1948

CRL.MC NO. 5826 OF 2026

AGAINST THE ORDER IN CMP NO.3288 OF 2024 OF JUDICIAL
MAGISTRATE OF FIRST CLASS, PONNANI

PETITIONERS/PETITIONERS/ACCUSED:

- 1 VINOD VALIYATTOOR
AGED 46 YEARS
S/O GOPALAKRISHNAN P SREEKRIPA PANTHARANGADI POST
KARIPARAMBU POST MALAPPRUAM DISTRICT, PIN - 676306
- 2 BENNY V V
AGED 51 YEARS
S/O V V VARKEY VELLAPPALLIL HOUSE KOORACHAUND POST
KOZHIKODE, PIN - 673527
- 3 SUJITH DAS S
AGED 38 YEARS
S/O SURESH, VILLA NO TC 95/65, HILL PARK AVENUE,
ANAYARA PO, THIRUVANANTHAPURAM, PIN - 685029

BY ADVS.
SRI.S.RAJEEV
SRI.S.SREEKUMAR (SR.)
SRI.M.S.ANEER
SHRI.SARATH K.P.
SHRI.ANILKUMAR C.R.
SHRI.K.S.KIRAN KRISHNAN
SHRI.T.P.ARAVIND
SHRI.AKASH CHERIAN THOMAS
SHRI.AZAD SUNIL
SHRI.MAHESWAR PADICKAL
SMT.AKSHARA S.
SMT.NIVEDITA RAJEEV
SMT.DIPA V.



RESPONDENTS/RESPONDENTS/DE FACTO COMPLAINANT:

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

2 XXXXXXXXXXXX
 XXXXXXXXXXXX XXXXXXXXXXXX

BY ADVS.
SRI.T.ASAF ALI, DGP, FOR R1
SRI C.RASHEED, FOR R1
SHRI.MUHAMMED FIRDOUZ A.V., FOR R2
SHRI.GENTLE C.D., FOR R2
SHRI.M.P.SHAMEEM AHAMED, FOR R2

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
17.07.2026, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**"C.R."****ORDER**

This Criminal Miscellaneous Case (Crl. M.C.) has been filed by three police officers of the Kerala Police Department seeking to set aside the order passed by the Judicial First Class Magistrate Court, Ponnani, whereby a private complaint filed by the second respondent, a lady, against the said police officers was forwarded for investigation.

2. The essential facts necessary for the disposal of this Crl. M.C. can be epitomized as follows:

On 06.09.2024, the second respondent lodged a complaint before the Station House Officer, Ponnani, stating that she was subjected to rape by the Circle Inspector of Police, Ponnani, the Deputy Superintendent of Police, Thirur and the Superintendent of Police, Malappuram. In the complaint, it is stated that during the year 2022, she approached the C.I. of Police, Ponnani to lodge a complaint with respect to a dispute regarding the right upon the house where the second respondent has been residing. When she met the Circle Inspector, he assured her that he would reach the house and would look into the issue. Subsequently, at 10:00 p.m. on the same day, the Circle Inspector contacted her by phone and arrived at her house. When the C.I. arrived, the second respondent, her younger son, her friend, and the



friend's six-year-old child were present in the house. After discussing the complaint for a short while, the C.I. took the second respondent to the bedroom, pretending he had to disclose a secret information. He then hugged her, and when she tried to escape, the C.I. told her that he would secure the title deed of the house in her name, and he raped her. Moreover, the C.I. instructed her not to disclose the incident to anyone.

3. Later, when the second respondent tried to contact the C.I., he did not attend her call, and when she directly met the C.I. at the police station, he stated that the matter was informed to the Dy.S.P., and the Dy.S.P. would contact her. But the Dy.S.P. did not call her. Hence, she met the Dy.S.P. after two weeks and made a complaint against the C.I. Then, the Dy.S.P. made sexually coloured comments and received the complaint lodged by her without giving any receipt. Later, after getting the details of the place of residence of the second respondent, the Dy.S.P. reached her house in a private car, in casual wear, and discussed the complaint and caught hold of her hand and instructed her to sit near him. Thereafter, he grabbed her breast and kissed her. Since she raised alarm, nothing further happened. Thereafter, she, along with her friend Rafeek and a driver, met the Superintendent of Police to complain about the acts of the C.I. and Dy.S.P. The Superintendent of Police received her complaint and sent back the second respondent, stating that he would call her. He also asked her to



come alone next time. Again, the second respondent met the S.P. along with her son. Later, the S.P. called her through WhatsApp and asked her to meet him to resolve the complaint, and directed to come to a place called Changuvetty. Accordingly, when she reached near the passport office, Changuvetty, a third party called her, introducing himself as the person authorised by the S.P., and she was taken to a nearby house in an autorickshaw. Thereafter, she was taken inside the house and was subjected to rape and oral sex by the S.P. Moreover, she was forced to have sexual intercourse with a friend of the S.P., who accompanied him. Although she resisted, she was forced to succumb before the friend of the S.P. Thereafter, the S.P. had given Rs.500/- to her, but she returned the same. Then she was threatened by the S.P. with dire consequences if she disclosed the incident to anyone.

4. Highly aggrieved by these incidents, the second respondent approached the Judicial First Class Magistrate Court, Ponnani, by filing a private complaint under Section 210 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS") alleging offences punishable under Sections 375, 376(2)(a)(i), 377, 354, 354A(1), 354B, 354D, 506, 446 and 450 r/w 34 of the Indian Penal Code against the petitioners, the Police Officers. After considering the private complaint, the learned Magistrate called for a report from the superior officer of the petitioners in view of the



provision contained under Section 175(4) of BNSS. Aggrieved thereby, the complainant approached this Court contenting that the acts of the accused complained of will not fall within the expression "arising in course of the discharge of their official duty" and therefore, the learned Magistrate ought to have forwarded the complaint for an investigation under Section 175(3) of BNSS without calling for a report as contemplated under Section 175(4) of the said act. The learned Single Judge of this Court, while considering the said writ petition, called for a report from the learned Magistrate regarding the proceedings in the said private complaint and the learned Magistrate in turn had filed a report stating as follows;

"Mrs.XXX filed a complaint before this court under section 210 of BNSS on 09-09-2024. The petition could not be verified on 09-09-2024 due to technical issues. So, the complaint was considered on the next day. Upon verification, it was found that there were defects in the complaint. So, the said complaint was returned to the complainant to cure the defects on 10-09-2024. Though the learned counsel for the complainant re-submitted the complaint before this court on the same day, it was found that the defects were not cured properly. Hence, the court was forced to return the complaint again to the complainant to re-submit the same after curing the defects. On 11-09-2024, the counsel re-submitted the petition after curing the defects. On perusal of records, it was found that the allegations were made against public servants, and the offences were alleged to have arisen in the course of the discharge of their official duties. The offences alleged in the above crime were s.376, 376 (2) (a) (i), 377, 354 A, 354 B, 354 D, 506, 446, and 450 read with 34 IPC. Hence, I bonafide



:7:

believe that an investigation should be ordered in the above case in view of the decision reported in XYZ v. State of Madhya Pradesh and Others (2022 (5) KHC 403). Since compliance with section 175 (4) (a) and (b) of BNSS is mandatory before considering the allegations in the complaint and taking a decision, this court has called for a report in this regard from the Deputy Inspector General of Police, Thrissur. At present, the complaint has been posted to 27-09-2024 for a report of DIG, Thrissur."

5. The learned Single Judge of this Court, who considered the said writ petition, disposed of the same vide order dated 18.10.2024, holding that compliance with Section 175(4), BNSS prior to registration of an FIR was not mandatory, as the alleged act could not be regarded as one committed by a public servant in the "discharge of their official duties". Accordingly, the learned Magistrate was directed to pass orders on the complaint as per the law, within ten days of receiving the order. In compliance with the said direction, the Magistrate ordered registration of an FIR vide order dated 24.10.2024.

6. In the meantime, aggrieved by the order of the Single Judge of this Court, the petitioners preferred a writ appeal, and the same was allowed by the Division Bench of this Court vide judgment dated 13.11.2024. Although the Division Bench acknowledged that a substantial question of law did arise in the appeal, it declined to adjudicate upon the same as "the main question is whether it was



appropriate to intervene at this stage under Article 226 of the Constitution of India when the complaint was pending...". The Division Bench proceeded to set aside the order passed by the Single Judge dated 18.10.2024 and also the order of the learned Magistrate dated 24.10.2024 directing registration of an FIR against the alleged offenders on the grounds that: (i) interference by the Single Judge with the order of the learned Magistrate was unwarranted, when the complaint before the learned Magistrate was still pending; (ii) the Single Judge should not have issued directions to the learned Magistrate when no order of the said Magistrate was under challenge; and (iii) owing to pendency of the application under Section 175 (4), BNSS before the learned Magistrate the remedy under Article 226 could not have been invoked without exhausting the remedy under the BNSS. The Division Bench directed the Magistrate to decide the legal and factual position on its own merits afresh and to arrive at a logical conclusion in the proceedings initiated based on the private complaint, uninfluenced by the observations made either by the single Judge or the Division Bench of this Court.

7. Aggrieved by the judgment of the Division Bench in the writ appeal, the second respondent approached the Hon'ble Supreme Court by way of appeal, seeking to set aside the judgment of the Division Bench and restore the order passed by the learned Single Judge. The



Hon'ble Supreme Court dismissed the appeal while directing the learned Judicial Magistrate to consider the contentions raised by the parties and pass appropriate orders in accordance with law. The concluding portion of the Hon'ble Supreme Court's judgment is as follows;

"After the order of the Single Judge was set aside by the impugned order, the JMFC has issued notice to the accused under Section 175(4)(b), BNSS, giving them a chance to state their side of the story. We leave it open to the appellant to participate in the proceedings before the JMFC and raise such points that are available to her in law, including that the actions of the accused police officers were not in discharge of their official duties and also that without considering the report that has been called for vide the order dated 11th September, 2024, an FIR should be directed to be registered by the jurisdictional police station. It is also clarified that the JMFC must first satisfy himself that the application under Section 175(3), BNSS is accompanied by an affidavit sworn or affirmed in accordance with the terms of Section 333 thereof."

8. Thereafter, the learned Magistrate, who was in seisin of the private complaint, after hearing both sides, forwarded the complaint to the Station House Officer, Ponnani, under Section 175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for investigation. Aggrieved by the said order, the accused in the complaint have filed the present Criminal Miscellaneous Case.

9. I heard Sri. S. Sreekumar, the learned Senior Counsel for the petitioners, Sri. T. Asaf Ali, the learned Director General of Prosecution, and



Sri. M.P. Shameem Ahamed, the learned counsel appearing for the 2nd respondent. The records were perused.

10. The learned senior counsel for the petitioners assailed the impugned order mainly on two grounds. The first contention is that, in the facts and circumstances of the present case, compliance with the procedure contemplated under Section 175(4) of the BNSS was mandatory, and that the learned Magistrate failed to adhere to the said procedure. According to the learned senior counsel, Section 175(4) of BNSS embodies a procedural safeguard available to a public servant against whom allegations relating to acts performed in the course of discharge of official duties are made. It is submitted that since the allegations in the present complaint are directed against police officers, the learned Magistrate was bound to obtain a report from an officer superior to the accused police officers and to consider both such report and the explanation offered by the public servants before passing any order under Section 175(3) of the BNSS. The omission to do so, according to the learned senior counsel, vitiates the impugned order.

11. In order to appreciate the above contention, it is necessary to refer to Sections 175(3) and 175(4) of the BNSS.

"175. Police officer's power to investigate cognizable case. -

.....



(3) Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.

(4) Any Magistrate empowered under section 210, may, upon receiving a complaint against a public servant arising in course of the discharge of his official duties, order investigation subject to -

- (a) receiving a report containing facts and circumstances of the incident from the officer superior to him; and*
- (b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged."*

12. A plain reading of Section 175(4) of BNSS makes it abundantly clear that the requirement of obtaining a report from the superior officer of the public servant is not attracted in every case merely because the accused happens to be a public servant. The procedural safeguards contemplated under Section 175(4) become applicable only where the act complained of has arisen in the course of the discharge of official duties. In other words, there must exist a reasonable nexus between the act complained of and the discharge of the official functions of the public servant.

13. Whether an act was committed in the discharge of official duty has to be determined with reference to the nature of the act complained of and not merely with reference to the status of the accused as a public servant. Merely because the accused is a police officer does not *ipso facto* attract the protection or the procedural safeguards available under Section



175(4) of BNSS. Acts which are wholly unrelated to official functions or which constitute a clear abuse of official position for personal ends cannot ordinarily be regarded as acts done in the discharge or purported discharge of official duty.

14. In the case at hand, the specific allegations contained in the private complaint are that the petitioners, police officers, committed rape and subjected the complainant to sexual assault and molestation when she approached them for redressal of her grievances. If the allegations are taken at their face value, solely for the purpose of deciding the applicability of Section 175(4) of BNSS, it is impossible to hold that such acts bear any reasonable nexus with the discharge of the official duties of police officers.

15. Therefore, I have no hesitation in holding that the procedural safeguards contemplated under Section 175(4) of the BNSS were not attracted in the facts and circumstances of the present case. Consequently, the learned Magistrate was under no statutory obligation to obtain and consider a report from the superior officer before exercising jurisdiction under Section 175(3) of the BNSS.

16. At the same time, this Court is conscious of the fact that, after the presentation of the private complaint, the learned Magistrate had initially called for a report from the superior officer and had also afforded an



opportunity to the petitioners to place their contentions. However, a careful reading of the impugned order shows that the learned Magistrate has categorically clarified that the said course was adopted only as a matter of abundant caution and that such exercise should not be construed as a finding that Section 175(4) of the BNSS had been invoked or that the alleged acts arose in the course of discharge of official duties.

17. The learned Magistrate has specifically recorded that the allegations against the petitioners are of rape and sexual assault and that such acts can never be regarded as having been committed in the discharge of official duties. On arriving at the said finding, the learned Magistrate rightly concluded that the additional procedural safeguards contemplated under Section 175(4) of the BNSS were not attracted.

18. The above approach of the learned Magistrate also finds support from the judgment of the Hon'ble Supreme Court rendered in the Criminal Appeal No.4629/2025 directed against the judgment of the Division Bench of this Court in this matter. In paragraph 59 of the said judgment, the Supreme Court expressly left it open to the complainant to urge before the learned Judicial First Class Magistrate that the acts alleged against the accused police officers were not committed in the discharge of their official duties and that an order directing registration of an FIR could be passed



even without taking into consideration the report that had earlier been called for by the order dated 11.09.2024. Thus, the Hon'ble Supreme Court consciously left the question open for independent consideration by the learned Magistrate.

19. Accordingly, the learned Magistrate was fully justified in independently examining whether the allegations disclosed have any nexus with the discharge of official duties and in arriving at the conclusion that no such nexus existed. Once such a finding was reached, there was no legal necessity to await or consider the report obtained from the superior officer, since the very foundation for invoking Section 175(4) of the BNSS had ceased to exist. This Court finds no perversity, illegality or jurisdictional error in the above reasoning adopted by the learned Magistrate. The procedural safeguards contemplated under Section 175(4), including obtaining a report from the superior officer and considering the explanation of the public servant, are conditional safeguards intended to operate only where the act complained of has a reasonable nexus with the discharge of official duties. Those safeguards cannot be invoked merely because the accused are public servants.

20. The mere fact that the learned Magistrate had initially called for a report from the superior officer or afforded the petitioners an opportunity of



hearing cannot be construed as an adjudication that the alleged acts arose in the discharge of official duties. In the present case, the learned Magistrate has, in unequivocal terms, held that the allegations of rape and sexual assault are wholly alien to the discharge of official duties and that Section 175(4) of the BNSS is, therefore, inapplicable. The said finding warrants no interference at this stage.

21. The second ground urged by the learned senior counsel for the petitioners is that the complaint, which was forwarded for investigation under Section 175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), was not accompanied by an affidavit sworn or affirmed in accordance with the requirements of Section 333 of the BNSS. The learned senior counsel further pointed out that, in this case, the Hon'ble Supreme Court has already directed the Magistrate to satisfy himself that the application under Section 175(3) is accompanied by an affidavit sworn or affirmed in accordance with the terms of Section 333 of the BNSS. According to the learned senior counsel, the affidavit accompanying the complaint was sworn in by the complainant before an Advocate, and the same does not satisfy the mandate contained in Section 333 of the BNSS. It is, therefore, contended that the learned Magistrate could not have entertained the application or forwarded the complaint for investigation.



22. For appreciating the said contention, it is necessary to refer to Section 333 of the BNSS, which reads as follows:

"Authorities before whom affidavits may be sworn.—

(1) Affidavits to be used before any Court under this Sanhita may be sworn or affirmed before—

(a) any Judge or Judicial Magistrate or Executive Magistrate; or

(b) any Commissioner of Oaths appointed by a High Court or Court of Session; or

(c) any notary appointed under the Notaries Act, 1952 (53 of 1952).

(2) Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

(3) The Court may order any scandalous and irrelevant matter in the affidavit to be struck or amended."

23. A plain reading of Section 333 of BNSS makes it evident that an affidavit intended to be used before a Court under the BNSS is required to be sworn or affirmed before any of the authorities specified therein. While considering this issue, it is also necessary to consider the direction of the Hon'ble Supreme Court in paragraph 59 of its judgment, which reads as follows:

".....It is also clarified that the Judicial First Class Magistrate must first satisfy himself that the application under Section 175(3), BNSS is accompanied by an affidavit sworn or affirmed in accordance with the terms of Section 333 thereof."



24. The legislative object behind insisting upon an affidavit accompanying an application under Section 175(3) of the BNSS is to discourage false, frivolous and vexatious complaints and to ensure that a complainant assumes responsibility for the allegations made before invoking the jurisdiction of the Magistrate for directing a police investigation. The contention of the petitioners, however, cannot be considered in isolation without advertent to the provisions contained in the Criminal Rules of Practice, Kerala. Rule 40 of the Criminal Rules of Practice, Kerala, provides for the authorities before whom affidavits may be sworn or affirmed for use before criminal courts. The said Rule reads as follows:

"40. Persons authenticating affidavit and mode of authentication.- (1) Affidavits may be sworn or affirmed before any judicial officer, a District Registrar or Sub-Registrar, the Chief Ministerial Officer of any Civil or Criminal Court in the State of Kerala, a Member of Parliament, or of the Legislature of any State in India, the Mayor, Chairman, President, Executive Authority or a Member of any Municipal Corporation, Municipal Council or other local authority in India, a Gazetted Officer serving in connection with the affairs of the Union or of any State in India, a Commissioned Officer in the Defence Forces of India, or an advocate.

(2) The person before whom the affidavit is sworn or affirmed shall state the date on which and the place where the same is made and sign under his name and designation at the end, as in Judicial Form No.58."

25. Significantly, while rendering the judgment referred to above, the Hon'ble Supreme Court was not called upon to examine the interplay



between Section 333 of the BNSS and Rule 40 of the Criminal Rules of Practice, Kerala. Notably, Section 333 of BNSS is corresponding to Section 297 of Cr.P.C and both are similar. Rule 40 was introduced in Criminal Rules of Practice, Kerala, after being fully cognizant of the provision contained under Section 297 of the Cr.P.C. From the discussions contained in the judgment of the Hon'ble Supreme Court, it appear that any issue regarding the validity of an affidavit authenticated under the Criminal Rules of Practice, Kerala or the competence of the persons mentioned in the Criminal Rules of Practice, Kerala to authenticate an affidavit, was not raised before or considered by the Supreme Court. The direction of the Supreme Court must, therefore, be understood in the context of the controversy that arose before it and cannot be read as pronouncing upon an issue which neither arose for consideration nor was adjudicated.

26. Undoubtedly, the learned Magistrate is bound to satisfy himself that an application under Section 175(3) of the BNSS is accompanied by an affidavit. Equally, the direction of the Supreme Court requiring compliance with Section 333 of BNSS is binding. At the same time, it is to be borne in mind that the object of insisting upon an affidavit is to ensure the authenticity of the allegations and to deter abuse of the criminal process by making the deponent answerable for false statements made on oath. The object behind insisting upon the filing of an affidavit along with a private



complaint would be fulfilled even if such affidavit is duly authenticated by an advocate.

27. If that legislative object is achieved by an affidavit duly sworn before a person authorised under the Criminal Rules of Practice, Kerala, the purpose underlying the statutory requirement under Section 333 of BNSS cannot be said to have been defeated, or the direction of the Hon'ble Supreme Court is not complied with. Thus, the mischief sought to be prevented by the requirement of an affidavit, namely, frivolous and reckless invocation of the criminal process, stands effectively addressed. The provision contained in Rule 40 of the Criminal Rules of Practice, Kerala, is not in conflict with Section 333 of the BNSS, rather, it supplements the said provision. It is equally important to note that the petitioners failed to show that any prejudice has resulted merely because the affidavit was authenticated by a person recognised under the Criminal Rules of Practice, Kerala, instead of one of the authorities specifically enumerated in Section 333 of the BNSS.

28. Viewed in the above perspective, the mere fact that the affidavit was not sworn before one of the authorities specifically mentioned in Section 333 of the BNSS cannot, in the facts of the present case, be treated as a defect so fundamental as to invalidate the order passed by the learned



Magistrate, particularly when the affidavit has been filed before a Court and fulfills the object for which the requirement of filing an affidavit was introduced.

29. Accordingly, I am unable to accept the contention advanced by the learned senior counsel for the petitioners that there has been non-compliance with the requirement of filing an affidavit accompanying the application under Section 175(3) of the BNSS so as to vitiate the impugned order.

30. For the foregoing reasons, I find no ground warranting interference with the order impugned in this Criminal Miscellaneous Case.

In the result, the Criminal Miscellaneous Case fails and is, accordingly, dismissed.

Sd/-
JOBIN SEBASTIAN
JUDGE

vdv



APPENDIX OF CRL.MC NO. 5826 OF 2026

PETITIONER ANNEXURES

Annexure XIV	A COPY OF THE JUDGMENT DATED 18.10.2024 IN W.P. (C.) NO. 33035/2024
Annexure XV	A COPY OF THE JUDGEMENT DATED 13.11.2024 IN W.A. NO. 1712/2024
Annexure XVII	A COPY OF THE JUDGMENT DATED 27.01.2026 PASSED BY THE HON'BLE SUPREME COURT IN SLP (CRIMINAL) NO. 5175 OF 2025
Annexure XVIII	A COPY OF THE COUNTER AFFIDAVIT SUBMITTED BY SP MALAPPURAM BEFORE THE HON'BLE SUPREME COURT OF INDIA DATED 13.04.2025