Reserved on : 13.08.2026
Pronounced on : 24.08.2026

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 9779 OF 2026

BETWEEN:

PALECANDA PONNAPPA @ VISHAL
S/O LATE SRI P.M. AIYANNA,
AGED ABOUT 55 YEARS,
RESIDING AT F FAITH CINCHONA ESTATE,
KUTTA, KODAGU DISTRICT,
KARNATAKA – 571 250.

...PETITIONER

(BY SRI ANGAD KAMATH, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
   KUTTA PS KODAGU
   REPRESENTED BY
   THE STATE PUBLIC PROSECUTOR,
   HIGH COURT OF KARNATAKA,
   BENGALURU – 560 001.

2. XXXXXXXXXX
   XXXXXXXXXX
   XXXXXXXXXX

XXXXXXXXXX

...RESPONDENTS

(BY SRI B.N.JAGADEESHA, SPP-I FOR R-1;
SRI JOSEPH ANTHONY, ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF BNSS., PRAYING TO QUASH THE IMPUGNED CHARGE SHEET NO.NO/A/30/2026 DATED 07.06.2026, FILED IN CR.NO.0034/2026 OF KUTTA POLICE STATION, PENDING ON THE FILE OF THE COURT OF THE CIVIL JUDGE AND JMFC, PONNAMPET AND C.C.NO.575/2026, IN SO FAR AS THE SAME CONCERNS THE PETITIONER (ACCUSED NO.2) FOR THE OFFENCES P/U/S 239 OF BNS 2023 AND SEC. 7 R/W SECTION 14 OF THE FORIEGNERS ACT, 1946, AND THE ORDER OF COGNIZANCE DATED 19.06.2026 AND ALL CONSEQUENTIAL PROCEEDINGS EMANATING THEREOF IN EXERCISE OF THE POWERS OF THIS HON'BLE COURT U/S 528 OF THE BNSS 2023 (AND SEC. 482 OF CRPC 1973).

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 13.08.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

CAV ORDER

Petitioner - accused No.2 is before the Court calling in question charge sheet dated 07-06-2026 (in Crime No.34 of 2026) filed in C.C.No.575 of 2026, pending before the Civil Judge and JMFC, Ponnampet. The offences alleged against the petitioner are under Section 239 of the BNS and Sections 7 and 14 of the Foreigners Act, 1946 (hereinafter referred to as 'the Act' for short).

2. Facts, in brief, germane are as follows: -

2.1. The petitioner is the owner, principal operator and managing person of Devi Villa Homestay, situated within Faith Cinchona Estate at Kutta, Kodagu District, a heritage coffee plantation of over sixty years' standing. The homestay is duly registered with the Department of Tourism, the Government of Karnataka under the Karnataka Tourism Trade (Facilitation and Regulation) Act, 2015 vide Registration Certificate No.DT/DOT/08/ 00001983, validly issued on 15-01-2024 and subsisting until 15-01-2029. The principal residence, built in the traditional Kodava style by the petitioner's grandparents is named as 'Devi Villa' after the late Smt. Devaki. The homestay is openly listed and reviewed across reputed international and domestic platforms, with several reviews including those given by solo women travelers, recording their experience of feeling 'safe and secure', all of which are a mater of public record since the year 2024. The homestay is run as a family enterprise by the petitioner, his wife Smt. Aparna Ponnappa and his mother Smt. Anitha Aiyanna.

2.2. It is pertinent to record at the outset that, with effect from 01-09-2025, the Foreigners Act, 1946 stood repealed in its entirety by Section 36 of the Immigration and Foreigners Act, 2025 (hereinafter referred to as 'the Act, 2025' for short). Under the successor regime, the keeper's obligation to furnish particulars of a foreign guest is contained in Section 8 of the Act, 2025 read with Rule 17 of the Immigration and Foreigners Rules, 2025, with the report having to be maintained in 'Form III', which corresponds to the erstwhile 'Form-C'. Further, by notification S.O.3999 (E) dated 01-09-2025, the contravention of that obligation has been made a compoundable offence for a fixed sum of ₹50,000/- payable to the Foreigners Regional Registration Officer.

2.3. The complainant (respondent No.2), a national of the United States of America holding an Indian Tourist Visa issued on 14-08-2024 and valid until 13-08-2029, first stayed at Devi Villa from 22-03-2026 to 24-03-2026, the booking having been made directly through the petitioner. A positive entry was made by the complainant in the visitor's book and no complaint of any nature – and no offence under the law relating to foreigners arose in respect of that first stay. This prior, wholly compliant stay, is a matter of record.

2.4. The complainant thereafter booked a second stay for the period 12-04-2026 to 18-04-2026. On 11-04-2026, on the petitioner's suggestion made purely by way of guest safety, the complainant herself booked a one-way cab through the 'Savari' mobile application with booking ID No.10605306, generated in her own name and was advised to photograph the driver of the registered vehicle prior to departure. The driver so engaged by the complainant is the very person subsequently arraigned as accused No.3.

2.5. On 12-04-2026 i.e., the date of the alleged offence, the complainant arrived at Devi Villa at about 1.00 p.m. and was received by the petitioner's elder mother, Smt. Anitha Aiyanna. The petitioner himself was however not present at the Villa. There is also his own contemporaneous message recording that he was, at that time, still about forty-five minutes away. The offence, as originally alleged, was that the complainant had been administered a sedative through a welcome drink and was thereafter sexually assaulted. Further, on her own account, being sedated, she was able to describe her assailant only as a 'bald man', whom she idenfitifed as, the resident cook and housekeeper. The offence in the complaint was thus laid only against accused No.1 alone and the petitioner was named only as the owner.

2.6 Crucially, the complainant did not, at any point during her stay, inform the petitioner or the owners of the homestay of the alleged offence. In her own statement under Section 180 BNSS, she has stated, in terms, that she did not disclose anything to the owner at the relevant time. The contemporaneous WhatsApp record, and the statement of her overseas friend (one Colin), bear this out. Even when Colin pressed her to report the matter, she remained hesitant and reluctant to disclose it to the owners. The petitioner therefore, had neither knowledge nor intention of any offence having allegedly occurred at his premises, a matter spoken to by the complainant herself.

2.7. Further, in no version is the petitioner shown to have been present when the alleged incident is said to have occurred. The incident is said to have happened between 1.00 and 2.00 p.m.; yet, even upon the complainant's own statement under Section 180 BNSS, the petitioner entered the premises only at about 4.00 p.m., while the CCTV places his entry no earlier than about 4.00 p.m. On every account, the petitioner was absent at the material time.

2.8. It was only on 18-04-2026, some six days after the alleged event – that the impugned FIR came to be registered in Crime No.34 of 2026 of Kutta Police Station, for the offences punishable under Sections 64(1), 351(2), 238 and 239 of the BNS. Significantly, the FIR was registered upon an oral communication and not upon any written complaint, the mode of registration being expressly recorded as 'oral', and Section 3(5) BNS nor the offence under the law relating to foreigners, was alleged therein. The registration of so grave a matter, after six days of the alleged incident and upon a merely oral narration, rendered the resulting record peculiarly malleable and susceptible to subsequent shaping.

2.9. On 19-04-2026, at about 5.00 a.m., the petitioner came to be arrested without any written grounds of arrest. The petitioner extended complete cooperation; he led the Investigating Officer to the premises and voluntarily produced, and permitted the seizure of the CCTV/DVR, his mobile handset and the homestay register. Form 'C' in respect of the complainant's stay was itself filed on this very date, 19-04-2026. The charge under Section 3(5) of the BNS was introduced for the first time at the remand stage, without any alteration of the FIR, and the petitioner was remanded to judicial custody.

2.10. The complainant's statement under Section 183 of the BNSS was recorded before the learned JMFC, Kushalnagar on 21-04-2026. The petitioner was enlarged on bail by the Court of the Principal District and Sessions Judge, Madikeri on 02-05-2026, after fourteen days of judicial custody.

2.11. Thereafter, and for the first time on 30-05-2026, some six weeks after the event, the complainant gave a further statement, recorded not before any Magistrate but over a video call, introducing an entirely new account implicating the taxi driver who is arraigned as accused No.3; that he had, given her a massage and had then assaulted her. This account finds no mention in the FIR or in her statement under Section 183 of the BNSS. It is, moreover, irreconcilable with her original case as the welcome drink which is said to have sedated her was, on her own narrative, administered well after the driver had left the premises so that, the very stupefaction upon which the original allegation rested cannot explain either an assault by the driver or her failure to name him. The drastic and belated improvement of the prosecution narrative is, with respect, highly suspect.

2.12. Acting upon that belated re-statement, the taxi driver came to be arrested on 02-06-2026 and arraigned as accused No.3. The blood samples of the petitioner and of accused No.3 were drawn only on 04-06-2026 with the corresponding FSL report remaining awaited when the charge sheet came to be filed three days later, rendering the investigation thus standing, on the prosecution's own showing, as incomplete.

2.13. On 07-06-2026, when the charge sheet comes to be filed after investigation, the petitioner is drawn as accused No.2.

The offences under Sections 64(1), 351(2), 238 and 3(5) sof the BNS were dropped against the petitioner as not applicable but, was charged for offences punishable under Section 239 of the BNS and Sections 7 read with 14 of the Act. The filing of the charge sheet has driven the petitioner to this Court in the subject petition.

3. Heard Sri Angad Kamath, learned counsel appearing for the petitioner, Sri B.N. Jagadeesha, learned State Public Prosecutor-1 appearing for respondent No.1 and Sri Joseph Anthony, learned counsel appearing for respondent No.2.

SUBMISSIONS:

THE PETITIONER:

4. The learned counsel Sri Angad Kamath, appearing for the petitioner would vehemently contend that the petitioner is charged of the offences under the Act in blatant ignorance of law, as it is a charge under a repealed statute. It is his further submission that Section 239 of the BNS under which the petitioner is charged has three ingredients that it should govern. The words found in the provision *"which he is legally bound to give",* are words of limitation

and carry the whole weight of the Section. Therefore, the question is not whether the petitioner knew and when he comes to know. It is whether any law of this Country is obliged by him to inform the police. Section 33 of the BNSS, which is also alleged does not meet the ingredients as required therein. The learned counsel amplifying his submissions would contend that merely alleging in a well drafted complaint or charge sheet of the said offences would not mean that the offences are met in any way. He seeks allowing of the petition as prayed for.

THE STATE PUBLIC PROSECUTOR - 1:

5. *Per contra,* the learned State Public Prosecutor - I appearing for the State would contend that the allegations being made under the repealed Act is an admitted fact. The offence being charged under the said Act is indefensible. Insofar as other offence is concerned, the learned State Public Prosecutor would submit that the Police have after investigation filed a charge sheet drawing the petitioner as accused No.2 for the said offence. Therefore, it is for the petitioner to come out clean in a full-blown trial.

THE COMPLAINANT:

6. The learned counsel Sri Joseph Anthony representing the 2nd respondent/complainant would also toe the lines of the learned State Public Prosecutor -1 in contending that the matter requires a full-blown trial insofar as offence under Section 239 of the BNS, if not of the offences under the Act, which is laid under a repealed statute. Folly of the Investigating Agency should not place a victim in a worse off situation is his submission.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

CONSIDERATION:

8. The afore-narrated facts which are succinctly captured *supra,* would not require any iteration. The entire issue gets triggered on the registration of a complaint. The complaint reads as follows:

> "On 18.04.2026 from 12:00 p.m to 1:30 pm statement of victim "A" (name changed) recorded at Dr. Mahesh Rao house of CLV of US consulate #861, 14th main road vijayanagar, mysore - 570017
>
> I am a citizen of the USA, Passport holding no. # A30928952 (United State of America). I am working as a Administrative

Assistant for Meijer, based out of grand rapids Michigan. USA from the past two years.

I came to Bangalore, India on 19/03/2026 on a tourist visa valid from August 14, 2024 to 13 August 2029 in order to explore tourist places of India, for vacation and to see Indian friends and families. During the vacation I stayed in Bangalore Casa Cottage from 19/03/2026 to 22/03/2026 and also Devi Villa Coorg from 22/03/2026 to 24/03/2026 which I booked through AIRBNB application. I came to know about the home stay through stenita who is my friend. she knows about the home stay and the owners. stenita is my co worker from past 2 years, we stayed for about 2 days at the Devi Villa Home stay from 22/03/2026 to 24/03/2026. At the time when we were checking in the home stay, Vishal welcomed us and took details of us. I stayed in Devi Villa home stay for 3 days and then I went back to Stenita house and stayed till 12/04/2026 and then went back to Bangalore stayed at Casa Cottage, Bangalore.

On same day I left Bangalore towards Devi Villa home stay through taxi savari vehicle no. KA53D2506 and taxi arrived Devi villa home stay at 01:00 PM on same day. during this time nobody received us at home stay. But Grand mother(Vishal's Mother) was present and allotted a tent house to me. Grand mother(Vishal's mother) name was anitha and her age is about 80 to 90 year old. Afterwards I entered the tent all my luggage was already kept by house keeper's inside the tent. Because of tiredness I took off my cloths wrapped in the sheet and I was lying on the bed, stomach down. **About 1:30pm house keeper entered into my tent and taps me on my left shoulder and offered me a welcome juice(guava). after I drank the juice, house keeper left the tent, then I was kind of sleepy and drowsy. When I woke up the same man was above me and Raped me, at the time I was not able to move, he ejaculated over my back and he cleaned himself and also my back during that time. I was conscious but could not resist or move my body, due to drowsiness but I could see and feel everything. This incident happened between 1:00 pm to 3:00 pm. I know that person from previous stay he was wearing green shirt which is uniform of the home stay and around 40 to 45 years old. Stout build, baldness in front and may be 5.5 to 5.7 height and I don't know his full name but his**

name starts with letter V, but I think he is called as Vrijesh. After the incident I finally I could get up and went to swimming Pool area. during that time grand mother(Vishal's Mother) was around the pool and Couldn't connect to the Wifi, around 4:00PM to 5:00PM. When I was in the pool the same man gave me the Candy bar and I told him to get away from me. I did not eat but broke it down Kept it aside. During that time owner of the home stay Vishal came and gave me the Wifi password but I did not disclosed anything to the owner at that time. Once I was out of the pool hung around property and sat by the pool texted Collins my good friend who is my colleague in the USA, I didn't call him because of time difference.

At around 9:50pm I called my friend Collins in USA(+1-610-848-0930) Spoke for 16 minutes and again spoke for 8 minutes and walked back to the tent. My friend Collins suggested to inform the family about the incident. Around that time same man walked into my tent gave me my own vitamin C. Then I Screamt at around 10:09 pm to 10:19 pm Ran into the main house where I was asked the owner Vishal, I wanted a safe place with a lock and not a tent. Vishal finally allowed me stay in the main house.

On next day Sunday Collins advised me from the USA to consult doctor and He sent details to how to get help. Collins is my friend who is in the USA, He contacted the US Consulate as well as Stenita Lewis but Stenita didn't help at all. **Stentia sent me a text message about the rape and I was not able to connect properly with US Consulate. Home stay owner were not allowing me to even make calls and I was connected through text mode only. I was very afraid and helpless.**

On 14/04/2026 the US Consulate connected with me and Mister Carlton who is the ACS in Chennai who was helping out and he was in constant touch with me. Since Home stay members were forced me to stay till Thursday that is from Sunday to Thursday. They were told me not to inform to the Police, not to consult the Doctor and not allowing me talk to anybody except texting. Then on Thursday I left the place with the taxi driver name Sujith

> **in the vehicle number KA12C4978 and Vishal arranged the above taxi.** I left that place around 9 am and came to the Mysore by noon. Before leaving the home stay I have collected some of the evidence such as sheet which was on bed, head band and tissue papers from the tent and brought it along with me to the Mysore.
>
> I got help from ACS, Carlton who got me in touch with Dr Mahesh Rao(+91-98454-22755) who is the CLV for USA citizens he and His wife have been very helpful. As of now I am eager to fly back to the USA and as I need to work and I need immediate medical checkup locally in private hospital like kamakshi or others to ensure my health is safe. Presently I am staying in hotel Le Ruchi in Mysore, I am giving this statement at the house of CLV of USA consulate, Dr Mahesh Rao suggested by USA consulate #861. 14th main road Vijayanagar, Mysore 570017. **I have given this statement in front of the Mufti police officer with my interest at around 12:00 PM to 1:30 PM on 18/04/2026 at the above mentioned address."**

(Emphasis added)

The Police conduct investigation and file a charge sheet. The summary of the charge sheet as obtaining in column No.17 is as follows:

> "17. ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶ
>
> ಕುಟ್ಟ ಪೊಲೀಸ್ ಠಾಣಾ ಸರಹದ್ದಿಗೆ ಸೇರಿದ ಹಾಗೂ ಮಾನ್ಯ ಸಿ.ಜೆ. & ಜೆ.ಎಂ.ಎಫ್.ಸಿ. ಘನ ನ್ಯಾಯಲಯ ಪೊನ್ನಂಪೇಟೆ ನ್ಯಾಯಲಯದ ವ್ಯಾಪ್ತಿಗೆ ಒಳವಡುವ ಕುಟ್ಟ ಗ್ರಾಮದಲಿರುವ ಈ ದೋಷಾರೋಪಣಾ ಪತ್ರದ ಕಾಲಂ ನಂ 12 ರಲ್ಲಿ ನಮೂದಿಸಿದ 2ನೇ ಆರೋಪಿ ಪಾಲೆಕಂಡ ಪೊನ್ನಪ್ಪ @ ವಿಶಾಲ್ ಎಂಬುವವರ ಒಡೆತನದಲ್ಲಿರುವ ಸರ್ವೆ ನಂ 73/125 ರ ಕಾಫಿ ತೋಟದ ಮಧ್ಯದಲಿರುವ ದೇವಿವಿಲ್ಲಾ ಎಂಬ ಹೆಸರಿನ ಹೋಂಸ್ಟೇಯಲ್ಲಿ ಈ ದೋಷಾರೋಪಣಾ ಪತ್ರದ ಕಾಲಂ ನಂ 12 ರಲ್ಲಿ ನಮೂದಿಸಿದ 1 ನೇ ಆರೋಪಿ ವ್ರಿಜೇಶ್ ಕುಮಾರ್ ರಾಯ್ ಎಂಬ

ಜಾರ್ಕಂಡ್ ರಾಜ್ಯದ ವ್ಯಕ್ತಿಯು ಈಗ್ಗೆ, 2 ವರ್ಷದಿಂದ ದೇವಿವಿಲ್ಲಾ, ಹೋಂಸ್ಟೇಯಲ್ಲಿ ಹೌಸ್ ಕೀಪಿಂಗ್ ಮತ್ತು ಅಡುಗೆ ಕೆಲಸದವನಾಗಿ ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸುತ್ತಿದ್ದು ಈ ದೋಷಾರೋಪಣಾ ಪತ್ರದ ಕಾಲಂ ನಂ 14 ರಲ್ಲಿ ನಮೂದಿಸಿದ 1 ನೇ ಸಾಕ್ಷಿದಾರರಾದ ಅಮೇರಿಕಾ ದೇಶದ ವಿದೇಶಿ ನೊಂದ ಮಹಿಳೆ (A) ರವರು **ದಿನಾಂಕ:-12-04-2026** ರಿಂದ **ದಿನಾಂಕ:-18-04-2026** ರವರೆಗೆ ಸದರಿ ಹೋಂಸ್ಟೇಯಲ್ಲಿ ತಂಗುವ ಬಗ್ಗೆ ಹೋಂಸ್ಟೇಯನ್ನು ಬುಕ್ ಮಾಡಿಕೊಂಡು **ದಿನಾಂಕ:-12-04-2026** ರಂದು ಬೆಂಗಳೂರು ರಿಚ್ ಮಂಡ್ ಟೌನ್ ನಲ್ಲಿರುವ ಕಾಸಾ ಹೋಟೆಲ್ ನಿಂದ ಆರೋಪಿ-**3** ರವರ ಬಾಪ್ತು **KA-53-D-2506** ನೊಂದಣಿ ಸಂಖ್ಯೆಯ ಶಿಫ್ಟ್ ಡಿಸೈರ್ ಟ್ಯಾಕ್ಸಿ, ಕಾರಿನಲ್ಲಿ ಸಮಯ ಮಧ್ಯಾಹ್ನ **13-08** ಗಂಟೆಗೆ ದೇವಿವಿಲ್ಲಾ, ಹೋಂಸ್ಟೇಗೆ ಬಂದಿದ್ದು ಆ ಸಮಯದಲ್ಲಿ ಸಾಕ್ಷಿ-**1** ರವರನ್ನು ಸಾಕ್ಷಿ-**4** ರವರು ಬರಮಾಡಿಕೊಂಡು ಅವರಿಗೆ ದೇವಿವಿಲ್ಲಾ, ಹೋಂಸ್ಟೇಯ ಟೆಂಟ್ ಹೌಸ್ ಕಾಟೇಜ್ ಸಂಖ್ಯೆ **-2** ನ್ನು ನೀಡಿದ್ದು ಸಾಕ್ಷಿ-**1** ಮತ್ತು ಆರೋಪಿ-**1** ಹಾಗೂ **3** ರವರು ಸಾಕ್ಷಿ-**1** ರವರ ಲಗೇಜ್ ಗಳನ್ನು ತೆಗೆದುಕೊಂಡು ಹೋಗಿ ಕಾಟೇಜ್ ಸಂಖ್ಯೆ-**2** ರಲ್ಲಿ ಇಟ್ಟು ವಾಪಾಸ್ಸು **3** ಜನರು ಕಾರಿನ ಹತ್ತಿರ ಬಂದಿದ್ದು ನಂತರ ಸಾಕ್ಷಿ-**1** ಮತ್ತು ಆರೋಪಿ-**3** ರವರು ಸಮಯ **13:18** ಗಂಟೆಗೆ ಉಳಿದ ಲಗೇಜ್ ಗಳನ್ನು ತಗೆದುಕೊಂಡು ಟೆಂಟ್-ಹೌಸ್ ಕಾಟೇಜ್ ಕಡೆಗೆ ಹೋಗಿದ್ದು ನಂತರ ಆರೋಪಿ-**1** ರವರು ಅಲ್ಲಿಂದ ಡೈನಿಂಗ್ ಹಾಲ್ ಗೆ ತನ್ನ ಕೆಲಸಕ್ಕೆ ಹೋಗಿದ್ದಾಗ ಟೆಂಟ್-**2** ರ ಬಳಿ ಇದ್ದ ಆರೋಪಿ- **3** ರವರು ಸಾಕ್ಷಿ-**1** ರವರಿಗೆ ತಾನು ಆಯುರ್ವೇದಿಕ್ ಮಸಾಜ್ ಮಾಡುತ್ತೇನೆ ಎಂದು ಹೇಳಿದಾಗ ಸಾಕ್ಷಿ-**1** ರವರು ಹಾಗಾದರೆ ನನಗೆ ಬಾಡಿ ಮಸಾಜ್ ಮಾಡು ಎಂದು ಹೇಳಿ ಟೆಂಟ್ ಗೆ ಕರೆದು ತನ್ನ ಬಳಿ ಇದ್ದ ಆಯಿಲ್ ಬಾಟಲಿಯನ್ನು ಆರೋಪಿ-**3** ರವರಿಗೆ ಕೊಟ್ಟು ಮೊಕ್ಕಡೆಯಾಗಿ ನಗ್ನವಾಗಿ ಮಲಗಿದ್ದು ಆರೋಪಿ-**3** ರವರು ಸಾಕ್ಷಿ-**1** ರವರಿಗೆ ಬಾಡಿ ಮಸಾಜ್ ಮಾಡುತ್ತಾ-ಮಾಡುತ್ತಾ ತನ್ನ ಕೈಯ ಬೆರಳುಗಳನ್ನು ಸಾಕ್ಷಿ-**1** ರವರ ಯೋನಿಯ ಒಳಗಡೆ ಹಾಕಿ ಸಾಕ್ಷಿ-**1** ರವರನ್ನು ಉದ್ರೇಕಿಸಿ ಅತ್ಯಾಚಾರ ಮಾಡಿ ನಂತರ ಟೆಂಟ್ ಹೌಸ್ ನಿಂದ ಸಮಯ **14:00** ಗಂಟೆಗೆ ಹೊರಗೆ ಬಂದು ತನ್ನ ಕಾರನ್ನು ತೆಗೆದುಕೊಂಡು ವಾಪಾಸ್ಸು ಹೋಗಿದ್ದು ತದ ನಂತರ ಆರೋಪಿ-**1** ರವರು ಸಮಯ **14:16** ಗಂಟೆಗೆ ಸಾಕ್ಷಿ-**1** ರವರಿಗೆ ಕುಡಿಯಲು ವೆಲ್ ಕಮ್ ಜ್ಯೂಸನ್ನು ನೀಡಿದ್ದು ನಂತರ ಸಾಕ್ಷಿ-**1** ರವರು **2** ನೇ ಟೆಂಟ್ ಹೌಸ್ ಕಾಟೇಜ್ ನ **3** ನೇ ಮಂಚದ ಬೆಡ್ ನ ಮೇಲೆ ನಗ್ನವಾಗಿ ಮೊಕ್ಕಡೆಯಾಗಿ ಮಲಗಿಕೊಂಡು ವಿಶ್ರಾಂತಿಯನ್ನು ಪಡೆಯುತ್ತಿದ್ದ ಸಂದರ್ಭದಲ್ಲಿ ಆರೋಪಿ-**1** ರವರು ಸಾಕ್ಷಿ-**1** ರವರ ಅನುಮತಿಯನ್ನು ಪಡೆಯದೆ ಕಾಟೇಜ್ ಸಂಖ್ಯೆ **-2** ರ ಒಳಗಡೆ ಪ್ರವೇಶಿಸಿ ಸಾಕ್ಷಿ-**1** ರವರು ಮಲಗಿದ್ದ ಸಮಯದಲ್ಲಿ ಆಕೆಯ ಮೇಲೆ ಅತ್ಯಾಚಾರ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ಸಾಕ್ಷಿ-**1** ರವರ ಕೈಯನ್ನು ಗಟ್ಟಿಯಾಗಿ ಹಿಡಿದುಕೊಂಡು ಆಕೆಯನ್ನು ಅತ್ಯಾಚಾರ ಮಾಡಿದ್ದು ಆ ಸಮಯದಲ್ಲಿ **1** ನೇ ಆರೋಪಿಯ ಶಿಶ್ನ ದಿಂದ ವಿರ್ಯವು ಸ್ಖಲನಗೊಂಡು ಸಾಕ್ಷಿ-**1** ರವರ ದೇಹದ

ಮೇಲೆ ಹಾರಿದ್ದು ಆ ಸಮಯದಲ್ಲಿ ವಿಶ್ರಾಂತಿ ಪಡೆಯುತ್ತಿದ್ದ ಸಾಕ್ಷಿ-**1** ರವರಿಗೆ ಒಮ್ಮೆಲೆ ಎಚ್ಚರವಾಗಿ ನೋಡಿದಾಗ ಆರೋಪಿ-**1** ರವರು ಟೆಂಟ್ ಹೌಸ್ ನ ಒಳಗಡೆಯಿದ್ದ ಟಿಸು ಪೇಪರ್ ಗಳಿಂದ ಸಾಕ್ಷಿ-**1** ರವರ ಶರೀರದ ಮೇಲೆ ಬಿದ್ದಿದ್ದ ಆತನ ವಿರ್ಯಾದ ಕಲೆಗಳನ್ನು ಒರೆಸಿ ಅಲ್ಲಿಯೇ ಇದ್ದ ಕಸದ ಬುಟ್ಟಿಯ ಒಳಗೆ ಹಾಕಿ ಟೆಂಟ್ ಹೌಸ್ ನಿಂದ ಹೊರಗೆ ಹೋಗಿದ್ದು ನಂತರ ಸಾಕ್ಷಿ-**1** ರವರು ಗಾಬರಿಗೊಂಡು ಈ ಬಗ್ಗೆ ಏನು ಮಾಡಬೇಕೆಂದು ತೋಚದೆ ಅದೇ ದಿನ ಅಮೇರಿಕಾದಲ್ಲಿರುವ ತನ್ನ ಗೆಳೆಯ ಸಾಕ್ಷಿ-**2** ರವರಿಗೆ ವಾಟ್ಸಾಪ್ ಮೇಸೆಜ್ ಮಾಡಿ ನಡೆದ ವಿಚಾರವನ್ನು ತಿಳಿಸಿದ್ದು ಸಾಕ್ಷಿ-**2** ರವರು ಈ ವಿಚಾರವನ್ನು ಹೋಂಸ್ಟೇ ಮಾಲಿಕರಾದ ಆರೋಪಿ **2** ರವರಿಗೆ ತಿಳಿಸಲು ಹೇಳಿದ್ದು ನಂತರ ರಾತ್ರಿ ಸಮಯ **10-15** ಗಂಟೆಗೆ ಆರೋಪಿ-**1** ರವರು ಸಾಕ್ಷಿ-**1** ರವರು ಮಲಗಿದ್ದ ಟೆಂಟ್ ಹೌಸ್ ನ ಹತ್ತಿರ ಜೋರು ಜೋರಾಗಿ ಮಾತನಾಡಿಕೊಂಡು ಸುತ್ತಾಡುತ್ತಿರುವಾಗ ಇದನ್ನು ಕಂಡ ಸಾಕ್ಷಿ-**1** ರವರು ಹೆದರಿ ಆರೋಪಿ-**2** ರವರು ಮಲಗಿದ್ದ ಕೋಣೆಯ ಕಿಟಕಿಯನ್ನು ಬಡಿದು ಆರೋಪಿ-**2** ರವರನ್ನು ಕರೆದು ನನಗೆ ಸದರಿ ಟೆಂಟ್ ಹೌಸ್ ನಲ್ಲಿ ಮಲಗಲು ಹೆದರಿಕೆ ಆಗುತ್ತದೆ**.** ಎಂದು ತಿಳಿಸಿದಾಗ ಆರೋಪಿ **-2** ರವರು ಸಾಕ್ಷಿ-**1** ರವರಿಗೆ ತನ್ನ ಮನೆಯ ಒಳಗಿನ ಮತ್ತೊಂದು ಕೋಣೆಯನ್ನು ನೀಡಿದ್ದು ಆ ಸಮಯದಲ್ಲಿ ಸಾಕ್ಷಿ-**1** ರವರು ಸಾಕ್ಷಿ-**2** ರವರು ತಿಳಿಸಿದಂತೆ ಆರೋಪಿ-**2** ರವರ ಜೊತೆ ನನಗೆ ಅತ್ಯಾಚಾರವಾಗಿದೆ ವೈದ್ಯರು ಮತ್ತು ಪೊಲೀಸರ ಬಳಿ ಹೋಗಬೇಕು ಎಂದು ಹೇಳಿದರು ಸಹ ಆರೋಪಿ-**2** ರವರು ಸಾಕ್ಷಿ-**1** ರವರ ಮಾತನ್ನು ಲೆಕ್ಕಿಸದೆ ನಾಳೆ ಸಿ.ಸಿ**.** ಕ್ಯಾಮಾರದ ಪುಟೇಜ್ ಗಳನ್ನು ಪರಿಶೀಲಿಸುವ ಎಂದು ತಿಳಿಸಿ ನಿರಾಕರಿಸಿದ್ದು ನಂತರ ದಿನಾಂಕ**: -13-04-2026** ರಂದು ರಾತ್ರಿ 10-37 ಗಂಟೆಗೆ ಸಾಕ್ಷಿ-1 ರವರು ಸಾಕ್ಷಿ-3 ರವರಿಗೆ ವಾಟ್ಸಾಪ್ ಮೇಸೆಜ್ ಮಾಡಿ ತನಗೆ ಅತ್ಯಾಚಾರವಾದ ಬಗ್ಗೆ ಮಾಹಿತಿಯನ್ನು ತಿಳಿಸಿದ್ದು ಕೂಡಲೇ ಸಾಕ್ಷಿ-3 ರವರು ಆರೋಪಿ-2 ರವರಿಗೆ ದೂರವಾಣಿ ಕರೆಮಾಡಿ ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ಅತ್ಯಾಚಾರವಾದ ಬಗ್ಗೆ ವಿಚಾರ ತಿಳಿಸಿ ಸಾಕ್ಷಿ-1 ರವರನ್ನು ಚಿಕಿತ್ಸೆಯ ಬಗ್ಗೆ ಆಸ್ಪತ್ರೆಗೆ ದಾಖಲಿಸಿ ಹತ್ತಿರದ ಪೊಲೀಸ್ ಠಾಣೆಗೆ ಹೋಗಿ ಪುಕಾರು ನೀಡುವಂತೆ ತಿಳಿಸಿರುತ್ತಾರೆ. ಆದರೆ ಆರೋಪಿ-2 ರವರು ಈ ಬಗ್ಗೆ, ಪೊಲೀಸರಿಗೆ ಯಾವುದೇ ಮಾಹಿತಿಯನ್ನು ಕೊಡದೆ, ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ಚಿಕಿತ್ಸೆಯನ್ನು ಕೊಡಿಸದೆ ಸಾಕ್ಷಿ-1 ರವರನ್ನು ಕುರಿತು ನೀನು ಈ ಕೃತ್ಯದ ಬಗ್ಗೆ ಪೊಲೀಸರಿಗೆ ದೂರು ನೀಡಿದರೆ ಮುಂದೆ ನಿನಗೆ ತೊಂದರೆ ಉಂಟಾಗುತ್ತದೆ ಹಾಗೂ ಇನ್ನು ಮುಂದೆ ನೀನು ಅಮೇರಿಕಾದಿಂದ ಭಾರತ ದೇಶಕ್ಕೆ ಬರಲು ಆಗುವುದಿಲ್ಲ, ಈ ವಿಚಾರವನ್ನು ಇಲ್ಲಿಗೆ ಬಿಟ್ಟು ಬಿಡು ಇದರಿಂದ ನೀನು ಗರ್ಭೀಣಿಯಾಗುವುದಿಲ್ಲ. ಇದೆಲ್ಲಾ ಸಹಜ ಎಂದು ಹೇಳಿ ಸಾಕ್ಷಿ-1 ರವರು ದಿನಾಂಕ:-12-04-2026 ರಿಂದ 17-04-2026 ರ ವರೆಗೆ ದೇವಿವಿಲ್ಲಾ, ಹೋಂಸ್ಟೇಗೆ ಬಂದು ವಾಸ್ತವ್ಯ ಹೂಡಿದ್ದು, ಈ ಬಗ್ಗೆ, **Section -7 R/w 14 Foreigners Act** ಪ್ರಕಾರ ಫಾರಂ ನಂ- ಸಿ, ಭರ್ತಿ ಮಾಡಿ 24 ಗಂಟೆಯ ಒಳಗಾಗಿ ಸ್ಥಳಿಯ ಪೊಲೀಸ್ ಅಧಿಕಾರಿಗಳಿಗೆ

ಮಾಹಿತಿ ನೀಡುವಂತೆ ನಿಯಮವಿದ್ದರು ಸಹ ಸದರಿ ನಿಯಮವನ್ನು ಪಾಲಿಸದೆ ನಿಯಮವನ್ನು ಉಲ್ಲಂಘಿಸಿ ಸಾಕ್ಷಿ-1 ರವರು ದೇವಿ ವಿಲ್ಲಾ ಹೋಂಸ್ಟೇಗೆ ಬಂದ ಬಗ್ಗೆ ಯಾವುದೇ ಮಾಹಿತಿಯನ್ನು ನೀಡದಿರುವುದು ಪ್ರಕರಣದ ಈ ವರೆಗಿನ ತನಿಖೆಯಿಂದ ದೃಢಪಟ್ಟಿರುತ್ತದೆ.

ಆದುದ್ದರಿಂದ ಮೇಲ್ಕಂಡ 1 ನೇ ಆರೋಪಿಯು ಸಾಕ್ಷಿ-1 ರವರ ಸಮ್ಮತಿಯಿಲ್ಲದೆ ಆಕೆಯ ಇಚ್ಛೆಗೆ ವಿರುದ್ಧವಾಗಿ ಅತ್ಯಾಚಾರ ನಡೆಸಿರುವುದಲ್ಲದೆ, ಪ್ರಕರಣದ ತನಿಖೆಯ ಸಮಯದಲ್ಲಿ ಸಾಕ್ಷಿ-1 ರವರು ಹಾಜರುಪಡಿಸಿದ ಸ್ವತ್ತುಗಳಾದ 1) ಹಸಿರು ಬಣ್ಣದ ಹರಿದಂತ್ತಿರುವ ಮೃದು ಪೇಪರ್ ನಲ್ಲಿ ವಸ್ತುಗಳನ್ನು ಸುತ್ತಿಕೊಂಡು ಬಂದಿರುವ ಪೇಪರ್ 2) ಬಿಳಿ ಬಣ್ಣದ ಮುದುರಿರುವ 4 ಟಿಸು ಪೇಪರ್ ಗಳು, 6) ಪಾರದರ್ಶಕದ 3 ಪ್ಲಾಸ್ಟಿಕ್ ಕವರ್ ಗಳು, 7) ತಲೆಗೆ ಸುತ್ತಿಕೊಳ್ಳುವ ಕಾಟನ್ ಕಂದು ಮತ್ತು ಬಿಳಿ ಹೂಗಳಿರುವ ಬಟ್ಟೆ, 8) ಖಾಕಿ ಬಣ್ಣದ ಪೇಪರ್ 9) ಹಾಸಿಗೆ ಮೇಲೆ ಹಾಸುವ ಕಂದು, ಬಿ ಮಿಶ್ರಿತ ಹೂಗಳಿರುವ ಹೊದಿಕೆಯಲ್ಲಿ ವಿರ್ಯಾಣುಗಳ ಕಲೆಗಳು ಇರುವುದು ಡಿ.ಎನ್.ಎ. ಪರೀಕ್ಷೆಯಿಂದ ಪತ್ತೆಯಾಗಿದ್ದು ಮತ್ತು ಆರೋಪಿ-1 ರವರ ರಕ್ತದ ಮಾದರಿಯಲ್ಲಿನ ಡಿ.ಎನ್.ಎ ಗೆ ಹೋಲಿಕೆಯಾಗಿರುವುದು ಎಫ್.ಎಸ್.ಎಲ್. ವರದಿಯಿಂದ ದೃಢಪಟ್ಟಿರುವುದರಿಂದ 1 ನೇ ಆರೋಪಿಯು ಕಲಂ:-64(1), ಬಿ.ಎನ್.ಎಸ್ ಕಾಯ್ದೆ 2023 ರಿತ್ಯಾ ಶಿಕ್ಷಾರ್ಹ ಅಪರಾಧವೆಸಗಿರುವುದು ದೃಢಪಟ್ಟಿರುತ್ತದೆ,

ಆರೋಪಿ 2 ರವರು ಸಾಕ್ಷಿ-1 ರವರ ಮೇಲೆ ಆರೋಪಿ 1 ರವರು ಅತ್ಯಾಚಾರ ಮಾಡಿದ ಬಗ್ಗೆ ಮತ್ತು ಸಾಕ್ಷಿ-1 ರವರು ತನಗೆ ವೈದ್ಯಕೀಯ ಚಿಕಿತ್ಸೆ ಮತ್ತು ಪೊಲೀಸರ ಸಹಾಯ ಬೇಕು ಎಂದು ಕೇಳಿದರು ಸಹ ಆಕೆಗೆ ಯಾವುದೇ ಸಹಾಯ ಮಾಡದೆ ಆರೋಪಿ-1 ರವರನ್ನು ಕೃತ್ಯದಿಂದ ರಕ್ಷಿಸಲು ಉದ್ದೇಶಿಸಿ ಕೃತ್ಯದ ಮಾಹಿತಿಯನ್ನು ಬಚ್ಚಿಟ್ಟು ಸಾಕ್ಷಿ-1 ರವರು ದೇವಿವಿಲ್ಲಾ ಹೋಂಸ್ಟೇಯಲ್ಲಿ ತಂಗಿದ್ದ ಬಗ್ಗೆ ಫಾರಂ ನಂ-ಸಿ. ಭರ್ತಿ ಮಾಡದೆ ಕಲಂ:- 239, ಬಿ.ಎನ್.ಎಸ್ ಕಾಯ್ದೆ 2023 ಮತ್ತು Section -7 R/w 14 Foreigners Act ರಿತ್ಯಾ ಶಿಕ್ಷಾರ್ಹ ಅಪರಾಧವೆಸಗಿರುವುದು ದೃಢಪಟ್ಟಿರುತ್ತದೆ,

ಆರೋಪಿ-3 ರವರು ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ಆಯಿಲ್ ಮಸಾಜ್ ಮಾಡುತ್ತೇನೆಂದು ಹೇಳಿ ಆಸೆ ಹುಟ್ಟಿಸಿ ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ಮಸಾಜ್ ಮಾಡುತ್ತಾ-ಮಾಡುತ್ತಾ ತನ್ನ ಕೈಯ ಬೆರಳುಗಳನ್ನು ಸಾಕ್ಷಿ-1 ರವರ ಯೋನಿಯ ಒಳಗಡೆ ಹಾಕಿ ಸಾಕ್ಷಿ-1 ರವರನ್ನು ಉದ್ರೇಕಿಸಿ ಸಾಕ್ಷಿ-1 ರವರ ಸಮ್ಮತಿಯಿಲ್ಲದೆ ಆಕೆಯ ಇಚ್ಛೆಗೆ ವಿರುದ್ಧವಾಗಿ ಅತ್ಯಾಚಾರ ನಡೆಸಿರುವುದು ತನಿಖೆಯಿಂದ ಸಾಬಿತಾಗಿರುವುದರಿಂದ 3 ನೇ ಆರೋಪಿಯು ಕಲಂ:-64(1), ಬಿ.ಎನ್.ಎಸ್ ಕಾಯ್ದೆ 2023 ರಿತ್ಯಾ ಶಿಕ್ಷಾರ್ಹ ಅಪರಾಧ ವೆಸೆಗಿರುವುದು ದೃಢಪಟ್ಟಿರುತ್ತದೆ.

ಆದುದ್ದರಿಂದ ಮೇಲ್ಕಂಡ 1, 2, ಮತ್ತು 3 ನೇ ಆರೋಪಿಗಳ ಮೇಲೆ ದೋಷಾರೋಪಣಾ ಪತ್ರವನ್ನು ತಯಾರಿಸಿ ಸಲ್ಲಿಸಿ ಕೊಂಡಿರುವುದಾಗಿದೆ. ವಿ.ಸೂ. ದಿನಾಂಕ:-07-05-2026 ರಂದು ಪ್ರಕರಣದ ತನಿಖೆಯ ಸಮಯದಲ್ಲಿ ಅಮಾನತ್ತು ಪಡಿಸಿಕೊಂಡ ದೇವಿವಿಲ್ಲಾ ಹೋಂಸ್ಟೇಯ ಸಿ.ಸಿ. ಕ್ಯಾಮರಗಳ ಫುಟೇಜ್ ಗಳಿರುವ ಡಿ.ವಿ.ಆರ್. ನ್ನು ಬೆಂಗಳೂರಿನ ಎಫ್.ಎಸ್.ಎಲ್. ನ ಆಡಿಯೋ ವಿಡಿಯೋ ವಿಭಾಗ ಕ್ಕೆ ಕಳುಹಿಸಿ ಅದರಲ್ಲಿರುವ ದೃಶ್ಯಾವಳಿಗಳನ್ನು ಸಂಗ್ರಹಿಸಿಕೊಡುವಂತೆ ಹಾಗೂ ಈ ದೃಶ್ಯಾವಳಿಗಳು ನೈಜತೆಯಿಂದ ಕೂಡಿದೆಯೇ? ಮತ್ತು 2 ನೇ ಆರೋಪಿಯ ಮೊಬೈಲ್ ಫೋನ್ ನ್ನು ಬೆಂಗಳೂರಿನ ಎಫ್.ಎಸ್.ಎಲ್, ನ ಮೊಬೈಲ್ ಪೆರನ್ಸಿಕ್ ವಿಭಾಗಕ್ಕೆ, ಕಳುಹಿಸಿ ಅದರಲ್ಲಿರುವ ದತ್ತಾಂಶಗಳನ್ನು ಸಂಗ್ರಹಿಸಿಕೊಡುವಂತೆ ಕೋರಿದ್ದು ಹಾಗೂ ದೇವಿವಿಲ್ಲಾ ಹೋಂಸ್ಟೇಗೆ ಅಳವಡಿಸಿದ ವೈಫೈ ಯ ಮಾಹಿತಿಗಳನ್ನು ನೀಡುವಂತೆ ಸಂಬಂಧ ಪಟ್ಟ ಕಂಪೆನಿಗೆ ಮನವಿ ಪತ್ರವನ್ನು ತಯಾರಿಸಿ ಸಲ್ಲಿಸಲಾಗಿದೆ, ಹಾಗೂ ಬೆಂಗಳೂರು ಎಫ್.ಎಸ್.ಎಲ್, ನ ಡಿ.ಎನ್.ಎ. ವರದಿಯಲ್ಲಿ, ಬ್ರೆಡ್ಸ್ ಬೆಡ್ ನ ಮೇಲೆ ಕಂಡುಬಂದಿರುವ 2 ವಿರ್ಯದ ಕಲೆಗಳ ಪೈಕಿ 1 ಕಲೆಯು ಆರೋಪಿ-1 ರವರ ರಕ್ತದ ಮಾದರಿಯು 9B ವಿರ್ಯದ ಕಲೆಗೆ ಹೋಲಿಕೆಯಾಗಿದ್ದು 9A ರಲ್ಲಿ ಪತ್ತೆಯಾದ ವಿರ್ಯದ ಕಲೆಯು ಅಪರಿಚಿತ ಪುರುಷ ವ್ಯಕ್ತಿಯದ್ದು ಎಂಬುದಾಗಿ ಕಂಡುಬಂದಿರುವುದರಿಂದ ಆರೋಪಿ 2, 3 ಮತ್ತು ಸಂಶಯಾಸ್ಪದ ವ್ಯಕ್ತಿ ನಾಬಕುಮಾರ್ ಬಿಶೋಯ್ ರವರ ರಕ್ತದ ಮಾದರಿಯನ್ನು ಸಂಗ್ರಹಿಸಿ ದಿನಾಂಕ:-04-06-2026 ರಂದು ಡಿ.ಎನ್.ಎ ಪರೀಕ್ಷೆಯ ಬಗ್ಗೆ, ಬೆಂಗಳೂರು ಎಫ್.ಎಸ್.ಎಲ್. ಕಳುಹಿಸಿಕೊಟ್ಟಿದ್ದು ಅವುಗಳ ವರದಿ ಬರಲು ಬಾಕಿ ಇದ್ದು ಈ ಮೇಲ್ಕಂಡ ಎಲ್ಲಾ ತಜ್ಞರ ವರದಿಗಳು ಬಂದ ನಂತರ ವರದಿಗಳೊಂದಿಗೆ ಘನ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹೆಚ್ಚುವರಿ ದೋಷಾರೋಪಣಾ ಪತ್ರವನ್ನು ತಯಾರಿಸಿ ಸಲ್ಲಿಸಲಾಗುವುದು."

(Emphasis added)

9. The petitioner is arrayed as accused No.2. The offences that are laid at his door are those punishable under Section 239 of the BNS and Sections 7 read with 14 of the Act. In the teeth of the allegations so made and the summary of the charge sheet noticed hereinabove, what merits examination is, whether the acts

attributed to the petitioner would even brush against the ingredients of the provisions invoked. I deem it appropriate, at the outset, to consider the allegation under Sections 7 read with 14 of the Act, for the very foundation of that charge appears to be fundamentally flawed.

THE FOREIGNERS ACT, 1946 :

10. The Foreigners Act, 1946 did not merely undergo an amendment or suffer deletion of a provision here or there. It stood repealed in its entirety with effect from 01-09-2025. This position is not in dispute. In its place came the Immigration and Foreigners Act, 2025, which was brought into force from 01-09-2025. **The Act, 2025 swept away and replaced four enactments which had hitherto occupied the field, namely: (i) the Passport (Entry into India) Act, 1920; (ii) the Registration of Foreigners Act, 1939; (iii) the Foreigners Act, 1946; and (iv) the Immigration (Carriers' Liability) Act, 2000. The provisions now invoked against the petitioner i.e., Sections 7 and 14 of the Foreigners Act, 1946, thus belonged to an enactment which had ceased to occupy the statute book**

before the alleged incident took place. What assumes significance, therefore, is the repeal and saving provision contained in Section 36 of the Act, 2025, which reads as follows:

> "**36. Repeal and saving**.—(1) The Passport (Entry into India) Act, 1920 (34 of 1920), the Registration of Foreigners Act, 1939 (16 of 1939), **the Foreigners Act, 1946 (31 of 1946)** and the Immigration (Carriers' Liability) Act, 2000 (52 of 2000) (hereinafter referred to as repealed Acts) **are hereby repealed.**
>
> **(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken, including any rules, orders, directions, instructions, regulations or any proceedings made or issued or taken or given or any penalty or fine imposed under the repealed Acts shall, in so far as it is not inconsistent with the provision of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.**
>
> **(3) The mention of the particular matters referred to in sub-section (2) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal**."

Section 36 of the Act, 2025 admits of little ambiguity. Sub-section (1) expressly repeals, *inter alia*, the Foreigners Act, 1946. Sub-section (2) preserves things already done or actions already taken, or purported to have been done or taken, including rules, orders, directions, instructions, regulations, proceedings, penalties and fines under the repealed enactments, insofar as they are not inconsistent with the provisions of the Act, 2025. Sub-section (3), in turn, preserves the general operation of Section 6 of the General Clauses Act, 1897 (hereinafter referred to as the 'General Clauses Act' for short).

11. Two dates, therefore, assume decisive significance. The Foreigners Act, 1946 disappeared from the statute book on 01-09-2025 and the Act, 2025 occupied the field from that very date. The incident forming the subject matter of the present proceedings is alleged to have occurred on 12-04-2026 i.e, more than seven months after the repeal had taken effect. Thus, on the date when the alleged act was committed, the Foreigners Act, 1946 was no longer the law in force.

12. **This chronology strikes at the very root of the prosecution under Sections 7 and 14 of the repealed enactment - The Foreigners Act, 1946. Criminality cannot be conjured out of a statutory provision which had ceased to exist when the alleged act occurred. If the conduct complained of constituted an offence on 12-04-2026, the**

prosecution must necessarily trace that offence to the law, which was then in force. It cannot travel backwards in time, resurrect a repealed penal provision and fasten criminal liability upon the petitioner under a statute, which had already departed from the legislative field. This principle is not merely one of statutory interpretation instead it receives constitutional sanctity under Article 20(1) of the Constitution of India, which reads as follows:

> **"20.Protection in respect of conviction for offences. - (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."**

Article 20(1) mandates that no person shall be convicted of an offence except for **violation of a law in force at the time of commission of the act charged as an offence**. The expression *"law in force"* is the constitutional sentinel. It admits of neither retrospective creation of an offence nor the post-repeal resurrection of a penal provision to criminalise conduct occurring thereafter. **A person cannot be prosecuted under a penal law yet to be**

born; equally, he cannot be prosecuted under a penal law already dead. Criminal liability must stand on the firm ground of a law in force on the date of the alleged act. It cannot rest upon the grave of a repealed enactment.

13. The saving clause contained in Section 36(2) of the Act, 2025 does not rescue the prosecution. **A saving provision preserves rights, liabilities, actions or proceedings which had their genesis while the repealed enactment was alive. It cannot breathe life into the repealed statute for the purpose of creating a fresh offence in respect of an act committed after the repeal. What is saved is the legal consequence of the past; what cannot be saved is the capacity of a repealed penal statute to govern the conduct occurring in the future.**

14. It now becomes apposite to notice the exposition of law by the Apex Court in the case of **KOLHAPUR CANESUGAR WORKS LIMITED v. UNION OF INDIA**[1], wherein the Apex Court has held as follows:

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[1] **(2000) 2 SCC 536**

"…. …. ….

37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. **To this rule, an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision."**

The principle that emerges is unmistakable. The effect of repeal is governed by the saving provision, whether contained in the repealing enactment itself or flowing from Section 6 of the General Clauses Act. But neither species of saving can convert a repealed penal enactment into a continuing source of criminal liability for acts committed after its repeal. Section 6 of the General Clauses Act preserves accrued liabilities; it does not manufacture future ones under a dead statute.

14.1 An identical issue fell for consideration before the Jabalpur Bench of the High Court of Madhya Pradesh in the case of **MUKHTIYAR AHMED KHAN v. UNION OF INDIA**[2], wherein the High Court has held as follows:

"…. …. ….

6. Before entering into merits of matter, it would be apposite to read the relevant provisions i.e. Section 7 and 14 under the Foreigners Act, 1946 and on careful reading, Section 7 of the Foreigners Act, 1946 creates obligations in respect of foreigners, while Section 14 prescribes penalty for contravention of the Act or any order made thereunder.

7. Further, the duty to submit Form-C arises from Rule 14 of the Registration of Foreigners Rules, 1992, which casts such obligation upon the "keeper of the premises" where the foreigner is accommodated.

8. It is not in dispute that the Immigration and Foreigners Act, 2025 came into force with effect from 01.09.2025. The said enactment is a comprehensive and consolidating statute governing matters relating to immigration, entry, stay and obligations of foreigners, and by express legislative mandate repeals the Foreigners Act, 1946. **Upon such repeal, the earlier statutory regime stood effaced except to the extent expressly saved by the repealing enactment. Consequent upon the enforcement of the Act of 2025, the Central Government has framed the Immigration and Foreigners Rules, 2025 in exercise of the rule-making power conferred under the new Act. The said Rules, 2025 constitute an independent and fresh set of subordinate legislation and are not a continuation or amendment of**

[2] **W.P. No.48763 of 2025, decided on 28-01-2026**

the Registration of Foreigners Rules, 1992, which were framed under the repealed Foreigners Act, 1946.

9. It is a settled principle of law that subordinate legislation does not survive the repeal of the parent statute unless expressly saved or re-enacted. In the absence of any express saving clause continuing the Registration of Foreigners Rules, 1992, the said Rules ceased to have operative force upon the repeal of the parent Act. **Consequently, with effect from 01.09.2025, the field is occupied exclusively by the Immigration and Foreigners Act, 2025 and the Rules framed thereunder, and any obligation, liability or penal consequence must necessarily be traced to the provisions of the 2025 Act and the Immigration and Foreigners Rules, 2025 alone. Any attempt to invoke the repealed Act of 1946 or the Registration of Foreigners Rules, 1992 for acts or omissions occurring after the commencement of the 2025 Act would be wholly without authority of law.**

10. In the present case, The foreign national had entered India on a valid visa granted for the period 25.09.2025 to 24.12.2025. The foreign national's stay at the petitioner's residence commenced on 12.11.2025, i.e., after the repeal of the 1946 Act. **The alleged omission, if any, is therefore governed exclusively by the Immigration and Foreigners Act, 2025, and not by the repealed enactment.**

11. It is a settled principle of criminal jurisprudence that no person can be prosecuted for an offence under a statute which was not in force on the date of the alleged act or omission. Registration of an offence under a repealed law, in the absence of a saving clause expressly permitting such prosecution, is legally unsustainable.

12. The respondent authorities have not pointed out any provision under the Immigration and Foreigners Act, 2025 which saves or continues penal action under the repealed Foreigners Act, 1946 for acts committed after the repeal. Upon

consideration of the saving clause relied upon by the respondent authorities, this Court finds that the same does not advance their case. The said clause merely preserves actions lawfully taken, proceedings initiated, or penalties imposed under the repealed enactments during the period when such enactments were in force, and creates a legal fiction only to ensure continuity of past actions, subject to consistency with the provisions of the new Act. **The saving clause does not operate to revive the repealed Foreigners Act, 1946, nor does it authorise initiation of fresh proceedings or registration of offences thereunder in respect of acts or omissions occurring after the enforcement of the Immigration and Foreigners Act, 2025.**

13. In the present case, the alleged omission is stated to have occurred on 12.11.2025, much after the repeal of the Act of 1946 with effect from 01.09.2025. No proceeding was pending nor any action was initiated under the repealed Act prior to such repeal. Consequently, invocation of the Foreigners Act, 1946 or the Registration of Foreigners Rules, 1992 by taking shelter under the saving clause is wholly misconceived and legally unsustainable. Any obligation or penal consequence after 01.09.2025 must necessarily be traced to the provisions of the Immigration and Foreigners Act, 2025 and the Rules framed thereunder alone.

14. In view of the above, this Court is of the considered opinion that registration of offence under the Foreigners Act, 1946 for an alleged violation occurring on 12.11.2025 is ex facie illegal and without authority of law.

15. Once the foundation of the proceedings is found to be void, all consequential actions taken pursuant thereto cannot be permitted to stand.

> 16. Accordingly, the writ petition is allowed. The FIR registered vide Crime No. 311/2025 at Police Station Chandiya, District - Umaria for the offence punishable under Sections 7/14 of the Foreigners Act, 1946, against the petitioner is hereby quashed. All consequential proceedings arising therefrom shall also stand quashed.
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> 17. However, it is clarified that this order shall not preclude the competent authority from taking action, if any is permissible in law, strictly in accordance with the Immigration and Foreigners Act, 2025, subject to its provisions and limitations."

I am in respectful agreement with the elucidation of law by the High Court of Madhya Pradesh, particularly in its construction of Section 36 of the Act, 2025. The High Court has recognised the elementary, yet inviolable, principle of criminal jurisprudence that no person can be prosecuted for an act or omission under a penal statute, which was not in force on the date on which the act or omission allegedly occurred. The prosecution before it, founded upon Sections 7 read with 14 of the Act, after the repeal of that enactment, was consequently held to be bereft of legal foundation.

15. The facts obtaining in the case at hand travel on the same path. The alleged incident is of 12-04-2026. The Foreigners Act, 1946 had ceased to exist with effect from 01-09-2025. **Therefore,**

when the alleged act took place, the Foreigners Act, 1946 itself was repealed and the question of alleging offences under Sections 7 and 14 of the Act do not arise. Neither Section 36(2) of the Act, 2025 nor Section 6 of the General Clauses Act can perform the legislative alchemy of reviving those repealed penal provisions to govern an act committed several months after their repeal.

16. The charge under Sections 7 read with 14 of the Act is, therefore, not merely loosely laid; **it is laid under a law which was not in existence on the date of the alleged offences. A charge resting upon a non-existent penal provision cannot be permitted to propel a citizen into the rigours of a criminal trial. It is a charge without statutory foundation, an accusation unknown to the law in force, and consequently a nullity in the eye of law.**

17. The allegation under Sections 7 read with 14 of the Act, *qua* the petitioner, must therefore fall to the ground.

SECTION 239 OF BNS / SECTION 202 OF IPC :

18. What then survives for consideration is the offence punishable under Section 239 of the BNS. Section 239 reads as follows:

> "**239. Intentional omission to give information of offence by person bound to inform**.—**Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give**, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both."

Section 239 of the BNS is the statutory successor to Section 202 of the erstwhile, the IPC. The provision does not punish mere silence. It does not make every citizen a repository of an omnibus obligation to report every offence of which he may acquire knowledge. What it punishes is an intentional omission to furnish information, which the person concerned is "*legally bound*" to furnish. The distinction is subtle, but decisive. Knowledge by itself is not the offence; silence by itself is not the offence. It is knowledge coupled with a legal

duty, followed by an intentional breach of that duty, which brings the provision to life.

19. The statutory expression, "*which he is legally bound to give*", is therefore, not an ornamental appendage to Section 239 of the BNS. It is its very fulcrum. Remove the legal duty and the offence collapses. Knowledge is innocent unless the law fastens a duty upon it; silence is permissible unless the law commands speech; and omission becomes culpable only when the law first commands an act and the person deliberately chooses not to perform it.

20. Section 202 of the IPC, which is the statutory predecessor of Section 239 of the BNS has been interpreted by the Apex Court in the case of **HARISHCHANDRASING SAJJANSINH RATHOD v. STATE OF GUJARAT**[3], wherein the Apex Court has held as follows:

"…. …. ….

> **4.** To sustain a conviction under the above quoted Section 202 of the Penal Code, **it is necessary for the prosecution to prove (*1*) that the accused had knowledge or reason to believe that some offence had been committed, (*2*) that the accused had intentionally omitted to give information respecting that offence, and**

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[3] **(1979) 4 SCC 502**

> **(*3*) that the accused was legally bound to give that information.** We have gone through the entire evidence bearing on the aforesaid offence under Section 202 of the Penal Code but have not been able to discern anything therein which may go to establish the aforesaid ingredients of the offence under Section 202 of the Penal Code. The offence in respect of which the appellants were indicted viz. having intentionally omitted to give information respecting an offence which he is legally bound to give not having been established, the appellants could not have been convicted under Section 202 of the Penal Code. **It is well settled that in a prosecution under Section 202 of the Penal Code, it is necessary for the prosecution to establish the main offence before making a person liable under this section. The offence under Section 304 (Part II) and the one under Section 331 of the Penal Code not having been established on account of several infirmities, it is difficult to sustain the conviction of the appellants under Section 202 of the Penal Code. The High Court has also missed to notice that the word "whoever" occurring at the opening part of Section 202 of the Penal Code refers to a person other than the offender and has no application to the person who is alleged to have committed the principal offence. This is so because there is no law which casts a duty on a criminal to give information which would incriminate himself.** That apart the aforementioned ingredients of the offence under Section 202 of the Penal Code do not appear to have been made out against the prosecution. There is not an iota of evidence to show that the appellants knew or had reason to believe that the aforesaid main offences had been committed."

The exposition of law by the Apex Court leaves little room for ambiguity. Three ingredients must coalesce before Section 239 of the BNS can be pressed into service: **first**, knowledge or reason to believe that an offence has been committed; **second**, an intentional omission to furnish information concerning such offence; and **third**, the existence of a legal obligation upon the person concerned to furnish such information. These ingredients do not operate in watertight compartments. The third is foundational to the second. Unless the law commands disclosure, failure to disclose cannot metamorphose into a penal omission.

21. Put differently, **Section 239 of the BNS does not create the duty; it punishes the breach of a duty created elsewhere in law.** Therefore, before the prosecution can accuse a citizen of having intentionally omitted to report an offence, it must first point to the law, which commanded that citizen to report it. A penal provision cannot manufacture its own foundational duty by implication.

22. This takes the Court to the question: **wherefrom does such a duty arise in the case of an ordinary member of the public?** The answer lies in Section 33 of the BNSS, which reads as follows:

> "**33. Public to give information of certain offences.— (1) Every person, aware of the commission of, or of the**

intention of any other person to commit, any offence punishable under any of the following sections of the Bharatiya Nyaya Sanhita, 2023, namely:—

(*i*) Sections 103 to 105 (both inclusive);
(*ii*) Sections 111 to 113 (both inclusive);
(*iii*) Sections 140 to 144 (both inclusive);
(*iv*) Sections 147 to 154 (both inclusive) and Section 158;
(*v*) Sections 178 to 182 (both inclusive);
(*vi*) Sections 189 and 191;
(*vii*) Sections 274 to 280 (both inclusive);
(*viii*) Section 307;
(*ix*) Sections 309 to 312 (both inclusive);
(*x*) sub-section (5) of Section 316;
(*xi*) Sections 326 to 328 (both inclusive); and
(*xii*) Sections 331 and 332,

shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.

(2) For the purposes of this section, the term "offence" includes any act committed at any place out of India which would constitute an offence if committed in India."

Section 33 of the BNSS is conspicuous in its architecture. Parliament has not employed the expression "any offence". It has consciously enumerated the offences which attract the statutory duty of a member of the public to report. The provision, therefore, proceeds by enumeration and not by general description. The duty is tethered to specified sections. Whether a legal obligation exists is thus not a

matter of judicial intuition or prosecutorial preference; it is answered by the statute itself.

23. This becomes all the more significant because failure to discharge that duty may expose a citizen to penal consequences under Section 239 of the BNS. A provision which creates criminal liability for an omission and particularly one operating alongside a provision which places the burden of proving reasonable excuse upon the person concerned, cannot be expanded by interpretative adventurism. **Where the Legislature has chosen enumeration, the Court cannot substitute enlargement. Where Parliament has drawn the circumference, interpretation cannot redraw it.**

THE HISTORY OF THE PROVISION :

24. The legislative ancestry of Section 33 makes the position even more illuminating. The obligation of the public to furnish information of specified offences is no legislative novelty. It has travelled through successive criminal procedural codifications for more than a century and a half. Its journey may be noticed thus:

Code	Provision	The enumeration, and what was added to it	Sexual offence
1861	s.138, Act XXV of 1861	Property and house-trespass offences alone – theft after preparation for hurt, robbery, and the house-breaking cluster	Absent
1872	Act X of 1872	Murder and offences against the State added, the Select Committee recording that it had "added murder and offences against the State" to the list.	Absent
1882	s.44, Act X of 1882	Carried forward; offence against the public tranquillity inserted in 1894.	Absent
1898	s.44, Act V of 1898	Carried forward, with an extraterritorial limb; a proposed extension deliberately declined in 1921	Absent
1973	s.39, Act 2 of 1974	Reorganised into clause (i)-(xii); illegal gratification, adulteration of food and drugs, criminal breach of trust by a public servant and currency offences added; kidnapping for ransom added in 1993	Absent
2023	s.33, Act 46 of 2023	Recast against the BNS; organised crime, petty organised crime and terrorism added; kidnapping cluster widened to take in importation of a girl or boy from a foreign country, trafficking of person, and exploitation of a trafficked person.	Absent

The legislative history speaks with remarkable consistency. Beginning with the Code of 1861, passing through the Codes of 1872, 1882 and 1898, then Section 39 of the Code of 1973, and finally arriving at Section 33 of the BNSS, 2023, the Legislature has repeatedly revisited the catalogue of offences, which a member of the public is legally bound to report.

25. The catalogue has never remained fossilised. With the changing complexion of crime, offences have been consciously added. Murder and offences against the State found their way into the fold. Public tranquillity was brought in. Illegal gratification, adulteration of food and drugs, criminal breach of trust by public servants and currency offences followed. Kidnapping for ransom was later incorporated. The BNSS went further and consciously brought within the fold organised crime, petty organised crime and terrorism and enlarged the kidnapping and trafficking cluster.

26. Yet, through every one of these legislative revisitations, **sexual offences have remained outside the enumeration**.

27. This is not an omission occurring in a statute drafted once and left untouched by time. It is an omission which has survived repeated legislative scrutiny. **Six codifications, more than a century and a half of legislative history, repeated**

enlargement of the catalogue, and yet sexual offences do not find place in the statutory enumeration.

28. When the Legislature has demonstrated, time and again, its willingness to add offences to the reporting obligation whenever public policy so demanded, the continued absence of sexual offences assumes significance. A Court construing a penal provision cannot travel beyond the statutory frontier and declare that what Parliament did not enumerate must nevertheless be treated as though it had.

29. The position becomes still clearer when contrasted with statutes where the Legislature has expressly imposed a duty to report sexual offences. The Protection of Children from Sexual Offences Act, 2012 is a ready illustration. Sections 19 and 21 thereof, create an express statutory obligation to report specified offences and provide consequences for failure to do so. Thus, where Parliament intended silence itself to become culpable in the context of sexual offences against children, it said so in unmistakable terms. The contrast is telling. **Where the Legislature intended a duty, it created one. Where it intended punishment for**

breach, it prescribed one. The Court cannot transplant that duty into a statutory field where Parliament has consciously not placed it.

30. In the case at hand, the petitioner is a private citizen. He is neither a public servant nor a police officer; neither a person in charge of a hospital nor one upon whom any special statute is shown to cast an independent obligation to report the alleged offence. The prosecution has not demonstrated any statutory source which made it legally obligatory for this petitioner, in the circumstances obtaining in the case, to furnish information concerning the alleged sexual offence. **If there is no legal duty, there can be no legally culpable omission; and if there can be no legally culpable omission, Section 239 of the BNS cannot be summoned merely because the prosecution alleges knowledge.**

31. The charge under Section 239 of the BNS, therefore, cannot stand even at its threshold. To permit it to survive would be to convert a provision punishing breach of a *legal duty* into one punishing breach of a perceived *moral duty*. The two are not

synonymous. Morality may expect a citizen to speak; criminal law can punish his silence only when the statute commands him to speak. **A moral expectation cannot, by prosecutorial alchemy, be converted into a penal obligation.**

32. The result is inevitable. The prosecution against the petitioner suffers from a two-fold statutory infirmity. The charge under Sections 7 read with 14 of the Foreigners Act is sought to be laid under an enactment which, as noticed hereinbefore, stood repealed. The charge under Section 239 of the BNS fares no better, for the very legal duty whose breach constitutes the foundation of that offence is absent *qua* the petitioner.

33. One charge thus **falls with the repeal of the statute which is sought to sustain it; the other falls for want of the statutory duty necessary to breathe life into it**. Neither can be permitted to linger merely to subject the petitioner to the rigours of a criminal trial. Criminal law cannot punish an omission where the law never commanded an act. **Section 239 of the BNS punishes the breach of a legal duty; it does not create one out of silence.** In the absence of such a duty cast upon the petitioner to

report the alleged sexual offence, the very substratum of the charge disappears. The charge, therefore, tumbles down under the weight of the statute itself. The petitioner cannot be made to stand trial for failing to discharge **a duty which the law never cast upon him**.

34. It becomes apposite, at this juncture, to notice the judgment of the Apex Court in **ANAND KUMAR MOHATTA v. STATE (NCT OF DELHI)**[4], wherein the Apex Court holds as follows:

> "…. …. ….
>
> ***Conclusion***
>
> **14. First, we would like to deal with the submission of the learned Senior Counsel for Respondent 2 that once the charge-sheet is filed, petition for quashing of FIR is untenable.** We do not see any merit in this submission, keeping in mind the position of this Court in *Joseph Salvaraj A.* v. *State of Gujarat* [*Joseph Salvaraj A.* v. *State of Gujarat*, (2011) 7 SCC 59: (2011) 3 SCC (Cri) 23]. In *Joseph Salvaraj A.* [*Joseph Salvaraj A.* v. *State of Gujarat*, (2011) 7 SCC 59: (2011) 3 SCC (Cri) 23], this Court while deciding the question whether the High Court could entertain the Section 482 petition for quashing of FIR, when the charge-sheet was filed by the police during the pendency of the Section 482 petition, observed: (SCC p. 63, para 16)

4 (2019) 11 SCC 706

> "***16*. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge [*Joesph Saivaraj A.* v. *State of Gujarat*, 2007 SCC OnLine Guj 365] could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not**."
>
> … … …
>
> **16. There is nothing in the words of this section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 CrPC even when the discharge application is pending with the trial court** [*G. Sagar Suri* v. *State of U.P.*, (2000) 2 SCC 636, para 7: 2000 SCC (Cri) 513. *Umesh Kumar* v. *State of A.P.*, (2013) 10 SCC 591, para 20: (2014) 1 SCC (Cri) 338: (2014) 2 SCC (L&S) 237]. **Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced and the allegations have materialised into a charge-sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge-sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court**."

The principle enunciated in **ANAND KUMAR MOHATTA** is of considerable significance to the case at hand. The filing of a charge-sheet does not erect an impregnable wall against exercise of the inherent jurisdiction of this Court. A proceeding which was vulnerable to interference at the stage of registration of the crime does not acquire immunity merely because the investigating agency has carried it one step further and christened its allegations through a charge-sheet. **An illegality does not gather legitimacy with the passage of stages in a criminal proceeding. Nor does an untenable accusation acquire legal sinew merely because it finds its way from the FIR into the final report.**

35. If the very ingredients of the offences are absent, the Court cannot be reduced to a mute spectator merely because investigation has culminated in a charge-sheet. On the contrary, where an abuse which germinated in the FIR is carried forward into the charge-sheet, the abuse does not disappear; **it only becomes aggravated**.

36. The law so declared in the case of **ANAND KUMAR MOHATTA** *supra* is reiterated by the Apex Court in **MAHMOOD ALI v. STATE OF U.P.**[5]. The High Court exercising jurisdiction under Section 482 of the Cr.P.C. is not required to surrender its judicial scrutiny at the altar of the charge-sheet. Where the

[5] **2023 SCC OnLine SC 950**

circumstances so warrant, the allegations and the material collected during investigation must be examined a little more closely to ascertain whether what is projected as a criminal prosecution is, in truth, one known to law or merely an accusation clothed in the language of penal provisions.

37. Both these judgments trace their jurisprudential foundation to the locus classic us in **STATE OF HARYANA v. BHAJAN LAL**[6], wherein the Apex Court delineated, illustratively and not exhaustively, the categories in which the extraordinary or inherent jurisdiction could be exercised to prevent abuse of process or to secure the ends of justice. wherein it is held as follows:

"…. …. ….

> **102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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[6] **1992 Supp (1) SCC 335**

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously

> instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(Emphasis supplied at each instance)

The law in **BHAJAN LAL**, read in the light of **ANAND KUMAR MOHATTA** and **MAHMOOD ALI** *supra*, yields an unmistakable principle that the mere inscription of a penal provision in the FIR or charge sheet does not constitute the offence. The ingredients must exist in fact and in law. **A section number is not a substitute for an ingredient; an accusation is not a substitute for an offence; and a charge-sheet is not a talisman which can protect an otherwise untenable prosecution from judicial scrutiny.**

38. The High Court, while exercising jurisdiction under Section 482 of the Cr.P.C., is undoubtedly not conducting a mini-trial. But the prohibition against conducting a mini-trial cannot be stretched to mean that the Court must close its eyes to the admitted or unimpeachable material staring at it. **There is a world of difference between weighing evidence to determine guilt and examining the material to determine whether an offence**

exists at all. The former belongs to trial; the latter lies at the very heart of jurisdiction under Section 482 of the Cr.P.C. / Section 528 of the BNSS, when abuse of process is demonstrated.

39. If the case at hand is tested on the anvil of the aforesaid principles, the answer admits of little ambiguity. Two charges survive against the petitioner, one under Sections 7 read with 14 of the Act and the other under Section 239 of the BNS. Both suffer from infirmities which strike not at the sufficiency of evidence, but at the very **existence of the offences in law**. The first is sought to be sustained under an enactment which, as noticed hereinbefore, stood repealed with effect from 01-09-2025. Once the statutory foundation itself has disappeared, a charge resting solely upon that foundation cannot be permitted to float in a legislative vacuum. The second, under Section 239 of the BNS, which founders on an equally fundamental infirmity. Section 239 does not punish mere knowledge of an offence followed by silence. It punishes intentional omission by a person **legally bound to furnish the information**. As elaborately noticed hereinbefore, no such statutory duty is demonstrated against the petitioner, a private citizen, in respect of

the alleged sexual offence. If the omission contemplated by law cannot arise, Section 239 of the BNS cannot operate.

40. Therefore, these are not matters where the prosecution possesses the ingredients but suffers from paucity of proof. **The ingredients themselves are wanting.** That distinction is decisive. Want of evidence may invite a trial; **want of an offence cannot justify one.** The case thus falls squarely within categories **(1) and (3)** of **BHAJAN LAL**, for even if the allegations and the material collected by the prosecution are accepted as they stand, they do not constitute the offences alleged against the petitioner. To the extent the record demonstrates that the criminal process has nevertheless been set in motion and carried forward despite these foundational statutory infirmities, the proceedings also attract the principle underlying category **(7)**. Permitting the prosecution to continue in such circumstances would amount to compelling the petitioner to undergo the ordeal of a criminal trial merely to secure, at its terminus, a conclusion which is already written into the statute at its threshold. **A criminal trial cannot be permitted to**

become the punishment where the law does not disclose the crime.

41. Therefore, viewed from any angle, continuation of proceedings against the petitioner for the aforesaid offences would be an abuse of the process of law and would result in manifest and patent injustice. The proceedings, insofar as the petitioner is concerned, cannot be permitted to continue.

42. For the aforesaid reasons, the following:

ORDER

(i) The Criminal petition is **allowed**.

(ii) The charge sheet dated 07-06-2026 laid in Crime No.34 of 2026 by the Kutta Police Station and pending before the Civil Judge and JMFC, Ponnampet in C.C.No.575 of 2026 stands quashed, *qua* the petitioner.

(iii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioner under Section 528 of the BNSS / Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings against any other accused pending before any other *fora.*

Sd/-
(M.NAGAPRASANNA)
JUDGE

NVJ
CT:MJ