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IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDERS RESERVED ON: 25-09-2026

PRONOUNCED ON : 30-10-2026

CORAM

THE HONOURABLE MR JUSTICE M.NIRMAL KUMAR

Case QR

CRL OP No. 6617 of 2026

and

Crl.M.P.No.4860 of 2026

CNR: {HCMA010566142026}

R.D.Santhanakrishnan ... Petitioner / Accused

Vs

State rep. By
Inspector of Police,
Crime Branch CID.,
Egmore, Chennai. ... Respondent / Complainant

Prayer: Criminal Original Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records in Spl.S.C.No.326 of 2025, on the file of the Mahila Court, Allikulam, Chennai and quash the same.

For Petitioners : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.R.Rajasekaran
Govt.Advocate (Crl.side)

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O R D E R

This Criminal Original Petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS”), to call for the records in Spl.S.C.No.326 of 2025 on the file of the Mahila Court, Allikulam, Chennai, and to quash the same.

2. The petitioner is the sole accused in Spl.S.C.No.326 of 2025, which arises out of Crime No.13 of 2021, registered by the respondent, Cyber Crime Cell, Crime Branch CID, Egmore, Chennai. He stands charged for the offences under Sections 228, 292(2)(a), 294(a), 354A and 370(2) of the Indian Penal Code, 1860 (“IPC”), Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 (“TNPHW Act”) and Section 67A of the Information Technology Act, 2000 (“IT Act”). Subsequently, in respect of the alleged obscene video, the person, who transmitted through social media is not traceable so far, the offence under Section 292(2)(a) IPC is dropped.

3. The case of the prosecution, in brief, are as follows:-

(i) On 20.12.2021, a video clipping showing the online proceedings of Court Hall No.11 of this Court, in which a male participant seen engaged in an erotic act with a woman, went viral on social media. The Division Bench took *suo motu* cognizance and, by order dated 21.12.2021 in *Suo Motu* Crl.Contempt Petition No.1699

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of 2021, directed the CB-CID to register a *suo motu* FIR and to nar the persons seen in the clipping. Pursuant to the memorandum of the Director General of Police, CB-CID, in Rc.No.Crime II(1)/18772/2021 dated 21.12.2021, the respondent registered Crime No.13 of 2021, on 22.12.2021, on the *suo motu* report of one U.M.Avinash, Sub-Inspector of Police, for the offences under Sections 228, 292(2)(a) and 294(a) IPC and Section 67A of the IT Act, against unknown persons.

4.The Registrar (IT-cum-Statistics) of this Court furnished a Compact Disc containing the clipping, which downloaded from the forwarded video circulating on WhatsApp, together with the cause list, the participant log-in details and a Certificate under Section 65-B of the Indian Evidence Act, 1872. The Bar Council of Tamil Nadu and Puducherry provided the enrolment particulars of the petitioner, an Advocate, enrolled as No.MS.3907/2011, and informed that he had been prohibited from practicing by Resolution, dated 21.12.2021. The woman seen in the clipping, aged about 20 years, was identified. Her identity is withheld in this order and she is referred to as “X”, and her mother as “Y”, in the manner adopted by the Division Bench in the contempt proceedings.

5. According to the final report, the petitioner, who was in his office at Ayanavaram, Chennai, logged into the Microsoft Teams

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video conference of Court Hall No.11 on his laptop. At about 15.(hours on 20.12.2021, he called “X”, who was working as an Office Assistant and in domestic work at his residence, near him and engaged in the act. He sexually harassed “X”, and that prior to the occurrence he used the financial condition of the family of “X” to his advantage and exploited her sexually by offering money, a new dress and food, and she was subjected to physical and sexual exploitation several times.

6.The statement of “X” was recorded on 28.12.2021 under Section 164 Cr.P.C. by the learned XI Metropolitan Magistrate, Saidapet, based on which, sections were altered on 07.01.2022 to Sections 228, 292(2)(a), 294(a) and 354A IPC, Section 4 of the TNPHW Act and Section 67A of the IT Act. The petitioner arrested on 08.01.2022 and released on station bail. Further statements of “X” and “Y” were recorded on 21.01.2022, Section 370(2) IPC., added by a second alteration report, the petitioner arrested again on 21.01.2022 and remanded to judicial custody.

7. On completion of investigation, the respondent filed the Final Report on 13.12.2024, for the offences under Sections 228, 294(a), 354A and 370(2) IPC, Section 4 of the TNPHW Act and Section 67A of the IT Act. The offence under Section 292(2)(a) IPC was dropped, because the person who captured and circulated the video could not

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be traced. The final report indicates eleven witnesses, namely, t Sub-Inspector, who gave the special report, the Registrar (IT-cum-Statistics), the Secretary of the Bar Council, the Reader/Examiner, who hosted the video conference, the President of the Women Lawyers Association, three persons said to know the petitioner and "X", junior advocate of the petitioner, wife of the petitioner, two persons, who attested the arrest and confession, and the Investigating Officer. The learned XI Metropolitan Magistrate, Saidapet, took cognizance in PRC.No.3 of 2025 on 07.01.2025 and committed the case to the Mahila Court, Allikulam, on 16.06.2025, where it is pending as Spl.S.C.No.326 of 2025.

8.The petitioner was also proceeded against in *Suo Motu* Crl.Contempt Petition No.1699 of 2021. By order dated 12.04.2022, the Division Bench found that he had pleaded guilty to the charges framed under Section 2(c)(i), (ii) and (iii) read with Section 12 of the Contempt of Courts Act, 1971 and tendered an unconditional apology, and sentenced him to simple imprisonment for two weeks for each charge, to run concurrently, and a fine of Rs.2,000/- for each charge, with the sentence of imprisonment set off against 34 days of incarceration already undergone in Cr.No.13 of 2021. As directed by this Court, the petitioner paid a sum of Rs.4,00,000/- as compensation to "X", through the Tamil Nadu State Legal Services Authority. By a further order dated 18.10.2022 in Sub Application

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(OS) No.459 of 2022, the Division Bench accepted the apology genuine and purged the petitioner of the contempt.

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9.The Division Bench also made the following observation in paragraph 5 of its order dated 12.04.2022, which is relevant for the present case of quashment.

> "…canoodling with a lady during Court hours in one's office, by itself, is not an offence nor would it attract the provisions of the Contempt of Courts Act."

10. Mr.R.C.Paul Kanagaraj, the learned counsel for the petitioner submitted that even if the entire final report and the materials collected by the respondent are taken at their face value, no offence is made out against the petitioner. The alleged occurrence took place in a closed room, in the office of the petitioner, and not in a public place. It came to be seen in the virtual court because the petitioner, who is not conversant with electronic devices, was unaware that the virtual court had been left running in the background of his laptop. There was no intention on his part to insult or interrupt the judicial proceedings, and thus Section 228 IPC is not attracted.

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11. The learned counsel further submitted that Section 294(a) IPC requires an obscene act in a public place, and Section 292(2)(a) IPC has itself been dropped by the respondent. The respondent admitted in the final report that the person, who recorded and circulated the video could not be traced, in spite of a notice issued to WhatsApp, and, therefore, Section 67A of the IT Act cannot be pressed against the petitioner. The "X" did not make any complaint, is not cited as a witness, and no witness has spoken to any act of torture, harassment or forcible misbehaviour by the petitioner against her. Sections 354A IPC and 4 of the TNPHW Act are not made out. Section 370(2) IPC, which added after the petitioner arrested and enlarged on bail, is not attracted, since there is no allegation of recruitment, transportation or harbouring of any person for exploitation. The petitioner has already been punished by this Court in the contempt jurisdiction for the very same occurrence, undergone imprisonment, paid Rs.4,00,000/- to "X", and has been purged of the contempt. Continuation of the trial for the same occurrence would be an abuse of the process of law.

12. Opposing the petition, Mr.R.Rajasekaran, the learned Government Advocatee (crlo.side) submitted that the final report is based on the statement of "X" recorded under Section 164 Cr.P.C., the statement of "Y", the confession of the petitioner and the records

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from the Bar Council. In a case of sexual offence, the testimony the victim alone is sufficient; the act was streamed live in the course of judicial proceedings through Microsoft Teams and thereby became a public act, the intention being inferable from the conduct that the pleas of “closed room” and of mistaken streaming, and the plea of age and infirmity, are defences which can be examined only at trial. The failure to trace the first circulator not absolved the petitioner of his own acts. The contempt proceedings and the criminal prosecution are distinct, so there is no double jeopardy.

13. I have heard the learned counsel on either side and perused the petition, the counter affidavit, the final report with the memo of evidence and the statements recorded under Section 161(3) Cr.P.C. which are filed along with it, and the orders of this Court in the contempt proceedings.

14.Section 528 BNSS, preserves the inherent power of this Court to make such orders as may be necessary to give effect to any order under the Sanhita, to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The principles are well settled. In ***State of Haryana v. Bhajan Lal (1992 Supp (1) SCC 335)***, the Hon’ble Supreme Court illustrated the categories in which the power may be exercised, including where the allegations in the First Information Report or the complaint, even if taken at their face

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value and accepted in their entirety, do not *prima facie* constitute a offence or make out a case against the accused, and where the uncontroverted allegations and the evidence collected in support of them do not disclose the commission of any offence. In ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra (2021) 19 SCC 401***, it was reiterated that the power must be exercised sparingly and with circumspection, that the Court does not conduct a mini-trial or appreciate the reliability of the material at this stage, but that the Court is duty bound to examine whether the allegations, as they stand, make out the ingredients of the offences charged.

15.The point for consideration is, therefore, whether the final report and the materials relied on by the prosecution, taken as they stand, disclose the ingredients of the offences with which the petitioner is charged, and whether the continuation of Spl.S.C.No.326 of 2025 would amount to an abuse of the process of Court. The offences are examined in turn.

16. Section 228 IPC punishes whoever *intentionally* offers any insult, or causes any interruption, to any public servant while such public servant is sitting in any stage of a judicial proceeding. Intention is the gist of the offence. The final report does not allege any act of the petitioner directed at the learned Judge or at the

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proceedings of the Court. It records that the petitioner was in his own office, logged into the video conference using his laptop to take notes, and engaged in the act at about 15.00 hours. There is no averment, and no material, that the petitioner intended to interrupt the proceedings, or that he knew that his conduct would be displayed in the virtual court.

17. On the contrary, the prosecution's own witnesses support the stand that the display was inadvertent. The junior advocate of the petitioner / Parthiban, stated under Section 161(3) Cr.P.C. that it was his routine to open the court list and the video conference on the laptop of the petitioner, the petitioner is not well versed in technology, and on 20.12.2021 he minimised the video conference and muted the audio, so that the petitioner unaware of it. The Registrar (IT-cum-Statistics) has stated that the Registry does not record the proceedings, and the Reader/Examiner, who hosted the session stated that he removed the petitioner from the meeting as soon as he noticed the incident. None of the witnesses states that the petitioner knowingly displayed himself to the virtual court.

18. The plea of guilty of the petitioner in the contempt proceedings does not advance the case of the prosecution. Contempt of Court, particularly under Section 2(c) of the Contempt of Courts Act, 1971, turns on the effect of an act on the authority and

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administration of justice, and the Division Bench was exercising distinct jurisdiction, in which it accepted the apology and took a lenient view on sentence. An admission of that nature cannot be read as an admission of the specific intention that Section 228 IPC requires. The Division Bench itself noted that the petitioner's conduct in his office was, by itself, not an offence. Having regard to the absence of any averment or material on intention, the offence under Section 228 IPC is not made out.

19. Section 294(a) IPC applies to whoever, to the annoyance of others, does any obscene act in any public place. It has three components: an obscene act, done in a public place, to the annoyance of others. As per the final report itself, the act was done in the private office of the petitioner at Ayanavaram, Chennai, and not in a public place. The virtual court was not a place where the petitioner had gone to perform any act. The act came to be seen on a screen because a video conferencing link, joined for the purpose of following the proceedings, remained connected in the background. The final report not alleged that the petitioner switched on the camera or addressed the virtual court knowingly. An act that is done in private and is exposed by a technical circumstance of which the doer was unaware cannot, without more, be said to be done *in a public place*. No participant of the virtual court is cited as a witness to speak of annoyance caused to him or her. The Division Bench has itself

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observed that the act, by itself, is not an offence. Section 294(a) IPC is therefore not attracted.

20. Section 67A of the IT Act punishes whoever publishes or transmits, or causes to be published or transmitted, in the electronic form any material which contains sexually explicit act or conduct. The respondent has dropped Section 292(2)(a) IPC for the reason that the person who captured the video and circulated it on social media is untraceable. A notice under Section 91 Cr.P.C. was issued to WhatsApp on 27.12.2021, and no reply identifying the first circulator received. The charge under Section 67A, which is the penal provision for publication and transmission in the electronic form, cannot rest on that circulation, as there is no material that the petitioner recorded the video, forwarded it, or caused it to be forwarded to anyone intentionally.

21. The respondent has thus sought to sustain Section 67A on the ground that the petitioner's conduct itself streamed live through Microsoft Teams. The words "publishes", "transmits" and "causes to be published or transmitted" denote volitional acts. As discussed above, the materials collected by the respondent show that the petitioner did not know that the video conference was running on his laptop. The live feed of a video conferencing platform, which displayed because of a technical circumstance and not through any

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act of the petitioner directed towards publishing or transmitting t material, does not amount to publication or transmission by him within the meaning of Section 67A. There is no material of the petitioner's knowledge, intention or volition, and the offence under Section 67A of the IT Act is not made out. Notably, the respondent, while dropping Section 292(2)(a) IPC for want of identification of the person who circulated the video, not explained how the same circulation could continue to found a charge under Section 67A against the petitioner. It is not in dispute that the petitioner is not conversant or tech-savvy in handling the electronic devices. The petitioner's junior colleague admits that it was he who operated the laptop and joined the virtual hearing. It is to be noted that the virtual hearing of cases were entertained during the COVOID-19 pandemic, where there was restriction and limited access to the physical court hearings and everyone were in fear of life, with no proper medical treatment. The accidental streaming of petitioner logging into the virtual hearing is also not in dispute. Thus, the petitioner had not committed any act knowingly to cause any disruption to the proceedings, a private act got streamed due to ignorance of technology. More so, when the virtual hearing and usage of electronic device was thrusted due to the prevailing circumstances then, when the entire process was at a nascent stage

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22. Section 354A(1) IPC defines sexual harassment, as a m committing any of the following acts: physical contact and advances involving unwelcome and explicit sexual overtures; a demand or request for sexual favours; showing pornography against the will of a woman; or making sexually coloured remarks. The final report states only that the petitioner "called the victim near him and engaged in the erotic act", and that he had sexually harassed the victim and exploited her by offering money, a new dress and food. It does not state which of the acts under Section 354A(1) was committed, when, where, or in what manner, nor does it state that any act was unwelcome to "X" at the time of occurrence. The statements recorded under Section 161(3) Cr.P.C. of the witnesses cited by the prosecution, including those of the wife of the petitioner and of the persons said to know "X" and the petitioner, do not speak to any unwelcome physical contact, sexual overture, demand or remark by the petitioner. The general statement that "X" was "sexually harassed without consent", without any particulars of the act complained of, cannot supply the ingredients of Section 354A IPC. The contention of the respondent that the sole testimony of a victim of sexual offence is sufficient is correct as a proposition of law, but it presupposes a testimony that discloses the commission of the offence, and the final report, as it stands, rests on no such testimony. It can be said petitioner pulled "X" by hand and made an attempt to misbehave. The "X" made no complaint and in normal course it could have passed by but for the sensation it created.

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23. Section 4 of the TNPHW Act penalises harassment of woman in or within the precincts of an educational institution, a temple or other place of worship, a bus stop, road, railway station, cinema theater, park, beach, place of festival, or a public service vehicle or vessel, “or any other place”. The residuary words must take colour from the preceding places, which are all public places. The place of occurrence is the private office of the petitioner. Moreover, as held above, the final report not disclosed an act of harassment of “X” as such. Section 4 of the TNPHW Act is not attracted.

24. Section 370 IPC defines the offence of trafficking as recruiting, transporting, harbouring, transferring or receiving a person or persons, for the purpose of exploitation, by any of the means specified in the section, namely threats, force or other coercion, abduction, fraud or deception, abuse of power, or inducement, including the giving or receiving of payments or benefits to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received. Sexual exploitation is one of the forms of exploitation, but exploitation by itself is not the of fence. The act of recruiting, transporting, harbouring, transferring or receiving by one of the specified means is the *sine qua non*.

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25. It is to be seen that in this case the Laptop, Lenova Yoga seized sent for forensic examination seeking following queries;

> (i) Whether the Laptop was used /login'd on 20.12.2021, if so provide us the details with time.
>
> (ii) Frequently used Applications and Softwares of the laptop
>
> (iii) The login Ids frequently used in the Laptop
>
> (iv) Whether Microsoft Teams software installed in the laptop, if so the provide us the time in and time out on 20.12.2021.
>
> (v) Complete history of the laptop on 20.12.2021

But, no such report received to conclusively hold the originator, to confirm the place, time and the device used. In the present case, these vital facts not available.

26. The only addition made after the second arrest is that the petitioner used the financial condition of the family of "X" and offered money, a new dress and food. The final report records that "X", a well known person in the locality, started working as an office assistant and in domestic work in the residence of the petitioner, for some time, she refrained from working there because the petitioner asked her to accompany him while he was out of station. There is no allegation that "X" was recruited, transported, harboured, transferred or received by the petitioner for the purpose of exploitation, or that she was in fact taken out of station. The allegation of offering money, a dress and food to a woman already

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employed by him does not, without more, satisfy the ingredients trafficking. The section was added on what the respondent called a "new revelation", and the respondent has not shown, in the final report or in the counter affidavit, which of the ingredients of Section 370 IPC is made out by the materials. The offence under Section 370(2) IPC, which carries a minimum rigorous imprisonment of seven years, cannot be sustained on such a bare and conclusory allegation.

27. According to the learned counsel for the petitioner, the prosecution is a second proceeding for the same occurrence. The respondent is right in contending that contempt proceedings under the Contempt of Courts Act, 1971 and a prosecution for offences under the IPC, the IT Act and the TNPHW Act are distinct in nature, and the bar of double jeopardy under Article 20(2) of the Constitution of India, and Section 337 BNSS (Section 300 Cr.P.C.), is not attracted in the strict sense. However, in exercise of the power under Section 528 BNSS, this Court is required to see whether the continuation of a prosecution would be oppressive. The same act has already been punished by the High Court; the petitioner undergone 34 days of incarceration, paid Rs.4,00,000/- as compensation to "X", suspended by the Bar Council, and purged of the contempt on 18.10.2022. The occurrence is of the year 2021, and the final report filed three years thereafter. When the materials on record not disclosed the ingredients of the offences charged, as held above, putting the

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petitioner to trial for the same occurrence would serve no purpo other than harassment, and would be an abuse of the process of Court.

28.It must be made clear that this Court does not approve of the conduct of the petitioner, an advocate, which has been described by the Division Bench in strong terms, and for which he has been dealt with by the Court in contempt jurisdiction and by his professional body. The question in this petition is only whether the specific penal provisions invoked against him are made out on the materials collected by the prosecution, and, for the reasons above, they are not.

29. In the result, this Criminal Original Petition is allowed, and the proceedings in Spl.S.C.No.326 of 2025 on the file of the Mahila Court, Allikulam, Chennai, arising out of Crime No.13 of 2021, on the file of the respondent, insofar as the petitioner is concerned, are quashed. Consequently, connected miscellaneous petition is closed.

30.10.2026

Index: Yes/No
Internet : Yes/No
Neutral Citation : Yes/No

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To

1. The Mahila Court, Allikulam, Chennai.
2. The XI Metropolitan Magistrate, Saidapet, Chennai.
3. The Inspector of Police, Crime Branch CID,
   Cyber Crime Cell, Egmore, Chennai - 8.
4. The Public Prosecutor, High Court, Madras.

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M.NIRMAL KUMAR , J.

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