



2026:KER:67401

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

MONDAY, THE 7TH DAY OF SEPTEMBER 2026 / 16TH BHADRA, 1948

CRL.MC NO. 6414 OF 2026

AGAINST THE ORDER DATED 27.07.2026 IN CRL.
MP (COMPLAINT) NO.1197 OF 2026 OF JUDICIAL MAGISTRATE OF FIRST
CLASS - IX, ERNAKULAM

PETITIONER:

ANSIBA HASSAN
AGED 36 YEARS
CHAKOLAS HEIGHTS, 5B, SEAPORT-AIRPORT ROAD,
CHITTETHUKARA, KAKKANAD, KOCHI, KERALA,
PIN - 682037

BY ADVS.
SHRI.MUHAMMED FIRDOUZ A.V.
SHRI.GENTLE C.D.

RESPONDENTS:

- 1 STATE OF KERALA
STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031
- 2 SHO PALARIVATTOM
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031
- 3 DISTRICT POLICE CHIEF ERNAKULAM CITY
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

SMT. MEGHA K. XAVIER, SR. P.P.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
03.09.2026, THE COURT ON 07.09.2026 PASSED THE FOLLOWING:



2026:KER:67401

:2:

'C.R.'**ORDER**

This Criminal Miscellaneous Case has been filed by the complainant in C.M.P. No. 1197/2026 on the file of the Judicial First Class Magistrate Court-IX, Ernakulam. The said complaint was filed under Sections 210, 173(4) and 175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), seeking a direction to the SHO, Palarivattom, to register an FIR and conduct an investigation into the cognizable offences allegedly committed by the accused.

2. The case of the petitioner, in brief, is as follows:

The petitioner is a well-known film actress in the Malayalam and Tamil film industries and is also a life member of the Association of Malayalam Movie Artists (AMMA). On 26.06.2026, the petitioner came across a short video published on a social media platform containing sexually coloured remarks and insinuations intended to outrage her modesty and insult her dignity as a woman. The impugned video was released as a teaser for a longer interview proposed to be streamed subsequently. The said video, containing serious allegations concerning the character, morality, and reputation of the petitioner, began circulating during the early hours of the night on 26.06.2026. Following its circulation, the petitioner suffered severe mental trauma and emotional distress. Having no other immediate remedy,



2026:KER:67401

:3:

the petitioner approached the Station House Officer, Palarivattom Police Station. The SHO assured the petitioner that immediate and appropriate steps would be taken to prevent further dissemination of the video and that necessary action would be initiated in accordance with law. However, no effective action was taken. Consequently, the petitioner contacted the Hon'ble Home Minister and apprised him of her grievance. Thereafter, the SHO contacted the petitioner and informed her that an investigation had already been initiated. However, at about 4.00 p.m. on 26.06.2026, the full version of the interview was released and began circulating extensively across various social media platforms. The said video contained false, scandalous, and sexually coloured remarks directed against the petitioner, which, according to the petitioner, gravely outraged her modesty and portrayed her as a woman of immoral character who invites men to her room for illicit activities. The publication and circulation of the said material caused serious and irreparable injury to the petitioner's reputation, dignity, and privacy.

3. Since the second respondent failed to take timely and effective action, the petitioner submitted a written complaint before him, requesting immediate legal action. However, on the very next day, the accused published yet another video containing further false, scandalous, and



2026:KER:67401

: 4 :

sexually coloured remarks against the petitioner, thereby causing a fresh and grave affront to her modesty, dignity, and reputation. Having lost all hope of securing effective action from the police, the petitioner submitted another complaint before the City Police Commissioner, Ernakulam City, seeking his immediate intervention and appropriate action. Despite the same, no effective action was taken. Consequently, the petitioner was constrained to approach the Judicial First Class Magistrate Court-IX, Ernakulam, by filing a complaint seeking appropriate directions for registration of an FIR and investigation into the cognizable offences disclosed therein. The offences alleged include those punishable under Sections 75(iv) and 79 of the Bharatiya Nyaya Sanhita, 2023 (BNS), Sections 67 and 67A of the Information Technology Act, 2000, and Section 119(a) of the Kerala Police Act.

4. Upon receipt of the complaint, the learned Magistrate called for a report from the SHO concerned. Pursuant thereto, the SHO submitted a report stating that a preliminary inquiry had been conducted and that no cognizable offences, as alleged by the petitioner, were disclosed during the inquiry. In the said report, the SHO further opined that the petitioner could institute appropriate proceedings against the accused for the offence of defamation under Section 356 of the BNS.



2026:KER:67401

: 5 :

5. The learned Magistrate, after considering the report and hearing the parties, passed Annexure 7 order declining the petitioner's prayer under Section 175(3) of the BNSS for a direction to the jurisdictional police to register an FIR and investigate the cognizable offences disclosed in the complaint. Instead, the learned Magistrate decided to proceed with the matter as a private complaint and directed the petitioner to appear before the court for recording her sworn statement. Aggrieved by the aforesaid order, the petitioner has preferred the present Crl. M.C., inter alia, seeking the following reliefs:

- "a) Call for the records leading to the Annexure - 7 order dated 27.07.2026 passed by the learned Judicial First Class Magistrate Court - IX, Ernakulam, in M.P.No.1197 of 2026;
- b) Set aside the Annexure - 7 order dated 27.07.2026 passed by the learned Judicial First Class Magistrate Court - IX, Ernakulam;
- c) Direct the learned Judicial First Class Magistrate Court - IX, Ernakulam, to exercise jurisdiction under Section 175(3) of the BNSS and pass appropriate orders directing the jurisdictional police to register an FIR on the basis of the petitioner's complaint and conduct a fair, impartial and time-bound investigation into the cognizable offences disclosed therein;
- d) Issue such other order or direction as this Hon'ble Court may deem fit



2026:KER:67401

: 6 :

and proper in the facts and circumstances of the case, in the interests of justice.”

6. I heard Sri. Muhammed Firdouz A.V., the learned Counsel for the petitioner, Smt. Megha K. Xavier, the learned Senior Public Prosecutor appearing for the respondents. The records were also perused.

7. The learned counsel for the petitioner submitted that the learned Magistrate erred in holding that the complaint did not disclose any cognizable offence and that the allegations disclosed, at the most, constitute only the offence of defamation. According to the learned counsel, such a conclusion could have been arrived at only after a proper investigation and not at the pre-investigation stage. It was contended that a plain reading of the complaint would prima facie disclose the commission of offences punishable under Sections 75(iv) and 79 of the BNS, Sections 67 and 67A of the Information Technology Act, 2000, and Section 119(a) of the Kerala Police Act. According to the learned counsel, when the allegations contained in the complaint prima facie disclose the commission of cognizable offences, it was incumbent upon the learned Magistrate to exercise the power under Section 175(3) of the BNSS and direct an investigation by the jurisdictional police. It was further submitted that the learned Magistrate committed a jurisdictional error in treating the application filed under Section 175(3) of the BNSS as a private complaint and directing the petitioner to appear



2026:KER:67401

:7:

before the court for recording her sworn statement, particularly when the petitioner had not sought an order taking cognizance of the offences, but had only sought a direction to the police to register an FIR and conduct an investigation. The learned counsel submitted that, upon receipt of a complaint disclosing the commission of a cognizable offence, the SHO was legally bound to register an FIR and could not have conducted a preliminary enquiry in lieu thereof. According to the learned counsel, the failure of the Station House Officer to register an FIR is contrary to the principles laid down by the Hon'ble Supreme Court in ***Lalita Kumari v. Government of Uttar Pradesh & Ors.*** [(2014) 2 SCC 1]. On these premises, the learned counsel submitted that the Annexure 7 order, whereby the learned Magistrate declined to forward the complaint to the Station House Officer for investigation and instead directed the petitioner to appear before the court for recording her sworn statement, is liable to be set aside. It was accordingly urged that appropriate directions be issued to the learned Magistrate to direct the jurisdictional police to register an FIR and conduct an investigation in accordance with law.

8. Per contra, the learned Senior Public Prosecutor opposed the petition contending that the order passed by the learned Magistrate is legally sustainable and does not warrant any interference. According to the



2026:KER:67401

: 8 :

learned Senior Public Prosecutor, although the SHO had initially received a complaint from the petitioner, the allegations contained therein did not disclose, prima facie, the commission of any cognizable offence. It was submitted that, for that reason, the SHO conducted a preliminary enquiry after obtaining permission from the Assistant Commissioner of Police, Ernakulam. The learned Senior Public Prosecutor contended that such a preliminary enquiry was legally permissible in the facts and circumstances of the case, particularly since the complaint did not, according to the police, disclose the commission of a cognizable offence. It was further submitted that the finding of the learned Magistrate in Annexure 7 that the allegations contained in the complaint did not disclose any cognizable offence warranting its forwarding to the SHO for investigation is proper and legally sustainable and, therefore, does not call for interference. According to the learned Senior Public Prosecutor, the learned Magistrate had already arrived at a prima facie satisfaction that the allegations, at the most, attracted the offence of defamation punishable under Section 356 of the BNS. Consequently, the learned Magistrate rightly directed the complainant to appear before the court for recording her sworn statement. It was therefore submitted that the impugned order does not warrant any interference.

9. The present case arises from a complaint lodged by an actress in



2026:KER:67401

: 9 :

the Malayalam film industry alleging that a fellow actress had given an interview to an online channel containing false, scandalous, and sexually coloured remarks against her, which, according to the petitioner, gravely outraged her modesty and portrayed her as a woman of immoral character who clandestinely invites men to her room for illicit activities. According to the petitioner, the video containing the said interview was thereafter released and widely circulated through various social media platforms, thereby causing serious and irreparable injury to her reputation, dignity, and privacy.

10. It is not in dispute that, upon coming to know of the publication of the alleged scandalous video, the petitioner lodged a written complaint before the Station House Officer concerned. According to the petitioner, even after receipt of the complaint, no effective action was taken by the Station House Officer, which constrained her to approach the superior police authorities. As the intervention of the superior police authorities also did not yield any result, the petitioner approached the jurisdictional Magistrate with a complaint seeking a direction to the police to register an FIR and investigate the matter.

11. It is discernible from the records that, after receipt of the complaint, the Station House Officer conducted a preliminary enquiry.



2026:KER:67401

:10:

During the course of the said enquiry, the statements of certain witnesses were recorded. The enquiry was thereafter concluded with a finding that no cognizable offence warranting registration of an FIR had been made out and that the allegations, at the most, attracted the offence of defamation punishable under Section 356 of the BNS.

12. It was thereafter that the petitioner approached the jurisdictional Magistrate seeking a direction to the police to register an FIR and conduct an investigation. The learned Magistrate, after considering the complaint and the report submitted by the SHO, declined to forward the complaint for investigation and instead directed the complainant to appear before the court for recording her sworn statement. The learned Magistrate also arrived at a prima facie satisfaction that the complaint did not disclose any cognizable offence warranting a direction for investigation under Section 175(3) of the BNSS.

13. Before delving into the legality and propriety of the order passed by the learned Magistrate, it is apposite to first consider the question whether a SHO, upon receiving information disclosing the commission of a cognizable offence, is at liberty to conduct a preliminary enquiry instead of registering an FIR forthwith.

14. While considering the said question, it is necessary to refer to



2026:KER:67401

:11:

the principles laid down by the Hon'ble Supreme Court in ***Lalita Kumari's case*** [cited supra]. In the said case, the Constitution Bench held that registration of an FIR under Section 154 of the Code of Criminal Procedure, 1973, is mandatory where the information received by the police discloses the commission of a cognizable offence. The Court further held that, in such circumstances, a preliminary enquiry is ordinarily not permissible. At the same time, the Constitution Bench recognised that where the information received does not clearly disclose the commission of a cognizable offence, a limited preliminary enquiry may be undertaken for the purpose of ascertaining whether a cognizable offence is disclosed. Now it is worthwhile to refer to paragraph 119 of Lalitha Kumari's judgment, which reads as follows;

"119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of



2026:KER:67401

:12:

a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

15. The sum and substance of the principles laid down in Lalita Kumari (supra) is that, where the information furnished to the police discloses the commission of a cognizable offence, registration of an FIR is mandatory, and a preliminary enquiry is not permissible. However, where the information received does not, on its face, disclose the commission of a cognizable offence, but indicates the necessity for further enquiry, a preliminary enquiry may be conducted for the limited purpose of ascertaining whether the information discloses the commission of a cognizable offence.

16. However, the said legal position has undergone a material change with the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023. Section 173(3) of the BNSS expressly provides for a preliminary enquiry in specified circumstances. Section 173 of the BNSS reads as follows:

"Information in cognizable cases.--

(1) Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed, may be given orally or by electronic communication to an officer in charge of a police station, and if given--

(i) orally, it shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it;

(ii) by electronic communication, it shall be taken on record by him on being signed within three days by the person giving it,

and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may by rules prescribe in this behalf:



Provided that if the information is given by the woman against whom an offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that--

(a) in the event that the person against whom an offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be videographed;

(c) the police officer shall get the statement of the person recorded by a Magistrate under clause (a) of sub-section (6) of section 183 as soon as possible.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant or the victim.

(3) Without prejudice to the provisions contained in section 175, on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer in charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence,--

(i) proceed to conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within a period of fourteen days; or

(ii) proceed with investigation when there exists a prima facie case.

(4) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1), may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Sanhita, and such officer shall have all the powers of an officer in



2026:KER:67401

:14:

charge of the police station in relation to that offence failing which such aggrieved person may make an application to the Magistrate."

17. It is, therefore, manifest that Section 173(3) of the BNSS expressly provides for a preliminary enquiry in cases where information relating to the commission of a cognizable offence punishable with imprisonment for three years or more but less than seven years is received, subject to the prior permission of an officer not below the rank prescribed therein. The Hon'ble Supreme Court, in ***Imran Pratapgadhi v. State of Gujarat*** [2025 INSC 410], considered the interplay between Sections 173(1) and 173(3) of the BNSS and held that Section 173(3) operates as an exception to the general rule contained in Section 173(1). In paragraph 23 of the said judgment, the Hon'ble Supreme Court observed as follows:

"S.154 of the CrPC does not provide for making any preliminary inquiry. However, as held in the case of Lalita Kumari, (2014) 2 SCC 1, a preliminary inquiry is permissible if the information received does not disclose a cognizable offence and indicates the necessity for an inquiry. A preliminary inquiry must be conducted only to ascertain whether a cognizable offence is disclosed. However, sub-section (3) of S.173 of the BNSS makes a significant departure from S.154 of the CrPC. It provides that when information relating to the commission of a cognizable offence which is made punishable for 3 years or more but less than 7 years is received by an officer-in-charge of a police station, with the prior permission of a superior officer as mentioned therein, the police officer is empowered to conduct a preliminary inquiry to ascertain whether there exists a prima facie case for proceeding in the matter. However, under S.154 of the CrPC, as held in the case of Lalita Kumari, (2014) 2 SCC 1, only a limited preliminary inquiry is permissible to ascertain whether the information received discloses a cognizable offence. Moreover, a preliminary inquiry can be made under the CrPC only if the information does not disclose the commission of a cognizable offence but



2026:KER:67401

:15:

indicates the necessity for an inquiry. Sub-section (3) of S.173 of the BNSS is an exception to sub-section (1) of S.173. In the category of cases covered by sub-section (3), a police officer is empowered to make a preliminary inquiry to ascertain whether a prima facie case is made out for proceeding in the matter even if the information received discloses commission of any cognizable offence. That is very apparent as sub-section (3) of S.173 refers explicitly to receiving information relating to the commission of a cognizable offence. Therefore, in a case where sub-section (3) of S.173 is applicable, even if the information pertaining to the commission of any cognizable offence is received, an inquiry can be conducted to ascertain whether a prima facie case exists for proceeding in the matter. The intention appears to be to prevent the registration of FIRs in frivolous cases where punishment is up to 7 years, even if the information discloses the commission of the cognizable offence. However, under S.154 of the CrPC, the inquiry permitted by paragraph 120.2 of the decision in the case of Lalita Kumari, (2014) 2 SCC 1 is limited only to ascertain whether the cognizable offence is disclosed.”

18. Keeping in view the aforesaid principles laid down by the Hon'ble Supreme Court and the statutory scheme under Section 173(3) of the BNSS, the preliminary enquiry conducted in the present case appears to have been undertaken for the limited purpose of examining the nature of the allegations and ascertaining whether the materials prima facie disclose the commission of a cognizable offence warranting registration of an FIR. Therefore, the preliminary enquiry conducted in the present case cannot be characterised as an enquiry prohibited by the principles laid down in *Lalita Kumari* (supra). The decision in *Lalita Kumari* cannot be understood as nullifying or restricting the statutory power subsequently conferred by Section 173(3) of the BNSS. Accordingly, the contention that the preliminary



2026:KER:67401

:16:

enquiry conducted by the police was per se contrary to the law laid down in *Lalita Kumari* (supra) cannot be accepted.

19. The principal challenge raised by the petitioner against Annexure 7 order is that the learned Magistrate could not have concluded, at the pre-investigation stage, that the allegations disclosed only the offence of defamation and not any cognizable offence. The learned counsel for the petitioner contended that a plain reading of the complaint would prima facie disclose the commission of offences punishable under Sections 75(iv) and 79 of the BNS, Sections 67 and 67A of the Information Technology Act, 2000, and Section 119(a) of the Kerala Police Act. According to the learned counsel for the petitioner, once the complaint prima facie disclosed the commission of a cognizable offence, the learned Magistrate ought to have exercised the power under Section 175(3) of the BNSS and directed investigation by the police. It was also contended that the petitioner had not sought an order taking cognizance of the offences as a private complaint, but had specifically sought a direction for police investigation.

20. While considering the aforesaid submission, it has to be borne in mind that merely because a complainant seeks investigation under Section 175(3) of the BNSS, the Magistrate is not bound to mechanically order a police investigation. The Magistrate is required to apply his or her judicial



2026:KER:67401

:17:

mind to the allegations contained in the complaint and the materials placed on record and determine whether the circumstances warrant an investigation by the police. The power under Section 175(3) of the BNSS is discretionary and is to be exercised judiciously.

21. At the same time, the Magistrate, while exercising the said jurisdiction, cannot abdicate the duty to independently examine the allegations contained in the complaint. The Magistrate is required to ascertain whether the allegations, if taken at their face value, disclose the commission of a cognizable offence and whether police investigation is necessary in the circumstances of the case. If the allegations disclose only a non-cognizable offence, such as defamation, it is open to the Magistrate to proceed with the complaint in accordance with the procedure prescribed by law. However, such a conclusion must be supported by reasons demonstrating due application of mind to the specific allegations and the ingredients of the offences alleged.

22. In the present case, it is evident from the records that the learned Magistrate mainly relied upon the report submitted by the SHO and the submissions made before the court and arrived at the conclusion that the allegations did not disclose any cognizable offence and that the offence prima facie attracted was one of defamation punishable under Section 356



2026:KER:67401

:18:

of the BNS. The learned Magistrate accordingly directed the petitioner to appear before the court for recording her sworn statement and to proceed with the complaint in accordance with law.

23. This Court is conscious of the fact that the mere allegation that a defamatory statement was made in an interview disseminated through an online or social media platform would not, by itself, automatically attract every penal provision invoked by the complainant. The ingredients of each of the offences alleged have to be independently examined. In particular, the applicability of Section 75(iv) of the BNS would depend upon the specific statutory ingredients of that provision, particularly the nature of the alleged remark and the identity of the person making it. In the case at hand, the petitioner has a specific case that the statement made by the first accused, who is her colleague, conveyed that the petitioner was engaged in an improper sexual relationship or sexual conduct. Therefore, a proper consideration of the complaint and the other materials on record, including the tenor, nature, and context of the statements made during the interview, is necessary to determine whether the ingredients of the alleged offence are prima facie disclosed. More pertinently, an offence under Section 75(iv) of the BNS can be committed only by a man. An offence under Section 75(iv) of the BNS is a gender-specific offence, and the said offence would be



2026:KER:67401

:19:

attracted only where the sexually coloured remark is made by a man. In the present case, admittedly, the first accused is a woman. Therefore, the applicability of Section 75(iv) of the BNS to the allegations against the first accused would not arise. However, this circumstance, by itself, cannot be determinative of whether the allegations disclose any other cognizable offence under the provisions invoked by the petitioner.

24. In the present case, the petitioner has specifically alleged that the statements made by the accused during the interview conveyed an imputation of sexual impropriety and portrayed the petitioner as a woman engaged in illicit sexual conduct. The petitioner has further alleged that the said statements were deliberately disseminated through an online platform and thereby caused injury to her dignity, reputation, and privacy. At this stage, this Court is not called upon to express any final opinion regarding the truth or otherwise of the allegations or the ultimate applicability of the penal provisions invoked by the petitioner. Whether the allegations ultimately satisfy all the ingredients of Section 79 of the BNS is a matter to be considered by the competent court upon a proper examination of the complaint and the materials placed before it.

25. What assumes significance in the present case is the manner in which the learned Magistrate dealt with the petitioner's request under



2026:KER:67401

:20:

Section 175(3) of the BNSS. In the impugned order, the learned Magistrate has merely observed that, "at present, no such cognizable offence would attract for forwarding the complaint to the SHO." However, the order does not contain any detailed consideration of the specific allegations made in the complaint, the ingredients of the offences alleged, or the reasons for rejecting the petitioner's contention that the allegations disclose cognizable offences.

26. The complaint contains a specific allegation that the accused, through an interview publicly disseminated through an online platform, made statements which, according to the petitioner, lowered her dignity and reputation in the estimation of viewers and imputed sexual impropriety to her. In order to attract section 79 of the BNS, the main requirement is that the accused must have intended to outrage the modesty of a woman. Likewise, the words or gestures must be intended to reach that woman, that is to see her, hear her, or must amount to intrusion upon her privacy. Whether the allegations in the present complaint ultimately attract Section 79 of the BNS, or any other penal provision, is a matter which requires due consideration on the basis of the specific allegations and the statutory ingredients of the respective offences. At this stage, it would be inappropriate for this Court to record any final finding on the merits of those



2026:KER:67401

:21:

allegations.

27. Apart from noticing the rival submissions and the stand taken by the SHO, the learned Magistrate has not independently considered the specific allegations raised by the petitioner or examined whether those allegations, if taken at their face value, satisfy the ingredients of any cognizable offence. The learned Magistrate has also not considered whether the nature of the allegations and the materials relied upon by the petitioner warranted police investigation for the purpose of collecting evidence which may not be available to the complainant herself.

28. In short, this Court is of the view that the learned Magistrate has not adequately considered the complaint and the materials placed on record before arriving at the conclusion that no cognizable offence was disclosed. The impugned order, therefore, suffers from non-application of mind and cannot be sustained.

29. Accordingly, the Crl. M.C. is allowed in part, and Annexure 7 order is set aside. The matter is remitted to the learned Magistrate for fresh consideration. The learned Magistrate shall independently examine the allegations contained in the complaint and the materials available on record and determine, in accordance with law, whether the allegations prima facie disclose the commission of a cognizable offence and, if so, whether the



2026:KER:67401

:22:

circumstances warrant a direction for police investigation under Section 175(3) of the BNSS. The learned Magistrate shall also consider whether police investigation is necessary for the purpose of collection of evidence which cannot effectively be secured by the complainant herself.

The learned Magistrate shall pass a fresh, reasoned order in accordance with law, uninfluenced by any of the observations contained in this order on the merits of the allegations.

Sd/-
JOBIN SEBASTIAN
JUDGE

ANS



:23:

2026:KER:67401

APPENDIX OF CRL.MC NO. 6414 OF 2026

PETITIONER ANNEXURES

Annexure-1	A TRUE COPY OF THE COMPLAINT DATED 26.06.2026 SUBMITTED BEFORE THE 2ND RESPONDENT, ALONG WITH THE ACKNOWLEDGMENT RECEIVED THROUGH E-MAIL
Annexure 2	A TRUE COPY OF THE E-MAIL COMPLAINT DATED 29.06.2026 SUBMITTED BEFORE THE 3RD RESPONDENT
Annexure-3	TRUE COPY OF THE COMPLAINT BEFORE JFCM IX, ERNAKULAM DATED 01.07.2026
Annexure-4	TRUE COPY OF THE POLICE REPORT DATED 08.07.2026
Annexure-5	TRUE COPY OF CIRCULAR NO. 41/2020/PHQ DATED 13.11.2020 ISSUED BY THE POLICE HEADQUARTERS, KERALA,
Annexure 6	TRUE COPY OF THE ADVISORY DATED 12.10.2015
Annexure-7	TRUE COPY OF THE ORDER OF THE JFCM IX, ERNAKULAM DATED 27.07.2026