

**IN THE COURT OF JUDICIAL MAGISTRATE OF THE FIRST CLASS-I,
CHERTHALA**

**Present:Smt. Sherin K George, Judicial Magistrate of the First
Class-I**

Dated this, the 30th day of April, 2026

CMP 3786/24 in C.C. No. 1097/2021

Complainant	: Unnikrishnan, s/o Radhakrishnan, Aged 23 /2020, Kumarakathu Madam, Thuravoor PO Kuthiyathodu
Respondent	: State of Kerala (Represented by the Assistant Public Prosecutor JFCM 1 Cherthala)
Nature of application	: Discharge Petition
Order	: Allowed

ORDER

1. This is an application filed by the accused under Section 274 of the Bharatiya Nagarik Suraksha Samhitha seeking discharge.
2. The prosecution case, as borne out from the final report in Crime No. 757/2020 of Kuthiyathode Police Station, is that on 14.07.2020 at about 09:45 AM, the accused had downloaded and stored obscene materials involving minors in a mobile phone bearing specified IMEI numbers, thereby allegedly committing offences

punishable under Sections 67A and 67B of the Information Technology Act.

3. Heard both sides. Perused the records.
4. The learned counsel for the accused contended that even if the entire allegations in the final report are accepted in toto, the same would not constitute the offences alleged, inasmuch as there is no allegation or material to show that the accused had published, transmitted or caused to be transmitted the alleged content to any other person. It is further contended that mere downloading or storage, without anything more, will not attract the penal provisions invoked.
5. At this stage, it is apposite to examine whether the materials placed on record disclose the essential ingredients of the offences alleged. Section 67A of the Information Technology Act contemplates punishment for publishing or transmitting material containing sexually explicit acts, while Section 67B specifically deals with material depicting children and similarly requires publishing, transmitting, creating, browsing or facilitating such acts with the requisite intent. Thus, the core ingredients necessary to attract the said provisions are not mere possession, but the element of publication, transmission, circulation or facilitation thereof, coupled with the necessary mental element.
6. On a careful perusal of the final report and accompanying materials, this Court finds that there is absolutely no allegation that the accused had shared, transmitted, published or circulated the alleged content to any other person. There is also no material to indicate that the accused had the intention to disseminate the

same. The entire allegation is confined to downloading and storage in a device.

7. In this context, the decision of the Hon'ble High Court of Kerala in *Shantheeshal T. v. State of Kerala* [2024 (4) KHC 232] assumes significance, wherein it has been held that mere storing or possessing pornographic material, in the absence of any material indicating transmission, publication or intention to circulate the same, will not attract penal provisions. The principle laid down therein, though in the context of the POCSO Act, squarely applies to the present case as well, since the foundational requirement of dissemination or intention remains common.
8. Further, it is also seen that the informant and the investigating officer appear to be one and the same, as evident from the final report, which casts an additional doubt on the fairness of the investigation, though this Court is not resting its decision solely on that aspect.
9. At the stage of consideration under Section 274 of BNSS, the Court is only required to see whether sufficient grounds exist for proceeding against the accused. If the materials, even if unrebutted, do not disclose the commission of the offence alleged, the accused is entitled to be discharged. In the present case, even if the entire prosecution case is accepted as true, the essential ingredients of Sections 67A and 67B of the Information Technology Act are not made out.
10. In such circumstances, continuation of the proceedings would amount to abuse of process of court.

11. Hence, this Court is satisfied that there are no sufficient grounds for proceeding against the accused.
12. In the result, the accused is **discharged under Section 274 of the Bharatiya Nagarik Suraksha Samhitha.**

Pronounced in open court on this the 30th day of April 2026.

Judicial First Class Magistrate—I
Cherthala