

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

Present:- Smt.Anupama.S.Pillai.,Judicial First Class Magistrate - I

Dated this, the 18th day of March, 2026.

C.M.P. 01/26 in CC 1724/24 in Crime No.376/24 of MANNAR PS

Petitioners : 1. M Y Jose, Aged 66/24, S/o Yohannan,
Moonnu Muriyil Veedu, Oripra
Muri, Chennithala Village.
2. Mariyamma Jose. Aged 63/24,
W/o M Y Jose, Moonnu Muriyil Veedu,
Oripra Muri, Chennithala Village.

[By.Adv. K Venugopal]

Respondent : State of Kerala represented, by SI of
Police, Mannar Police Station in Crime
No. 376/2024 of Mannar Police Station.

[By APP-I, Chengannur]

Offence : Sec.294(b) r/w 34 of IPC

Section of law : U/Proviso to Sec.274 of BNSS.

This case coming on this day for hearing, the Court delivered the following:-

ORDER

1. This is a petition filed by accused Nos.1 and 2 under the proviso to Section 274 of the BNSS seeking discharge from the offence punishable under Section 294(b) read with Section 34 of the IPC.
2. **The petition averments in brief as follows:** - The petitioners are the accused in the above case. The allegation against them is under Section

294(b) IPC. The ingredients of the offence are not attracted. The alleged incident did not occur in any public place and the words alleged to have been used do not amount to obscenity within the meaning of law. Hence the petition is filed.

3. **The prosecution case is in brief is as follows:-** The accused, due to previous enmity towards CW1 in connection with a property dispute, when CW-1 questioned them regarding dumping of waste in a disputed property, on 10.01.2024 at about 10.00 a.m., near the pathway situated about 200 metres south-west from the match box company on Kuthankulangara-Karayuma road, abused CW1 in filthy language. The second accused called CW1 by using the word “Pula***** Mole” and other abusive expressions, thereby committing the offence punishable under Section 294(b) read with Section 34 IPC.
4. The point arise for consideration is as follows;

POINT

1. *Whether the prosecution materials, taken at their face value, prima facie disclose the essential ingredients of the offence under Section 294(b) IPC?*
 2. *Whether sufficient grounds exist for proceeding against the accused, or whether the materials are so deficient that the accused is entitled to a release order under the proviso to Section 274 of BNSS?*
5. **Point Nos 1 and 2:** Both these points are considered together for the sake of brevity.
6. The crime was registered on the basis of a complaint preferred by CW1 before this Court which was forwarded for investigation. After investigation,

final report was filed. The prosecution has cited six witnesses. CW1 is the complainant, and CW2 and CW3 are occurrence witnesses. The prosecution relies on the original complaint and the statements recorded under Section 161 Cr.P.C.

7. CW1 in her complaint and statement stated that there existed a property dispute between her and the accused who are her relatives and neighbours. On the date of occurrence, the accused were allegedly dumping waste in the disputed property and when questioned, the second accused used the word “Pula***** Mole” and other abusive words.
8. CW2 and CW3 have also stated that there was a quarrel between the parties regarding the property dispute and that the second accused used the said abusive word against CW1.
9. The learned counsel for the petitioners contended that even if the entire allegations are accepted as true, the offence under Section 294(b) IPC is not made out. It is argued that the alleged words are only abusive and do not amount to obscenity, and further that the incident did not occur in a public place so as to attract Section 294(b) IPC.
10. Section 294(b) IPC makes punishable the act of uttering obscene words in or near a public place causing annoyance to others. Therefore, in order to constitute the offence, the prosecution must show that
 - (i) *the words are obscene,*
 - (ii) *they were uttered in or near a public place, and*
 - (iii) *such act caused annoyance to others.*
11. In the present case, the prosecution asserts that the second accused called CW1 by using the word “Pula***** Mole” and other abusive expressions.

12. The question whether the alleged word amounts to obscenity has been considered by the Hon'ble High Court of Kerala in **Latif v. State of Kerala [2014 (2) KHC 604]**.

13. In the judgment, the Hon'ble High Court of Kerala observed as under. :
2. *The very short point for decision in this revision is whether the words alleged to have been used by the revision petitioner will constitute obscenity as defined under the law. The question for decision in revision is whether those words will amount to obscenity as defined under the law. If the finding is that such words will not amount to obscenity, the revision petitioner will have to be acquitted.....*3. *Sub-section (1) of S. 292 I.P.C. provides that for the purposes of sub-s.(2), dealing with punishment and sentence for obscenity, "a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious, or appeals to the prurient interest, or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it." Thus sub-s. (1) to S. 292 I.P.C. gives a clear idea as to what is meant by obscenity under the law, punishable under Sections 294(2), 293 and 294 I.P.C. Abusive words or humiliating words or defamatory words will not as such amount to obscenity as defined under the law. Of course there is no doubt that the words alleged to have been used by the revision petitioner are in fact abusive and humiliating. But to make it obscene, punishable under S. 294(b) I.P.C. it must satisfy the definition of obscenity. S. 294 I.P.C. does not define obscenity. Being a continuation of the subject dealt with under S. 292 I.P.C. the definition of obscenity under 292(1) "I.P.C. can be applied in a prosecution under S. 294 I.P.C. also. To make*

punishable, the alleged words must be in a sense lascivious, or it must appeal to the prurient interest, or will deprave and corrupt persons. In P.T. Chacko v. Nainan Chacko reported in (1967 KLT 799) this Court held that, "the test of obscenity is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences." In Sangeetha Lakshmana v. State Of Kerala reported in (2008 (2) KLT 745) this Court held thus, "in order to satisfy the test of obscenity, the words alleged to have been uttered must be capable of arousing sexually impure thoughts in the minds of its hearers." Thus it is quite clear that, to make obscene the alleged words must involve some lascivious elements arousing sexual thoughts or feelings or the words must have the effect of depraving persons, and defiling morals. by sex appeal or lustful desires. I find that the words alleged to have been used by the revision petitioner in this case are really abusive and humiliating, but those words cannot be said to be obscene. As already stated, every abusive word or every humiliating word cannot, by itself, be said to be obscene as defined under the Indian Penal Code....

14. Thus, it is trite that that every abusive or humiliating word will not amount to obscenity and that to constitute obscenity, the words must involve lascivious elements or must arouse sexually impure thoughts or deprave the minds of the hearers. The Hon'ble High Court observed that merely abusive expressions, without any element of sexual obscenity, will not attract Section 294(b) IPC.

15. In the present case, the only allegation is that the second accused called the complainant by using the word "Pula***** Mole" and other abusive expressions in the course of a quarrel arising out of a property dispute. Even if the entire prosecution case is accepted as true, the alleged words appear

to be abusive and humiliating but do not satisfy the test of obscenity as laid down in the above decision.

16.At the stage of considering discharge under the proviso to Section 274 BNSS, the Court has to see whether the materials, if unrebutted, would make out the offence alleged. In the present case, even if the prosecution evidence is accepted in toto, the essential ingredients of Section 294(b) IPC are not made out.

17.When the materials produced by the prosecution do not disclose the ingredients of the offence even on their face, compelling the accused to stand trial would be an abuse of the process of law. Under the proviso to Section 274 of BNSS, the Magistrate is empowered to release the accused where the charge is groundless.

18.Hence, this Court finds that the materials on record do not disclose sufficient grounds to proceed against the accused for the offence under Section 294(b) IPC. The charge is groundless in terms of the proviso to Section 274 of BNSS. The points are found in affirmative.

In the result,

The petition is ALLOWED

The accused Nos 1 and 2 are hereby released. The release shall have the effect of discharge from the offence alleged under Section 294(b) read with 34 of IPC. Bail bond executed stands cancelled. Sureties are discharged.

(Typed by me , corrected by me and pronounced in open Court, this the 18th day of March, 2026)

Sd/-

Judicial First Class Magistrate-I

Chengannur