

IN THE COURT OF FAST TRACK SPECIAL JUDGE, NORTH PARAVUR

Present : Sri. Suresh. T.K., Special judge

Thursday, 19th day of February, 2026

**Common Order in
Crl.MP.No.5/2026 & Crl.MP.No.6/2026
IN SC 1533/2025**

Complainant : State of Kerala, rep. by the
: Sub Inspector of Police,
Vadakkekara Police Station
(By Smt. Pravitha. K.S.
Special Public Prosecutor)

Accused : A1– Prasad, Aged 55/2025,
S/o. Sreedhaaran,
Velasseril House,
Madaplathuruthu,
Moothakunnam Village,
Ernakulam District.

Accused : A2 – Sanitha, Aged 45/2025,
W/o. Rajesh,
Valiyamarathinkal Village,
Gothuruthu,
Chendamangalam Villagge,
Ernakulam District

(By M/s. V.A. Pradeepkumar &
Nivea. K.G.,
Advocates for A1 & A2)

These Crl.MPs having been heard on 10.02.2026 and the Court on 19.02.2026 passed the following:

COMMON ORDER IN CrI. MP 05/2026 & CrI. MP 06/2026 IN
SC 1533/2025.

CrI. MP 05/2026.

- 1.** This is a petition filed for and on behalf of accused No. 1, under Section 262 of BNSS.
- 2.** Petition averments in brief are as follows: Case of prosecution suffers from inherent and material contradictions. As per first information statement, accused No. 1 forcefully hugged and kissed on the lips of the survivor. Whereas in the subsequent statement dated 26.03.2025, the case of the survivor is that accused No. 1 attempted to kiss her and forcibly kissed on her cheek. The entire prosecution case did not disclose the essential ingredients of the offences alleged against the accused. The survivor as well as her siblings were residing with their father and he has serious matrimonial disputes with accused No. 2. Accused No. 1 filed a divorce petition as OP No. 156/2025 before Family Court, North Paravur and in that case the father of the survivor is the second respondent since he is having an illicit relationship with the survivor with the wife of accused No. 1. The present case is a counter blast and abuse of process of law of that case. Elder sister [CW1] of the survivor has filed a sworn affidavit in that case dated 22.10.2025 stating that the complaint was false and engineered out of personal vengeance. CW2 admitted that she was maintaining an illicit relationship with one Ashkar, which was discovered by the second accused, leading to serious disputes. CW2 influenced her younger sister and by misusing the provisions of PoCSO Act, falsely implicated the accused in this case. Father of the survivor is an accused in Crime No. 66/2024 of Excise Range Office, Thrissur. At the relevant point of

time, the survivor, her elder sister and accused No. 2 were present in the house. The allegations against accused No. 1 are inherently improbable, unsupported by independent evidence, and is a result of coercive tutoring and family vendetta. There was no immediate, spontaneous or contemporaneous disclosure of the alleged incident. The prosecution case fails to comply with the mandatory requirements of Section 230 of BNSS inasmuch as the charge lacks clear, definite, and consistent particulars regarding the precise nature, manner, and circumstances of the alleged act. Section 262 of BNSS empowers the court to discharge an accused where the materials on record do not disclose sufficient ground for proceeding. Hence the petition to discharge accused No. 1.

Crl. MP 06/2026

- 3.** This is a petition filed, for and on behalf of accused No. 2, under Section 262 of BNSS.
- 4.** The averments in the petition can be summarized as follows: The offences alleged against accused No. 2 are under Sections 3 and 5 of BNS and Sections 19 (1) and 21 of PoCSO Act. Prosecution has not produced any materials to show intentional suppression, mens rea or willful failure on the part of the petitioner to attract Section 19(1) or Section 21 of the PoCSO Act. Accused is the mother of the survivor. Their family is undergoing severe matrimonial disputes, including proceedings before the Family Court in North Paravur. The children were residing with their father during that point of time. The elder daughter of the accused filed a sworn affidavit before the Family Court, admitting that the entire complaint was false, motivated by personal vengeance, and that she had influenced the survivor to give false statement. She admitted that she falsely implicated the accused due to

personal animosity arising out of disputes after the petitioner objected to her illicit relationship with one Mr. Ashkar. In fact, this accused questioned and reprimanded the elder daughter regarding her improper relationship with Askar. In that incident, the elder daughter had left the home and went to her father's house with the electric scooter and certain gold ornaments. Father of the survivor is an accused in Crime No. 66/2024 of the Excise Range Office, Thrissur for the unlawful possession of 1,650 litres of spirit and a case is pending as CP No. 61/2025 before the District and Sessions Court, Thrissur. This accused had not witnessed any incident as alleged in the case. The complete absence of ocular evidence, medical corroboration, or contemporaneous materials clearly indicates that no such incident had in fact occurred. There was no immediate, spontaneous or contemporaneous disclosure of the alleged incident. The continuation of proceedings against the accused, a woman and mother, on such fragile, contradictory and tainted materials would amount to gross miscarriage of justice and abuse of process. Hence the petition to discharge accused No. 2.

5. Learned Special Public Prosecutor has filed separate objections to both the petitions, but with similar contentions. It is contented that the petition is filed on frivolous and untenable grounds only with an intention to delay the proceedings of this Hon'ble Court. The prosecution has placed sufficient materials along with the charge sheet, which clearly discloses a prima facie case against both the accused. At the stage of discharge, the court is not required to conduct a detailed appreciation of evidence. It is sufficient that the materials on record disclose a strong suspicion against the accused. Contentions raised by the accused are

matters of trial and cannot be adjudicated at this preliminary stage. Hence prayed to dismiss the petition.

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- 6.** Point for consideration is that, whether it can be concluded that there is not sufficient ground for proceeding against the accused and this is a fit case to discharge the accused No. 1 ?

Crl. MP 06/2026.

- 7.** Point for consideration is that, whether it can be concluded that there is not sufficient ground for proceeding against the accused and this is a fit case to discharge the accused No. 2 ?

Points in both petitions.

- 8.** This case is charge-sheeted by the Sub Inspector of Police, Vadakkekara Police Station, in Crime No. 203/2025 of Vadakkekara Police Station, alleging offences punishable under Sections 74, 3(5) of BNS, 8 r/w 7, 10 r/w 9(m) and 21 r/w 19(1) of the PoCSO Act. It is alleged that on 31.12.2024 at about 08.30 P.M., in the residential house of the survivor, bearing No. XVIII/72 of Chendamangalam Grama Panchayath, accused No. 1, with sexual intention, hugged the survivor and kissed on her lips. Though the survivor disclosed the matters to the second accused, her mother, she did not report the matter before the police, but maintained silence. Thereby, it is alleged that both the accused have committed the offences as stated above.

- 9.** Both the petitions are filed under Section 262 of BNSS. As per Section 31 of PoCSO Act, Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court, Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including

the provisions as to bail and bonds) Shall apply to the proceedings before a Special Court and for the purpose of said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor. So, Chapter XIX of BNS is applicable.

10. Section 250 of BNSS reads as follows: discharge (1) The accused may prefer an application for discharge within a period of 60 days from the date of commitment of the case under Section 232. (2) If upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in his behalf, The judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and records his reasons for doing so.

11. As per Section 251, framing of charge

(1) If after such consideration and hearing as aforesaid, the judge is of opinion that there is ground for presuming that the accused has committed an offence which -

(a) is not exclusively triable by the court of sessions, he may frame a charge against the accused and by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate or the Judicial Magistrate of the first class on such a date as he deems fit and thereupon such a Magistrate shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report.

(b) is exclusively triable by the Court, he shall frame in writing, a charge against the accused within a period of 60 days from the date of first hearing on charge.

(2) Where the judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused present either physically or through audio-video electronic means and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

12. Petitioners have produced photostat copies of petition in OP No. 156/2025 of Family Court, copy of the chief affidavit filed by CW2 (in this case) in OP No. 14/2023 of Family Court, North Paravur, copy of the original petition in OP No. 18/ 2023 of Family Court, North Paravur and chief affidavit filed by CW2 in OP No. 14/ 2023, to support their contentions in the petitions. It is well settled that accused has no right to advance materials beyond the charge sheet to seek a discharge. (See **State of Orissa v. Debendra Nath Padhi AIR 2005 SC = 2005 (1) SCC 568**). In **Rukmini Narvekar v. Vijaya Satardekar and Ors (AIR 2009 SC 1013 = 2018 SCC 1)**, it was held by the Hon'ble Apex Court that there may be some very rare and exceptional cases where some defence material when shown to the trial Court would convincingly demonstrate that the prosecution version is totally absurd or preposterous and in such very rare cases the defence materials can be looked into by the Court, at the time of framing of the charge or taking cognizance. But in **Nitya Dharmananda alias K.Lenin v. Sri. Gopal Sheelum Reddy** also known as **Nithya Bhaktananda (AIR 2017 SC 5846 = 2018 (2) SCC 93)**, it was held that if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from

summoning or relying upon the same, even if such document is not a part of the charge sheet. But the documents produced along with the petitions by the accused are not of sterling quality or a document which was withheld by the Investigating Agency. Such documents are copies of the petitions filed by accused No. 1 against father of the survivor, accused No. 2 against father of the survivor and copy of a chief affidavit filed by elder sister of the survivor in such case.

- 13.** The stage of framing charges is not a 'mini trial' to evaluate the defense evidence, although some exceptions exist for unimpeachable and clinching evidence. Hence, I am satisfied that the documents produced along with the petition cannot be looked into or to be considered for the purpose of discharge or framing charge of the accused in this case.
- 14.** In first information statement recorded at 06.30 P.M. on 02.03.2025, the survivor has a definite case that on 31.12.2024, at about 08.30 P.M., accused No. 1 came to her house to celebrate New Year. When he was about to leave the house, she was sitting in the verandah and at that time, he forcibly hugged her and kissed on her lips. She pushed him and then washed her face. She questioned the mother for such activities on the side of accused No. 2. But she consoled her. She had a quarrel with the mother.
- 15.** Accused No. 1 has a case that in the additional statement dated 26.03.2025, the survivor had a different case that accused had kissed on her cheeks. But on a perusal of that statement, it can be seen that such allegations are false. It is stated in that statement that to the doctor she had a history that on the date of the birthday of the mother, he attempted to kiss her and then kissed on her cheek. It is pertinent to note that she has no such case before the police.

- 16.** It is contended by the accused that subsequently the elder sister of the survivor had filed a chief affidavit before the Family Court, North Paravur, admitting that at her instance survivor had deposed a false case against both the accused in this case. This is a matter of evidence and cannot be decided in the discharge stage of the case.
- 17.** Another contention of the accused is that there is no independent corroboration or medical evidence to support the case of the survivor. Being a sexual assault case, the evidence of the survivor is sufficient, if it is of sterling quality to find guilt of the accused. No such corroboration can be expected in the case of sexual assault matters. Moreover, according to the survivor, the second accused was present at the time of the alleged incident. She is also arrayed as an accused for not reporting the matter before the police.
- 18.** Another contention raised by the accused is that there was no immediate, spontaneous or contemporaneous disclosure of the alleged incident by the survivor. It is also a matter of evidence. It is further alleged that father of the survivor is an accused in an Abkari case pending before the District and Sessions Court, Thrissur. Such a case has no relevance as far as the allegations in this case is concerned.
- 19.** Upon consideration of all the documents and matters produced along with the charge sheet, it cannot consider that there is not sufficient ground for proceeding against the accused. At the same time, the court is of the opinion that there is ground for presuming that the accused have committed the offences alleged and hence a charge is to be framed against them.

20. CrI. MP 05/2026.

In the result, petition is dismissed. However, there is no order as to costs.

21. CrI. MP 06/2026.

In the result, petition is dismissed. However, there is no order as to costs.

(Dictated by me to the dictation software in my chamber, corrected and pronounced by me in open court on this the 19th day of February, 2026)

Sd/-

SURESH.T.K
SPECIAL JUDGE

APPENDIX

Nil

Id/-

SPECIAL JUDGE

//True copy//

SPECIAL JUDGE

COMMON ORDER IN
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DATED : 19.02.2026