

**IN THE COURT OF THE JUDICIAL I CLASS MAGISTRATE- I,  
ATTINGAL**

Present:- **Sri. Jawhar H**  
Judicial First Class Magistrate-I, Attingal

Dated this the 12<sup>th</sup> day of March, 2026.

**CMP No.4253/2025 in CC. No.1190/2018**

Petitioner : A1. Nazimudeen, S/o Khadar, Khadar Mahal Veedu,  
TC 20/1297, Karamana, Thaikkadu Village

A2. MA Jaleel S/o Abdul Khadar, Nazeema Manzil,  
Karamana, Thaikkadu Village

A3. Salim, S/o Khadar, Khadar Mahal Veedu,  
TC 20/1297, Karamana, Thaikkadu Village

*(By Adv. Sri. V. Shibu A Korani)*

Counter petitioner : State – represented by the Sub Inspector of Police,  
Pothencode Police Station in Crime No. 153/2018

*(By Assistant Public Prosecutor)*

Order : Petition is allowed in part.

This case coming on hearing today, the Court passed the following:

**ORDER**

This is the order in a petition filed under Section 262 of BNSS by the learned counsel for the accused.

2. The gist of the prosecution allegation is that out of their animosity towards the complainant in demanding back the amount which he had advanced to the father of his daughter-in-law Shebina, the accused, who are the uncles of the said Shebina, trespassed into the property of CW1, wrongfully restrained him, and uttered obscene words, questioned him as to why he and his son assaulted their sister's daughter at Gulf. The second accused caught hold of the shirt of CW1 and pushed him.

Meanwhile, the first accused hit CW1 below his left eye with a key held in his hand. voluntarily causing hurt, when CW1 fell down, the third accused kicked CW1 on his lower abdomen, and gave death threat by stating that if he continued to assault their sister's daughter, they would do away with him and his family. Thereby the accused acted in furtherance of their common intention and committed the offences punishable under Sections 447, 341, 294B, 323, 324, 5061 and 34 of IPC.

3. The learned Counsel for the petitioner submitted that the final report and the documents produced along with the same does not contain any of the ingredients to attract the offences alleged against the petitioner. It is the definite case of the Counsel for the petitioner that there is no obscene word stated anywhere either in the FIS which forms the basis for the registration of the FIR or in the final report allegedly uttered by the petitioner herein, in the absence of which the offence under Section 294(b) IPC will not attract against the petitioner.

4. The next contention raised is that there is no statement given or produced along with the final report to evidence that the ingredients of the offence under Section 341 of IPC is made out and contended that in order to attract the offence under Sections 323 and 324 of IPC, some hurt or infirmity should be caused to the injured, but the deposition given to police does not disclose any such hurt or infirmity caused to the alleged injured due to the acts of the accused herein. It is also contended that it is not stated in the FIS that any alarm was caused to the injured owing to the act of the accused. It is also highlighted that the final report does not disclose any ingredient to attract the offence under Section 447 of IPC as well.

5. Based on the above arguments, the learned counsel for the accused canvassed to discharge the accused under Section 262 of BNSS.

6. The learned APP, on the other hand, even though did not file any written objection objected to the application filed by the learned counsel for the petitioner, contending that except for the offence under Section 294(b) of IPC, the ingredients necessary to attract all other offences against the petitioners herein are seen present in the final report and the other documents produced along with the same, and there is no ground for invoking the provisions of Section 262 of BNSS.

7. Heard both sides, considered the final report and the documents

produced along with it.

8. The points that arise for consideration are:

1) Whether the petition is allowable?

2) Order and relief?

9. **Point No. 1:** After considering the final report and the other documents produced along with the same, it is seen that nothing has been stated anywhere to show that the petitioner herein had sang, recited or uttered any obscene song, ballad or words in or near any public place in the case at hand. As rightly argued by the learned counsel for the petitioner, the ingredients to attract the offence under Section 294(b) IPC against the petitioner herein is not made out.

10. As far as the other allegations against the accused are concerned, at the time of considering the discharge petition filed by the accused, this Court is expected to consider whether prima facie there are sufficient grounds for proceeding against the accused, and is not expected to appreciate evidence to conclude whether materials are sufficient for conviction. It has been held by Hon'ble Apex Court on various occasions that at the stage of considering an application for discharge, the Court must proceed on the assumption that the material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, discloses the existence of the ingredients necessary to constitute the offence and at this stage, the probative value of the materials has to be gone into, and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. The above aspects and the fact as to what constitutes sufficient grounds for proceeding against an accused was detailed by the Hon'ble High Court in Jacob P. Paul v. State of Kerala 2025 KHC 430, wherein it was held that sufficient ground means materials that are enough to justify launch of a criminal trial against the accused, without requiring the court to determine at this stage whether conviction is likely. It cannot be held that the charge against the petitioner is groundless.

11. From the above discussion it is clear that apart from the offence under Section 294(b) of IPC it can be seen that there are sufficient grounds for presuming

that the accused committed the other offences.

12. From the available materials produced by the prosecution, apart from the offence under Section 294(b) of IPC, this Court cannot consider the charge for the other offences groundless as against the accused/ petitioners. In such a scenario, this Court deems it fit to discharge the accused for the offence under Section 294(b) of IPC alone.

13. **Point No. 2:** On the basis of the above discussion in Point No. 1, the accused are discharged of the offence punishable under Section 294(b) of IPC, and the petition is allowed in part.

Pronounced by me in open court on this the 12<sup>th</sup> day of March 2026.

Sd/-

Judicial I Class Magistrate-I,  
Attingal