

MHNG030032632026



Cri.M.A./525/2026

Nilesh Kishorrao Ambilwade Vs. PSO Ganeshpeth Nagpur

ORDER BELOW EXH.01.

1. By the present Application U/sec.175(3) of the BNSS, 2023, the Applicant is seeking direction to Ganesh peth Police Station to register report against Accused u/s. 173(1) of the BNSS, 2023 for offence punishable U/sec.74, 79, 115(2), 296, 351(2), 352, read with 3(5) of BNS, 2023 and to investigate the same.
2. Heard the learned counsel appearing on behalf of the Applicant and perused the entire material placed on record. It is submitted that Applicant No.1 is the practicing advocate, Applicant No.2 is his wife and Applicant No.3 is his son. The father of Applicant No.1 owned and possessed a land property at Plot No.9 part and 10 situated beside their residential house at Ramaji Wadi, New Shukrawari, Nagpur. The said property was purchased by the father of the Applicant No.1 from Ramaji Sawarkar vide sale deed dated 11.12.1986. Thereafter, the title has been confirmed by the Hon'ble High Court, bench at Nagpur in one of the disputes. The Non-Applicant Nos.2 to 8 are resident of the same locality and were trying to erect pendol on the plot owned and possessed by the applicants without their permission. When the Applicant No.1 tried to

confront the Non-Applicants, they did not stop the erection of pendol. Thereafter, on 06.12.2025 the applicant lodged a complaint before Ganesh peth Police Station, Nagpur on 07.12.2025. The Non-applicants again started erecting pendol, when applicants requested them not to erect pendol illegally. The persons got angry and started beating Applicant No.3 with fists and blows. He also started assaulting Applicant No.1. During the said fight the non-applicants also assaulted Applicant No.2 by coming on her person. The Non-applicants also hurled abuses in filthy language and threatened the Applicants of dire consequences. One of the Non-applicants brought the hammer. The non-applicants and family members by holding their waist teared the shirt. Thereafter, on 08.12.2025 complaint came to be lodged before Ganesh peth Police Station. However, no action was initiated.

3. During the said fight one of the non-applicants viz. Harish attempted to assault Applicant No.3 with hammer, non-applicant Harish's brother Suresh, Aryan, Prasad manhandled Applicants and assaulted them with fists blows. Aryan Bhojar by holding a piece of tile assaulted the Applicants. Non-applicant No.5 assaulted the applicants with wooden bamboo. Due the said assault, Applicant No.3 sustained with internal injuries. Non-applicant no.3 assaulted applicant no.2 and held her by her chest and push her towards her residential house. The Applicant No.2 felt repulsion and her modesty was outraged by non-applicants. The entire episode was captured in a CCTV, the footage of which was also submitted to Police

Station in a pen drive. On 13.12.2025 police only registered NCR bearing No.477/2025 under Section 115(2), 352, 351(2) read with 3(5) BNS and initiative preventive action under Section 174 BNSS. The applicant approached Deputy Commissioner of Police Zone 3 on 15.12.2025 and thereafter approached Commissioner of Police on 24.12.2025. In spite of which no action came to be taken against the non-applicants. Therefore, the applicants have filed the present application under Section 173(4) of BNSS.

4. In support of their contention, the Applicants placed on record documents showing their title over the plot in question. The Applicants have also placed on record the complaints made to Non-applicant No.1 and Commissioner of Police. So also copy of NCR is also placed on record. One of the important documents placed on record by the Applicants is the copy of CCTV footage of the incident captured by CCTV and mobile phone of the Applicants. In order to succeed in the present application, the Applicants must showcase that a cognizable case was made out. Only then the police can be ordered to record the First Information Report as mandated by Hon'ble Apex Court in the case of Lalitha Kumari.
5. The entire allegations levelled by the Applicants contains, only two cognizable offences as per Bharatiya Nyaya Sahita i.e. section 74 and section 79. These two provisions are in para materia with Section 354 & 509 of Indian Penal Code. The Applicants must pass a crucial test by establishing the basic ingredients of these offences, prima facie. Once the Applicants

succeed in demonstrating that the core ingredients of these sections are present from the allegations levelled by them, in that particular case, this court can direct concerned police station to record First Information Report and investigate the case if investigation is necessitated.

6. In order to appreciate the allegations level by the applicants, following crucial ingredients of two sections are required to be fulfilled. They are as follows.

Section 74

1. *That there was an assault or use of criminal force to any woman*
2. *That such an assault or insult was intended to outrage or knowing it to be likely to outrage the modesty of such woman*

Section 79

1. *Intention to insult the modesty of a woman*
2. *The insult must be caused*
 - i. *By uttering any word or making any sound or gesture or exhibiting any object, intending that such word or sound shall be heard or that the gesture or object shall be seen by such a woman or*
 - ii. *By intruding upon the privacy of such women.*

7. The crucial test to decide whether any act insults modesty of a woman, there has to be an intention to outrage modesty of a woman or knowledge to that effect. The intention and knowledge of the accused persons is required to be culled out from various circumstances in which, and upon whom the offence has been committed. Neither the use of criminal force alone nor act of outraging the modesty alone is sufficient to attract an offence under Section 354 IPC or Section 74 of BNS.

In case of section 79 of BNS or Section 509 of IPC, every insult will not attract the said offence. There must be definite allegation of insult to the modesty of a woman or intrusion into privacy of a woman. Mere insult will not attract prosecution under these provisions. Outraging modesty of a woman means a sense of shame or bashfulness that a woman feels when faced with any act. The ultimate test is whether the act is capable of shocking a women's sense of decency is nothing but her morality. In catena of cases, Hon'ble Apex Court has stated that for mens rea to be established, something better than mere statement must be produced before the court.

8. In the instant case, it is admitted position that the act has happened during the course of altercation between Applicants and Non applicants. The CCTV footage also shows that on the date of incidence, the families of Applicants and Non applicants entered into a fight over erecting a pedol upon the land belonging to the Applicants. I have carefully perused, the CCTV footage which shows that the fight in fact took place between Applicants and Non applicants. The Applicants have pointed out the particular incident and identity of various persons from the CCTV footage, made available on pen drive, I have carefully perused the CCTV footage in order to prima facie gather whether ingredients of Sections 74 or 79 of BNS are present. The entire incident appears to have been due to erection of pedol, which applicant objected and the fight broke out. The other non cognizable offence alleged by the Applicants can be prima facie seemed to have been committed

by the Non applicants. The Applicant No.3 appears in the CCTV footage in which she is seem to have been pacifying the persons involved in fight. It is also seen that the applicant number three is in argumentative state, and there has been exchange of words. The fight started with arguments between ApplicantNo.1 and 2 with Non applicant No.1. Thereafter the other Non-applicants joined the scuffle. The entire incident nowhere brings out any intention, much less, any act which Non applicants appear to have committed, by which they insulted modesty of Applicant No.3. The entire incident shows that an argument taking place and hurt caused to persons involved in fight. Nowhere such argument or the crowd appears to have used any force with intention or knowledge of outraging modesty of Applicant No.3. The Applicants have submitted that there has been long-standing dispute concerning the plot in question. At this structure, prima facie view is required to be taken of the entire pleadings, so also the CCTV footage of the incident, made available. The entire incident nowhere brings out essential ingredients of Section 74/79 of BNS, which are the only two cognizable offences for which the present application can be considered.

9. In the absence of any such ingredients present in the incident showcase by the Applicants, the case cannot be referred to the police for recording First Information Report. The Applicants have not made out a case where an offence is required to be registered, though, the Applicants have complied Sec.173(1) and 173(4) of BNSS, as no cognizable offence is even prima

facie made out. Hence, I proceed to pass following order: -

-: O R D E R : -

1. The Application is rejected.
2. Case is disposed of accordingly.

Place: Nagpur
Date: - 18/03/2026

(Kaustubh Nagesh Marathe)
Judicial Magistrate First Class
(Court No.01) Nagpur

