

WA.1712/2024

-:1:-



2024:KER:84446

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

WEDNESDAY, THE 13TH DAY OF NOVEMBER 2024 / 22ND KARTHIKA, 1946

WA NO. 1712 OF 2024
[AGAINST THE JUDGMENT DATED 18-10-2024 IN WP(C) NO.33035 OF 2024
OF HIGH COURT OF KERALA.]

APPELLANT/3RD PARTY:

BY ADVS. SRI. S. SREEKUMAR (SENIOR),
SRI. N.M. MADHU,
SRI. C.S. RAJANI.

RESPONDENTS/PETITIONERS & RESPONDENTS 1 TO 4:

- 1 XXXXXXXXXX
 XXXXXXXXXX XXXXXXXXXXXX

- 2 XXXXXXXXXX
 XXXXXXXXXX XXXXXXXXXXXX

- 3 STATE OF KERALA
 REPRESENTED BY HOME SECRETARY,
 KERALA STATE ROOM NO: 357(A),
 FIRST FLOOR, MAIN BLOCK, SECRETARIAT,
 TRIVANDRUM, PIN - 695001.

- 4 SUPERINTENDENT OF POLICE
 DISTRICT POLICE OFFICE, MALAPPURAM DISTRICT,
 KERALA, PIN - 675505.

- 5 ADDITIONAL POLICE SUPERINTENDENT
 DISTRICT POLICE OFFICE, MALAPPURAM DISTRICT,
 KERALA, PIN - 676505.

WA.1712/2024

-:2:-



2024:KER:84446

6 STATION HOUSE OFFICER,
PONNANI POLICE STATION, MALAPPURAM DISTRICT,
KERALA, PIN - 679586.

R1 & R2 BY SENIOR ADVOCATE SRI. A. KUMAR,
R3 TO R6 BY ADV. SRI. P. NARAYANAN,
SENIOR GOVERNMENT PLEADER & ADDL. PUBLIC PROSECUTOR.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04.11.2024,
THE COURT ON 13.11.2024 DELIVERED THE FOLLOWING:



JUDGMENT

Dated this the 13th day of November, 2024.

Nitin Jamdar, C. J.

By this appeal filed under Section 5 of the Kerala High Court Act, 1958, the Appellant had challenged the judgment delivered by the learned Single Judge dated 18 October 2024 in W.P.(C) No.33035 of 2024 filed by Respondent Nos.1 and 2 – the Petitioners.

2. The Petitioners are complainants, who have filed a complaint before the Judicial First Class Magistrate, Ponnani, Malappuram. Respondent No.3 is the State of Kerala represented by the Home Secretary, Thiruvananthapuram, Respondent No.4 is the Superintendent of Police, Respondent No.5 is the Additional Police Superintendent, and Respondent No.6 is the Station House Officer of Malappuram.

3. Petitioner No.1 is a housewife and Petitioner No.2 is her close friend. It is the case of Petitioner No.1 that despite filing complaints to the concerned Station House Officer and District Police Chief regarding the rape by the accused, no FIR was registered. Petitioner No.1 filed Exhibit-P5 complaint under Section 173(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) before the Judicial First Class Magistrate Court, Ponnani, on 11 September 2024. The learned Magistrate sought a report from the DIG of Thrissur Range under Section 175(4)(a) of the BNSS on 11 September 2024. At that stage, the Petitioners filed the



present Writ Petition on 13 September 2024. The Petitioners prayed for the following reliefs:

(i) To issue a writ of mandamus or such other writ or direction to Respondent No.4 – Station House Officer, to register an FIR on the information received which contained cognizable offence as Exhibit-P3 document and conduct investigation;

(ii) Petitioner No.2 respectfully prays that this Court directs the Respondent Nos. 1 and 3 – State of Kerala represented by Home Secretary and the Additional Police Superintendent, to comply with the directions of the Hon'ble Supreme Court regarding the procedure for recording statements and registering an FIR. Specifically, it was prayed to order the Respondents to:

(a) Register an FIR immediately upon receiving a complaint related to a cognizable offence, in accordance with law and the guidelines established by the Hon'ble Supreme Court;

(b) Summon the witness for statement collection only after the FIR is registered and not before, ensuring due process and preventing any harassment of the witnesses.

(iii) To declare that the immunity provided under Section 175(4) of the BNSS shall not be extended to crimes committed by a public servant that are unrelated to their official duties. Specifically the Court is requested to rule that the protection afforded to public servants does not apply to the acts that constitute criminal offences committed outside the scope of their official functions. This prayer is made to ensure that public servants are held accountable for any criminal acts they commit in their personal



capacity without the shield of immunity intended for their official duties.”

The Appellant was not a party to the Writ Petition of Respondent Nos.1 and 2/Writ Petitioners.

4. The Writ Petition came up before the learned Single Judge on 13 September 2024, wherein the learned Single Judge called for a report from the Additional Police Superintendent, Malappuram, regarding what action has been taken in relation to Exhibit-P4 complaint dated 8 September 2024 and why a preliminary enquiry is desired in this case on or before 23 September 2024.

5. By the same order, the learned Single Judge also called for a report from the Judicial First Class Magistrate Court, Ponnani, regarding the stage of C.M.P.No.3288/2024 and the proceedings thereof on or before 23 September 2024. The learned Magistrate, pursuant to the above directions, submitted a report. The learned Single Judge noted the contents of the report in which the learned Magistrate explained that since the Magistrate bona fide believed that a report needed to be called for under Section 175(4)(a) and (b) of the BNSS, it was mandatory that the report was called for. The learned Single Judge thereafter took the report into consideration and declared that Section 175(4) of the BNSS is not mandatory and directed the Magistrate to pass an order as per this declaration of law within ten days. The Registry was directed to forward a copy of the judgment to the learned Magistrate on that day itself through



email for information and compliance. Accordingly, the Writ Petition was disposed of by judgment dated 18 October 2024. This order is challenged in the present Appeal.

6. When the Appeal came up on board on 25 September 2024, the learned Senior Advocate appearing for the Petitioners submitted that the learned Magistrate had passed an order on 24 October 2024 forwarding the complaint to Station House Officer, Ponnani, for registering the crime for investigation. While adjourning the same to enable the Petitioners to file a counter, the statement of the Senior Government Pleader that the filing of FIR would be deferred was recorded. After that, the matter has come up before us for consideration.

7. A counter affidavit is filed by the Petitioners placing on record the order passed by the learned Magistrate on 24 October 2024 in C.M.P No.3288/2024, the order dated 11 September 2024 (Ext.-P6), and the report of the Additional Police Superintendent, Malappuram.

8. We have heard Mr. S. Sreekumar, learned Senior Advocate appearing for the Appellant, Mr. A. Kumar, learned Senior Advocate appearing for Respondent Nos.1 and 2/Writ Petitioners, and Mr. P. Narayanan, learned Special Government Pleader and Additional Public Prosecutor appearing for the official Respondents.

9. The analysis of the impugned judgment would show that first, it refers to the prayers and then, basic facts in paragraph (3), and the



reliance placed by the Petitioners on the decisions of the Hon'ble Supreme Court in the case of *Lalitha Kumari v. Government of Uttar Pradesh [(2014) 2 SCC 1]* and *XYZ v. State of Madhya Pradesh and Ors. [AIR 2022 SC 3957]*, and reference is made to the decision of the Hon'ble Supreme Court in the case of *Divine Retreat Centre v. State of Kerala and Others [(2008) 3 SCC 542]* relied on by the learned Special Government Pleader in paragraph (5). Then, in paragraphs (8) and (9), the facts in the complaint are referred to. Paragraph (3) in the impugned judgment refers to the complaint made by Petitioner No.1 before the Judicial First Class Magistrate. It states that it was strange that on receipt of the complaint, the learned Magistrate passed an order on 11 September 2024 calling for a report from the superior officer. The order dated 11 September 2024 is reproduced in the impugned judgment.

10. Thereafter, the petition is disposed of by the following observations:

“17. Assimilating the legal position as stated above, when a lady alleges sexual molestation by coitus, by a police officer or a public servant, the same could not be held as a complaint against a public servant arising in course of the discharge of his official duties. At the same time, it has to be held that, Section 175(4) of the BNSS used the term ‘may’ and the legislative intent behind this provision is only discretionary and not mandatory. Therefore, the procedure opted by the learned Magistrate to call for a report containing facts and circumstances of the incident resorting to Section 175(4) (a) of the BNSS, from the officer superior to them as well as the situation led to the incident, so alleged, are not mandatory in the instant case.



18. It is discernible from the records placed by the prosecution that, as per Ext.R3(e), as on 20.8.2022, petitioner No.1 made a specific complaint against the C.I. of Police regarding forceful sexual intercourse. But, no action taken against the C.I., so far. Why there was failure to take action on Ext.R3(e) for a period of 3 years, is shocking. Thereafter, petitioner No.1 raised complaint alleging sexual intercourse by the C.I., Dy.S.P. and S.P.

19. Since it is reported by the learned Magistrate that, in view of the decision in XYZ's case (supra), the learned Magistrate is of the bona fide view that an investigation should be ordered in the complaint, I am not inclined to order investigation in this matter and I direct the learned Magistrate to pass order therein, as per law discussed hereinabove, within a period of ten days from the date of receipt of a copy of this judgment.

This Writ Petition (Civil) stands disposed of as above.

Registry is directed to forward a copy of this judgment to the learned Magistrate today itself, through e-mail, for information and compliance.

Registry is further directed to mask the identity of the petitioners in the cause title of this judgment.”

11. Section 156 of the Code of Criminal Procedure, 1973 (Cr.P.C.) and Section 175 of the BNSS deal with the complaint to the Magistrate in case of refusal to file an FIR by the police authorities. Section 156 of the Cr.P.C. reads thus:

“156. Police officer's power to investigate cognizable case.- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have



power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.”

12. The corresponding provision, Section 175 of the BHSS, reads thus:

“175. Police officer’s power to investigate cognizable case.

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIV:

PROVIDED that considering the nature and gravity of the offence, the Superintendent of Police may require the Deputy Superintendent of Police to investigate the case.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.



(4) Any Magistrate empowered under section 210, may, upon receiving a complaint against a public servant arising in course of the discharge of his official duties, order investigation, subject to—

(a) receiving a report containing facts and circumstances of the incident from the officer superior to him; and

(b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged.”

There is a marked difference between the two procedures.

13. The learned Senior Advocate for the Appellant submitted that the complaint specifically makes reference to being filed under Section 175(4) of the BNSS, and in the Writ Petition, only a direction was sought to register a crime and a declaration as to whether Section 175(4) of the BNSS is mandatory. The learned Senior Advocate for the Appellant submitted that under Section 175(4) of the BNSS, any Magistrate under Section 210, may, upon receiving a complaint against a public servant arising in the course of the discharge of his official duties, order investigation, subject to receiving a report containing the facts and circumstances of the incident from the officer superior to him, and after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged, which procedure is not found in Section 156 of the Cr.P.C. The learned Senior Advocate submitted that reading the scheme of the BNSS and the legislative intent, the word “may” apprehending Section 175(4)(a) will have to be treated as



mandatory. The learned Senior Advocate also contended that Section 175(4)(b) contemplates hearing to the affected parties. The learned Senior Advocate submitted that, on facts also, several questions arise, which will show that the Appellant has a good defence, and this has been prejudiced by an order which is passed without hearing the Appellant. If any order or direction was to be issued in respect of the order passed by the learned Magistrate under Section 175(4) of the BNSS, then the Appellant ought to have been joined as a party in the Writ Petition.

14. The learned Senior Advocate for the Petitioners submitted that the learned Single Judge has taken the correct view of the matter that as per Section 175(4) of the BNSS, calling for a report from the superior officer is not mandatory. The reading of Section 175(4) shows that Section 175(4)(a) does not make it mandatory to call for a report from a superior officer. He submitted that the complaint made by the Petitioners would clearly indicate that there was no question of the incident occurring during the official duties of the Appellant and, therefore, it was not necessary to call for a report.

15. From the rival contentions, the question also arises whether the Magistrate can order an investigation under Section 175(3) of the BNSS, without giving the accused an opportunity of being heard, and also, whether the Magistrate is obliged under Section 175(3) to consider submissions made by the police for not registering an FIR before ordering an investigation. Therefore, the issue requires detailed



deliberation. There is no detailed discussion in the impugned judgment about this legal issue. Section 175(4) of the BNSS is different from Section 156 of the Cr.P.C., and no direct decision of this Court or the Hon'ble Supreme Court is referred to in the impugned judgment. The impugned judgment has made a reference to the decision in the case of *Anoop v. Baby Joseph [2023 KLT Online 1747]*, which, as pointed out by the learned Senior Advocate for the Appellant, is on a different footing, being in the context of Section 190 of the Cr.P.C. at the stage of taking cognisance. Question also arose whether the Appellant, who claims the benefit of Section 175(4) of the BNSS and treats it as a protection, should have been heard. A serious issue of interpretation of the provisions of Section 175(4) of the BNSS had arisen and the impugned judgment has not gone into the intricacies of the interpretation, and has referred to a judgment, which has no direct relevance.

16. However, we do not propose to delineate the legal issue as the main question is whether it was appropriate to intervene at this stage under Article 226 of the Constitution of India when the complaint was pending and give a declaration of law, and then direct a particular course of action to be followed by the learned Magistrate.

17. The learned Senior Advocate for the Appellant contended that the Petitioners had exhausted the provisions of Section 175(4) of the BNSS by first approaching the superior officer for refusal to file an FIR and



thereafter, the learned Magistrate. Once the matter came before the learned Magistrate, a report was called for from the superior officer since the Complaint referred to the fact that in 2022, the Appellant had gone to the house of Petitioner No.2 to make enquiries on her request regarding her Complaint and the learned Magistrate was yet to decide the matter. Thereafter, the superior officer submitted a report. The learned Senior Advocate for the Appellant made a serious grievance that Petitioners, bypassing all this, directly approached this Court by filing a petition under Article 226 of the Constitution of India. We find merit in this grievance. Since the Petitioners had already approached the learned Magistrate, and the complaint was pending, and there was no challenge to any of the orders of the Magistrate, the Magistrate should have been allowed to proceed without any interference. The legal issue should also have been first decided by the learned Magistrate, whose order was not under challenge. Afterwards, the proceedings would arise from taking cognisance or dismissing the complaint. At this stage, it is unwarranted to step in, issue directions, and declare the position of law when the complaint was pending before the learned Magistrate.

18. As rightly argued by the learned Special Government Pleader for Respondent Nos. 3 to 6 that the Hon'ble Supreme Court has laid down in the case of *Sakiri Vasu v. State of Uttar Pradesh and Others [(2008) 2 SCC 409]* that, first, the remedy under the Code of Criminal Procedure for approaching the Magistrate under Section 156 should be exhausted, and writ petitions under Article 226 of the Constitution should not be



directly filed. In this case, the Petitioners had already approached the learned Magistrate. Since the learned Magistrate had initiated the proceedings, bypassing that procedure, the Writ Petition came to be filed under Article 226 of the Constitution of India, in which directions were issued to the learned Magistrate when none of the proceedings before the Magistrate were under challenge. The learned Special Government Pleader also pointed out that there was no delay on the part of the learned Magistrate and that the learned Magistrate was proceeding expeditiously.

19. The reliefs sought in the Petition have nothing to do with the proceedings pending before the learned Magistrate and, in fact, Exhibit-P6, the order passed by the learned Magistrate on 11 September 2024 in C.M.P. No.3288/2024 calling for a report, was not even the subject matter of the petition. If the learned Magistrate found that the matter needed to be proceeded further, the Magistrate would have taken steps as per the subsequent provision under the BNSS, in respect of an investigation. If the learned Magistrate found that the complaint should be dismissed, an order would have been passed under Section 226 of the BNSS. Section 223(2) is a stage where the Magistrate will not take cognisance and this stage had not arisen in the present case. If any erroneous order is passed by the learned Magistrate, it is always subject to challenge in appropriate proceedings. The impugned judgment thus suffers from serious procedural irregularity and is required to be set aside.



20. There is one more aspect which requires interference. In paragraph (11) of the impugned judgment, reference is made to the order dated 13 September 2024, which is passed by the learned Single Judge calling for a report from the learned Judicial First Class Magistrate, Ponnani, and the same is reproduced. Paragraphs (11), (12) and (13) of the impugned judgment read as under:

“11. When this Court, as per order dated 13.9.2024, called for a report from the learned Judicial First Class Magistrate, Ponnani regarding the proceedings in C.M.P.No.3288/2024, the learned Magistrate reported as under:

“..... Hence, I bonafide believe that an investigation should be ordered in the above case in view of the decision reported in XYZ v. State of Madhya Pradesh and Others (2022 (5) KHC 403). Since compliance with section 175 (4) (a) and (b) of BNSS is mandatory before considering the allegations in the complaint and taking a decision, this court has called for a report in this regard from the Deputy Inspector General of Police, Thrissur. At present, the complaint has been posted to 27-09-2024 for a report of DIG, Thrissur.”

12. Going by the report of the learned Magistrate, the learned Magistrate reported that, after referring XYZ’s case (supra) that, an investigation should be ordered in the case. But, as per Section 175(4) (a) and (b) of the BNSS, compliance of the same is mandatory before considering the allegations in the complaint and take a decision and therefore, she called for a report from the Deputy Inspector General of Police, Thrissur and the case stands posted on 27.9.2024, for report of the D.I.G.

13. The decision relied on by the learned Magistrate has been discussed in extenso in the foregoing



paragraphs. Adverting to the report of the learned Magistrate stating that, compliance of Section 175(4)(a) and (b) of the BNSS is mandatory, I have gone through Section 175(4)(a) and (b) of the BNSS and the same is extracted as under:

.....”

(emphasis supplied)

21. Therefore, the learned Single Judge has taken note of the report filed by the learned Magistrate. It was not necessary to call for a report from the learned Magistrate to explain a judicial order in the first place. Though the learned Senior Advocate for the Petitioners has sought to contend that the order dated 13 September 2024 does not call for an explanation, the order shows that a report regarding the stage and the proceedings was called for. The stage was already known. The order was already part of the record (though not challenged). Furthermore, there is no disapproval in the impugned judgment that the learned Magistrate has needlessly justified the judicial order by submitting a report. On the other hand, the report submitted by the learned Magistrate explaining the judicial order was specifically looked into, commented on and criticised. This, in our respectful opinion, could have been avoided. This procedure placed the learned Magistrate in a piquant position.

22. Now we turn to the argument of the Petitioners that the challenge to the impugned judgment delivered by the learned Single Judge has become infructuous because, on 24 October 2024, the learned Magistrate has passed an order directing investigation under



Section 175(3) of the BNSS. The order passed by the learned Magistrate is as under:

“ORDER

The complainant filed the above complaint under section 210 of the Bharatiya Nagarik Suraksha Sanhita, alleging the offence punishable under sections 376, 376 (2) (a) (I), 377, 354 A, 354 B, 354 D, 506, 446 and 450 read with 34 of the Indian Penal Code.

2. This court finds that an investigation should be ordered in view of the decision reported in XYZ Vs. State of Madhya Pradesh and Others (2022 (5) KHC 403).

3. The accused persons are public servants, and the offences were alleged to have taken place following a complaint submitted by the defacto complainant herein before Accused No. 1 to 3; this court called for a report from the DIG, Thrissur Range, who was the superior officer of Accused No. 1 to 3 in view of Section 175 (4) (a) and (b) of Sanhita as the court was under the impression that the offences were alleged to have arisen in the course of the discharge of their official duties. Accordingly, DIG, Thrissur Range, submitted a report.

4. The Hon’ble High Court of Kerala, as per order in WP (C) No.33035/2024 dated 18/10/2024, held that the term used in Section 175 (4) of the BNSS is “May” and the legislative intent behind this provision is only discretionary and not mandatory, and it is not mandatory to call for a report from the office superior to the accused containing facts and circumstances of the incident resorting to Section 175 (4) of the BNSS, since the complaint alleging sexual molestation by coitus is not a complaint against a public servant arising in the course of discharge of his official duties and the Hon’ble High



Court of Kerala directed this court to pass an order within a period of 10 days. So, I am of the view that the investigation should be ordered under section 175(3) of the BNSS. In this section also, the term used is 'May'. The accused persons herein are the higher officials in the police department. In these circumstances, calling for a report from the police officer will only be futile. Hence, discretionary power has to be invoked. Therefore, the complaint is forwarded to SHO, Ponnani for registering the crime for investigation.

(Pronounced in open court on this the 24th day of October, 2024)

*Sd/-
(Judicial First Class Magistrate)"*

23. According to the learned Senior Advocate for the Petitioners, the order dated 24 October 2024 is independent of the order passed by the learned Single Judge, wherein the learned Single Judge has held it to be discretionary and not mandatory, and it is open for the Appellant to take recourse to the legal remedy as regards the said order is concerned. The learned Single Judge has not given specific directions for the registration of the crime. The reason for filing the Writ Petition was the manner in which the investigation was taking place and the complainant was being threatened. Also, since the learned Magistrate has passed an order on 24 October 2024, the remedy of the Appellant lies elsewhere.

24. The position cannot be and is not as simplistic as that. The order of the learned Magistrate calling for a report from the superior officer was criticised in the impugned judgment. Thereafter, the learned Magistrate



was directed to submit a report to explain/inform, the report submitted was looked into, and the learned Magistrate was directed to pass an order in the light of the law laid down within a period of ten days, and the order was directed to be sent on the same date by email. Therefore, the situation the learned Magistrate was placed in when the order was passed on 24 October 2024, cannot be lost sight of. This order is not passed in routine circumstances. The order of the learned Magistrate was disapproved, however, it was not set aside. Thereafter, when the learned Magistrate was directed to decide the matter within ten days, the learned Magistrate took the other option. Given how the proceedings unfolded, the learned Magistrate had no choice but to change the earlier course of action. In these peculiar facts and circumstances, it is not possible for us to accept the simpliciter contention that the learned Magistrate has taken an independent view of the matter in the order dated 24 October 2024, and now the petition has become infructuous. The learned Senior Advocate for the Appellant made a grievance that the impugned judgment left the learned Magistrate with no option but to recall the order dated 11 September 2024 and under Section 403 of the BNSS, the Magistrate has no power to alter or review, however, in view of the directions issued, the learned Magistrate was forced to review the decision.

25. The order passed by the learned Magistrate dated 11 September 2024 (Exhibit-P6) was neither challenged nor set aside, and the learned Magistrate was called upon to pass an order in light of the observations



made by the learned Single Judge in the impugned judgment. Therefore, the learned Magistrate has passed another order on 24 October 2024, effectively recalling the earlier order. The question then arises, as contended by the learned Senior Advocate for the Appellant, regarding the applicability of Section 404 of the BNSS. According to the Petitioners, there is no merit in the contention that the order passed on 24 October 2024 amounts to a review under Section 404 of the BNSS. Apart from the legality, it cannot be ruled out that the learned Magistrate adopted the course of action because of the direction issued in the impugned judgment.

26. Taking an overall view of the matter, we are of the opinion that the situation needs to be rectified, and the position has to be restored to set the judicial proceedings on the proper course. As we have indicated earlier, it is more of a matter of concern regarding the procedure adopted than the merits of the matter. We are aware of the seriousness of the allegations made by the Petitioners in their complaint, however, this Appeal raises broader issues that relate to the exercise of independent jurisdiction by the learned Magistrate. Therefore, we are of the opinion that it is necessary to intervene.

27. The order passed by the learned Magistrate dated 24 October 2024 is on record. We have heard the learned Senior Advocates for the parties regarding the same. The order passed by the learned Magistrate, dated 24 October 2024, is clearly a sequitur to the impugned judgment and



cannot be said to have been passed on an independent application of mind. Therefore, if we set aside the impugned judgment of the learned Single Judge on the above ground, the order passed by the learned Magistrate based on the order of the learned Single Judge would not survive.

28. Having declared that the order passed by the learned Magistrate on 24 October 2024 is only a sequitur to the impugned judgment, setting aside the dated 24 October 2024 will be inevitable. We will now have to decide whether to set aside the order dated 24 October 2024 in this Appeal or let the Appellant take out independent proceedings for the same. For the other course of action, we will have to extend the order of not filing the FIR for some time to enable the Appellant to challenge the order dated 24 October 2024. However, the matter needs to move on at the earliest. If we do not set aside the order of the learned Magistrate dated 24 October 2024, then it will cause further delay as another round of litigation for the same purpose with the same result will ensue. This delay will also prejudice the Petitioners-Complainants. Because the methodology adopted in the impugned order was incorrect, it should not prejudice the Petitioners also. Therefore, having given our anxious consideration to the course of action to be adopted, we are of the opinion that the order passed by the learned Magistrate dated 24 October 2024 is also required to be quashed and set aside in this Appeal in the above circumstances.

WA.1712/2024

-.22:-



2024:KER:84446

29. Appeal is allowed. The impugned judgment dated 18 October 2024 and the order passed by the learned Magistrate dated 24 October 2024 in C.M.P. No.3288/2024 are quashed and set aside.

30. The proceedings in C.M.P. No. 3288/2024 filed by Petitioners be taken to their logical conclusion by the learned Magistrate as per law. We make it clear that regarding the factual issues and the interpretation of Section 175(4) of the BNSS, the learned Magistrate will decide the legal and factual position on its own merits, without being influenced by the observations made in the impugned judgment or this judgment. If any party is aggrieved by the order of the learned Magistrate, it is open to them to pursue the remedies as available in law.

Sd/-
NITIN JAMDAR,
CHIEF JUSTICE

Sd/-
S. MANU,
JUDGE

krj

//TRUE COPY//

P.A. TO C.J.

WA.1712/2024

-.23:-



2024:KER:84446

APPENDIX

APPELLANT'S ANNEXURES:- 'NIL'

RESPONDENTS' ANNEXURES:-

ANNEXURE-R1:- COPY OF THE ORDER IN CMP. NO.3288/2024 DATED
24.10.2024 PASSED BY THE JFCM COURT, PONNANI.
(CONFIDENTIAL)

ANNEXURE-R2:- COPY OF THE IA. NO.1/2024 ALONG WITH ORDER IN CMP.
NO.3288/24 DATED...(CONFIDENTIAL)

ANNEXURE-R3:- COPY OF THE REPORT SUBMITTED BY THE 3RD RESPONDENT
DATED 20.09.2024. (CONFIDENTIAL)

//TRUE COPY//

P.A. TO C.J.