

IN THE COURT OF SPECIAL MOBILE MAGISTRATE
SRINAGAR

(Railway Magistrate, Kashmir)

(Special Court under Companies Act, 2013)

File No: 279/2025

CNR No. JKSG030166462025

Case No. 279/2025

Date of Institution: 10.03.2025

Date of Disposal: 30-04-2025

In the Case of:

Aadil Nazir Khan

S/o: Nazir Ahmad Khan

R/o: Tangmarg, Baramulla, J&K

A/P: Abhi Guzar, Lal Chowk, Srinagar

...Complainant

...Through Mr. Hasnain Khawja, Ld. Advocate &

Mr. Naveed Bukhtiyar, Ld. Advocate

V/S

1. Directors,

Shivan & Narresh

R/o: D-63, Udyog Vihar, Phase-V, Gurugram,
Haryana, 122016

2. Editor-in-Chief

ELLE India

616, Tulsi Pipe Road,
1102/A, Naman Midtown, Parel,
Maharashtra, 400012.

3. Unknown

(All Models who Participated in the Show)

...Accused

...Through:

A-1 through DMD Advocates,
Mr. Vikas Malik, Ms. Areeba Ahad
and Mr. Mushtaq Ahmad, Ld.
Advocates;

A-2 through Mr. Ravinder Singh,
Mr. Dijvijay Singh, Ms. Khushboo
Kohli, Mr. Ashiq Hussain Shah,
Sameer-ul-Hameed, Ld.
Advocates.

In the Matter of: Complaint under 210 of BNS Seeking Action Under Section 296, 299 of the Bharatiya Nyaya Sanhita (BNS), and 50 A of the Jammu and Kashmir Excise Act, 1958, Against the Organizers of a Fashion Show for Obscenity, Hurting Religious Sentiments During the Month of Ramadan and Publicly Consumption of Alcohol.

Coram: FAIZAN I NAZAR Judicial Magistrate 1st Class
JO Code: JK 0229

ORDER

1. Instant Complaint has been filed by the complainant against the known and unknown accused stating that on 9th of March 2025 he was scrolling through X and was deeply hurt when he came to know about the unfortunate incident which has taken place in Gulmarg. He states that fashion show was organized by the respondents during which inappropriate and the obscene content was displayed. It has been further stated that the event occurred during the sacred month of Ramadan which is a period of fasting, prayer and religious observance for Muslims. It has been alleged that in such fashion show several elements of the event including the attire, choreography, behaviour of the participants were found to be obscene and offensive. It has been stated that the contents were explicitly sexualized and disrespectful to the religious and cultural sensibilities of the Muslim community and more particularly to the Kashmiri culture. Furthermore it has been stated that timing of the event during the month of the Ramadan was

particularly inappropriate and seem to be intended to insult the religious sentiments of the Muslims. Furthermore it has been stated that not only the fashion show displayed obscene content but also allowed for the public consumption of alcohol during the event which is violation of public decency and moral conduct, especially in the settings where such acts can negatively influence the audience.

- 2.** Against the aforesaid background the complainant states that the actions of the accused are punishable under Sections 299, 296 of BNS, 2023 and Section 50-A of the Jammu and Kashmir Excise Act 1958 which criminalise deliberate and malicious acts intending to outrage the religious feelings of any class of people by insulting their religion or religious beliefs, obscenity and public consumption of alcohol respectively.
- 3.** Upon the presentation of the complaint court issued pre-cognizance notice on known accused as a mandatory pre-condition for proceeding to take cognizance of offences in terms of proviso to sub-section 1 of section 223 BNSS. Pursuant to such notice Known accused caused their appearance through counsels and have filed detailed responses at pre-cognizance stage.
- 4.** The responses of the known accused *inter alia* state that no offences on the facts stated in the complaint are made out, hence, court cannot proceed to take cognizance of any offence. Copies of drone permission from Additional Deputy

Commissioner Baramullah dated 28.02.2025 and 04 hour permit for severing liquor in connection with get together in favour Nedous Hotel Gulmarg issued by Deputy Excise Commissioner (Executive) Kashmir Division have been placed on record for demonstrating that no offences as alleged has been committed. Reliance has been placed upon the Judgment of Hon'ble Supreme Court in **Mahendra Singh Dhoni v. Yerraguntla Shyamsundar, [2017] 3 S.C.R. 763** wherein the following cautious has been sounded:

14. Before parting with the case, we would like to sound a word of caution that the Magistrates who have been conferred with the power of taking cognizance and issuing summons are required to carefully scrutinize whether the allegations made in the complaint proceeding meet the basic ingredients of the offence; whether the concept of territorial jurisdiction is satisfied; and further whether the accused is really required to be summoned. This has to be treated as the primary judicial responsibility of the court issuing process.

5. So far as the law is concerned Section 210 BNSS empowers Magistrate to take cognizance upon receiving a complaint of **facts which constitutes such offence**. Steps for taking such cognizance of **offence** has been specified under section 223 BNSS but it is mandated under new procedural law (BNSS) that before any such step in progress of cognizance is taken accused must be afforded

opportunity of being heard. The importance of such hearing has been recently underscored by Hon'ble High Court of Jammu and Kashmir And Ladakh in **Anil Kumar Yadav v. Directorate of Enforcement**, 2025 LiveLaw (JKL). Accused at such pre-cognizance hearing may bring, *inter alia*, to the attention of Court the following:

- a. facts stated in the complaint does not make out an offence;
- b. there is some legal bar operating on the cognizance of offence made out;
- c. facts which influence the mind of court to proceed under 225 BNSS for ascertaining where there are sufficient grounds for proceeding further instead of proceeding to issue the process straightway, and
- d. such facts which court can deem necessary to be immediately put to complainant during his examination on oath under section 223 BNSS to elicit relevant facts and ascertain truth.
{Ref: ***Rekha Sharad Ushir v. Saptashrungi Mahila Nagari Sahkari Patsansta Ltd.***, 2025 LiveLaw (SC) 355}

6. Now so far as the complaint is concerned. The **first offence** which complainant alleges is offence of obscenity. Two screenshots annexed with the complaint show one female and one male model in skimpy clothes. That is the sole fact appearing in complaint alleged to be obscene. Accused on the other hand has placed on record material which show that in fashion show several models participated and the above two models wearing

skimpy clothes actually were showcasing swim wear for which the company of first accused has expertise.

7. It is important to note that actual event to which the complaint pertains has happened in Gulmarg which is beyond the territorial Jurisdiction of this court but jurisdiction before this court has been carved out because such alleged obscene content was circulated through social media and viewed by complainant within the territorial jurisdiction of this court thus making the complaint maintainable in respect of jurisdictional point of view under section 199 BNSS.
8. Be it obscenity under BNS or under IT Act the test to determine obscenity is same. ***Contemporary Community Standard*** test has to be applied to determine whether the material published or depicted is obscene within the meaning. The test has been laid down by Hon'ble Supreme Court in **Aveek Sarkar & Anr v. State Of West Bengal And Anr**, 2014 (4) SCC 257. The following is the relevant portion of judgement:

24. We are also of the view that Hicklin test is not the correct test to be applied to determine "what is obscenity". Section 292 of the Indian Penal Code, of course, uses the expression 'lascivious and prurient interests' or its effect. Later, it has also been indicated in the said Section of the applicability of the effect and the necessity of taking the items as a whole and on that foundation where such items would tend to

deprave and corrupt persons who are likely, having regard to all the relevant circumstances, to read, see or hear the matter contained or embodied in it. We have, therefore, to apply the "community standard test" rather than "Hicklin test" to determine what is "obscenity". A bare reading of Sub-section (1) of Section 292 , makes clear that a picture or article shall be deemed to be obscene (i) if it is lascivious; (ii) it appeals to the prurient interest, and (iii) it tends to deprave and corrupt persons who are likely to read, see or hear the matter, alleged to be obscene. Once the matter is found to be obscene, the question may arise as to whether the impugned matter falls within any of the exceptions contained in Section. A picture of a nude/semi-nude woman, as such, cannot per se be called obscene unless it has the tendency to arouse feeling or revealing an overt sexual desire. The picture should be suggestive of deprave mind and designed to excite sexual passion in persons who are likely to see it, which will depend on the particular posture and the background in which the nude/semi-nude woman is depicted. Only those sex-related materials which have a tendency of "exciting lustful thoughts" can be held to be obscene, but the obscenity has to be judged from the point of view of an average person, by applying contemporary community standards.

9. In the above cited judgment Hon'ble Supreme Court also stated that in determining the contemporary community standards regard has to be given to "contemporary mores and national standards and not the standard of a group of susceptible or sensitive persons". Thus material may be repulsive or vulgar but at the same time to attract the penal offence of obscenity such material must cross the above community standard test. Hon'ble Bombay High Court in **Lalit and ors v. State of Maharashtra**, 2023:BHC-NAG:14992 DB observed as under:

Whilst holding so, we are mindful of the general norms of morality prevalent in present Indian Society and take judicial note of the fact, that in present times it is quite common and acceptable that women may wear such clothing, or may be **clad in swimming costumes** or such other revealing attire. We often witness this manner of dress in films which pass censorship or at beauty pageants held in broad public view, without causing annoyance to any audience.

10. Thus two models wearing skimpy clothes or swim wear in the broader scheme of the event does not attract the penal offence of obscenity so far as facts disclosed in the complaint pertain hence cognizance cannot be taken of such offence.
11. **Another offence** which complainant states to have been committed is offence under **Section 299 BNS**, 2023 which proscribes deliberate and

malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs. However, section 217 of BNSS, 2023 states that no court shall take cognizance inter alia of offence under section 299 BNS except with the previous sanction of the Central Government or of the State Government. (Ref : **Jishan Alam v. State Of Uttarakhand And Another**, {(2022) 06 UK CK 0109}. As the complainant has not placed on record sanction of appropriate Government thus the bar for taking cognizance of such offence operates. The complainant can renew, if law permits so, his complaint with respect to offence under section 299 BNS only after obtaining the sanction from the appropriate Government as stipulated in the section 217 BNSS, 2023. At this stage in absence of such sanction this court cannot proceed to take cognizance of such offence.

12. Third offence stated to be committed by accused is offence under Section 50-A of the Jammu and Kashmir Excise Act 1958 which proscribes drinking in public or any place of worship. However, proviso to sub section (2) of section 45 of the said Act bars the **cognizance of offence under the Excise Act on the complaint made by private individuals.** It is only the Deputy Commissioner, police and other authorities stated under the Act who have locus to maintain a complaint under the Excise Act. Four hour permit for severing liquor in connection with get together on 07.03.2025 in favour Nedous Hotel

Gulmarg issued by Deputy Excise Commissioner (Executive) Kashmir Division on 01.03.2025 has been placed on record by accused. At the most complainant can bring the facts of alleged violation of such license or otherwise into the knowledge of competent authorities under the Act so that they can proceed to enquiry into the matter and file appropriate motion before the competent Court but in view of above bar this court cannot take cognizance of such offence as private complaint under the Excise Act is not maintainable.

13. In view of above discussion this Court deems it fit not to proceed further in the complaint and is, accordingly, disposed of as such.

14. File be consigned to record after due compilation.

Announced
30.04.2025

(Muzafar)

Sd/-
(Faizan-I-Nazar)
Special Mobile Magistrate, Srinagar
Railway Magistrate, Kashmir