

ORDER-SHEET FOR MAGISTRATE'S RECORDS

Present: Sukanya Gogoi, S.D.J.M (S), Tinsukia

Ref: CR Case No.24/2026

17.07.2026

1. Complainant is represented by learned APP.
2. Accused, Bishnu Upadhyay, is present.
3. I have seen petition no. 1392/2026 filed on behalf of the accused has praying to allow him to go on a personal recognition bond without sureties on the grounds shown.
4. I have perused the case record and heard both sides.
5. Considering the nature of the offences and the fact that he has willingly appeared before this Court in answer to the summons issued against him, I allow the prayer of the accused person.
6. The accused, Bishnu Upadhyay is allowed to go on bail on execution of a Personal Recognition (PR) bond of ₹ 10,000 without sureties, with the condition that he shall remain present on each date without fail, till the disposal of the case.
7. Copies of the complaint petition along with the relevant documents have been provided to the accused.
8. At the very onset, I would like to reiterate section 274, B.N.S.S which lays down the procedure to be followed at the present stage where the substance of the accusation against the accused is to be explained to him. The provision reads as below:

"274. When in a summons-case the accused appears or is brought before the Magistrate, the particulars of

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the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge:

Provided that if the Magistrate considers the accusation as groundless, he shall, after recording reasons in writing, release the accused and such release shall have the effect of discharge."

9. I have perused the complaint petition filed by the Assistant Labour Commissioner cum Assessing officer, Bhaskar Mili under section 3 of the Building and Other Construction Worker's Welfare Cess Act, 1966 (hereinafter referred to as "the Act") and the related Rules, 1998 (hereinafter referred to as "the Rules").

10. Through his complaint, the complainant has alleged the following facts against the accused:

i. that, the accused is an employer as per the definition laid down under section 4 (1) (2) of the act and section 6 of the Rules and as such has a duty to pay cess amount within 30 days from the date of commencement of work.

ii. That, based on field inspection and assessment dated 08.07.2025, a notice was served to him for payment of 1% cess against his building construction situated at S.R. Lohia Road, Tinsukia vide letter no. L.E.5/BOC/Cess/Pt./5492 dated 08.07.2025.

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iii. That, the accused had neither deposited the cess nor had they informed the complainant and as such, a show cause letter vide office letter no.L.E.5/BOC/Cess/Pt./6061-6074 dated 06.08.2025 was served on the accused along with another notice with applicable penalty vide office letter no. L.E.5/BOC/Cess/Pt./251-280 dated 17.01.2026.

iv. That, in spite of the said notices, the accused had failed to deposit the cess nor had he lived for any clarification before the complainant.

11. I have perused the case record which is devoid of any supporting documents including the letters mentioned above and proof of their service upon the accused concerned.

12. I have also gone through the relevant provisions of the Act and the Rules framed thereunder and would like to quote a few relevant provisions herein.

13. The offences alleged against the accused is under section 12 of the Act and 13 of the Rules for contravention of section 3 of the Act.

14. Section 3 of the Act reads as under:

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"3. Levy and collection of cess.—(1) There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (27 of 1996), at such rate not exceeding two per cent. but not less than one per cent. of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time specify. (2) The cess levied under sub-section (1) shall be collected from every employer in such manner and at such time, including deduction at source in relation to a building or other construction work of a Government or of a public sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required, as may be prescribed. (3) The proceeds of the cess collected under sub-section (2) shall be paid by the local authority or the State Government collecting the cess to the Board after deducting the cost of collection of such cess not exceeding one per cent. of the amount collected. (4) Notwithstanding anything contained in sub-section (1) or sub-section (2), the cess leviable under this Act including payment of such cess in advance may, subject to final assessment to be made, be collected at a uniform rate or rates as may be prescribed on the basis of the quantum of the building or other construction work involved."

15. Section 12 of the Act enumerates the penalty for contravention of section 3 and lays down as below:

"12. Penalty.—(1) Whoever, being under an obligation to furnish a return under this Act, furnishes any return knowing, or having reason to believe, the same to be false shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both. (2) Whoever, being liable to pay cess under this Act, wilfully or intentionally evades or attempts to evade the payment of such cess shall be punishable with imprisonment which may extend to six months, or with fine, or with both. (3) No court shall take cognizance of an offence punishable under this section save on a

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complaint made by or under the authority of the Central Government."

16. Section 13 of the Rules lays forth the procedure to be followed to recover the unpaid overdue amount from the accused and reads as follows:

"13. Recovery of overdue amount:-For the purpose of recovery of sums due on account of unpaid cess, interest for overdue payment or, penalty under these Rules, the assessing officer shall prepare a certificate signed by him, specifying the amount due and send it to the collector of the district concerned who shall proceed to recover from the said employer the amount specified thereunder as if it were an arrear of land revenue."

17. As already noted in the preceding paragraphs that apart from the bare complaint petition alleging the non-payment of cess by the accused, the complainant has not furnished any document to substantiate his accusations that he had complied with rule no. 7 and rule no. 12 and that the accused had received the report and notices and had willfully defaulted in the payment of overdue cess.

18. Over and above, it becomes pertinent to refer to section 15 of the Rules which deals with the procedure of filing complaints under the Act and has been made mandatory by the said statute.

"15. Filing of Complaints:-(1) Assessing Officer, or any inspector under the main Act, or a Trade Union, having come to know of violation of an obligation to furnish return, furnishing of false information, intentionally or wilfully evading or attempting to evade the payment of cess may make a complaint to the Board. The Board on receiving such complaint shall

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examine the complaint and if it so decide may refer such complaint to the Central Government for taking legal action against the offender. (2) The Central Government on receiving such reference may make such inquiry as may be considered necessary and authorise an inspector of appropriate jurisdiction to file a complaint in the Court of Law."

19. The above provision makes it mandatory for the Assessing Officer becoming cognizant of violation under the Act, to first place the complaint before the Board, who in turn shall first examine the complainant and then may refer such complaint to the Central Government to take legal action against offender. Only upon receiving a reference from the Central Government which may make an independent enquiry into the violation and will have to authorize a particular officer of the Department having appropriate jurisdiction to file a complaint case in a court.

20. The language of the provision is obligatory in nature and the complainant herein has been unable to satisfy the court that their office had complied with the aforementioned rule in the manner stipulated therein. Furthermore, as already discussed and highlighted in the preceding paragraphs, the complainant has also been unable to furnish any documents reflecting his compliance with the mandatory rules enumerated above or any order of the Central Government empowering him to file the

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present complaint case against the accused on the particular facts alleged in his petition.

21. In light of the above observations, this court finds the accusations against the accused to be groundless and **the accused, Bishnu Upadhyay is therefore released from this case.**

This case is accordingly disposed of.


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Later on, the PR bond is furnished, vide PR bond no. 1826/2026 is verified and the same is **accepted.**


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