

GAHC010063682026



2026:GAU-AS:4604

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./465/2026

PINKU GOGOI
S/O LATE HONDESWAR GOGOI, R/O GILA PUKHURI ROAD, HOUSING
BOARD COLONY, PARBOTIA, P.S. TINSUKIA, DIST. TINSUKIA, ASSAM, PIN
786125,

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM.

2:DULAL HIRA
SON OF LATE MANESWAR HIRA
RESIDENT OF VILL- PUNIA
CHENGELIAPARA
P.O. AULACHOWKA
P.S. MANGALDAI
DIST. DARRANG
ASSAM

Advocate for the Petitioner : MR P PRAWAR, MR. N KOTHARI, MR Y KOTHARI

Advocate for the Respondent : PP, ASSAM,

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

31.03.2026

Heard Mr. P. Prawar, the learned counsel appearing for the petitioners. Also heard Mr. D.P. Goswami, the learned Addl. Public Prosecutor, Assam.

2. This is an application under Section 528 of the BNSS, 2023 praying for quashing the proceedings of N.I.R. Case No.38/2022 under Section 138 of the Negotiable Instrument Act, 1881 pending in the court of the learned Addl. Chief Judicial Magistrate, Darrang, Mangaldai.

3. On 11.11.2022, the petitioner issued a cheque of ₹15,82,345/- to the respondent. The cheque was dishonoured by the bank on 15.11.2022. After compliance of the formalities, the respondent filed the case under Section 138 of the N.I. Act.

4. The learned counsel for the petitioner has pointed out that the respondent issued a notice to the petitioner asking him to pay the money within 7(seven) days of receiving the notice. According to Mr. Prawar, this notice is illegal because instead of 7 days time, 15 days time should have been given.

5. Apart from this plea, the petitioner has also raised some other issues, which do not deserve an elaborate discussion in this case.

6. I have considered the submissions made by the learned counsel of both sides.

7. The guidelines for consideration of a petition under Section 482 of the CrPC has been laid down by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal*, AIR

1992 SC 604. Paragraph 102 of the judgment reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

8. Reverting to the case in hand, this Court is of the opinion that the issues raised by the petitioner can be raised before the trial court. This is not a fit case for exercising the power under Section 528 of the BNSS, 2023. Therefore, the criminal

petition is found to be devoid of merit and stands dismissed accordingly.

JUDGE

Comparing Assistant