

GAHC010135052025



2026:GAU-AS:269

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

Case No. : Crl.Pet./725/2025

SRI KRISHNA KANTA BORUAH
SON OF SRI BIPIN BORUAH, RESIDENT OF VILLAGE LAKHIMIGAON,
P.O.BONGALCHUK, P.S. NORTH LAKHIMPUR, PIN- 787031, DIST.
LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY PP, ASSAM

2:SMTI CHITRA REKHA ROY RAJKHOWA
WIFE OF SRI HEMANTA RAJKHOWA

R/O VILL- KARIGAON
P.O. DOOLAHAT
P.S.NORTH LAKHIMPUR

DIST. LAKHIMPUR
ASSAM
PIN-78702

Advocate for the Petitioner : MR. B D GOSWAMI, MR B ISLAM,MR. J C GOGOI

Advocate for the Respondent : PP, ASSAM, MR. N Z AHMED (R-2),MD. A SAHAD (R-2)

**BEFORE
HONOURABLE MR. JUSTICE SANJEEV KUMAR SHARMA**

JUDGMENT & ORDER (CAV)

Date : 08-01-2026

1. Heard Mr. B.D. Goswami, learned counsel for the petitioner as well as Mr. A. Sahad, learned counsel for the respondent no.2. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor for the State.

2. This is an application under Section 528 of BNSS, filed by the petitioner, namely, **Krishna Kanta Boruah**, praying for quashing the **charge-sheet no.24/2024 dated 27.02.2024** and **Criminal proceeding pending against the petitioner vide PRC Case No.369/2024**, pending before the Chief Judicial Magistrate, Lakhimpur, North Lakhimpur, **arising out of FIR dated 24.01.2024 registered as North Lakhimpur P.S Case No.16/2024 under Sections 447/376/511 IPC.**

3. On 24-01-2024 one Smti Chitrarekha Ray Rajkhowa lodged a FIR before the In-Charge, Nowboicha Police Out Post alleging inter-alia therein that - *"Humble submission is that the accused person is brother-in-law. My husband is in service at BSF. Today morning at about 10.30 am the accused person, with bad intention came to our house in absence of my husband and entered in my bedroom and forcefully tried to establish physical relation with me against my will and outrage my modesty by disrobing my clothes. At that time, I could save myself by shouting. It is therefore prayed to take necessary action as per law."*

4. Upon receipt of the said FIR, the In-Charge, Nowboicha Police Out Post forwarded the same to the Officer-in-Charge, North Lakhimpur Police Station, who registered a case vide North Lakhimpur P.S. case No.- 16/2024, U/S 447/376/511 IPC. And thereafter, the police arrested the petitioner on 24-01-2024. This High Court by order dated 13-02-2024 without perusal of the Case Diary released the petitioner on bail.

5. Thereafter, the I.O submitted charge sheet vide Charge Sheet No. 24/2024 on 27-02-2024 U/S 447/376/354/511 IPC.

6. Thereafter, the Learned CJM, Lakhimpur, North Lakhimpur by order dated 03-05-2024 has taken cognizance of the offence U/S 447/376/354/511 IPC. Being aggrieved, the petitioner filed the instant petition praying for quashing the criminal proceeding vide PRC Case No.-369/2024, pending before the Chief Judicial Magistrate, Lakhimpur, North Lakhimpur.

7. The learned counsel for the petitioner submits that the petitioner is a Head Constable (GD) of Indo Tibetan Border Police Force and he has no past criminal antecedents.

8. It is submitted on behalf of the petitioner that upon perusal of the FIR, no case under Section 376 IPC is made out.

9. It is submitted that in order to attract the ingredients of Section 375 IPC defining rape, penetration is essential as held by the Honourable Apex Court in ***Tarkeshwar Sahu Vs. State of Bihar (Now Jharkhand), reported in (2006) 8 SCC 560***. It is also submitted that as per the medical opinion also, no sign of sexual assault is present and

hence, the question of invoking Section 376 IPC does not arise.

10. Upon a perusal of the charge-sheet and the order of the learned Magistrate, it appears that cognizance has been taken of the offences under Sections 447/376/354/511 IPC. In other words, the cognizance has been taken of the offence of attempt to commit rape and not rape itself.

11. Further upon perusal of the material available on record, it cannot be said that there is no material whatsoever in respect of the offences of which cognizance have been taken by the learned Magistrate.

12. In view of the above, I do not see any scope for interference in exercise of the powers under Section 528, BNSS.

13. Consequently, this criminal petition stands **dismissed**.

14. Interim order, if any stands **vacated**.

JUDGE

Comparing Assistant