

GAHC010282792025



2026:GAU-AS:3011

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

Case No. : WP(C)/7381/2025

MAHAVIR AQUA
A PARTNERSHIP CONCERN HAVING ITS PRINCIPAL PLACE OF BUSINESS
AT MAHAVIR AQUA, PLOT NO 21, INDUSTRIAL GROWTH CENTRE,
CHATABARI, CHAIGAON, KAMRUP, ASSAM 781124 AND IS REPRESENTED
BY ONE OF THE PARTNERS SHRI CHETAN DHIRASARIA.

2: CHETAN DHIRASARIA

S/O SHRI ASHOK DHIRASARIA
R/O 1ST FLOOR
SIKARIA BUILDING
LAKSHMI PATH
F.A. ROAD
KUMARPARA
GUWAHATI
KAMRUP (M)
ASSAM 78100

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER BRSECRETARY, HOME AND
POLITICALDEPARTMENT, I BLOCK, JANATA BHAWAN,BRDISPUR,
GUWAHATI, KAMRUP M, ASSAMBR-781006.

2:THE DIRECTOR GENERAL OF POLICE

ASSAM
ASSAM POLICE HEADQUARTERS
ULUBARI
GUWAHATI
KAMRUP (M)
ASSAM 781007

3:THE CRIMINAL INVESTIGATION DEPTT. (CID)
CID ASSAM HEAD QUARTERS
DR. B.K. KAKATI ROAD
SOUTH SARANIA
ULUBARI
GUWAHATI
KAMRUP (M)
ASSAM 781007

4:THE DIST. MAGISTRATE

AMINGAON
KAMRUP
OFFICE OF THE DIST. COMMISSIONER
AMINGAON
KARMUP
ASSAM 781031

5:THE CIRCLE OFFICER

CHHAYGAON REVENUE CIRCLE
CHHAYGAON
ASSAM 78112

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s) : Mr. Pran Borah, Sr. Advocate
Mr. H. K. Sarma, Advocate

For the Respondent(s) : Mr. D. Nath, Sr. Govt. Advocate

Date on which judgment is reserved : NA

Date of pronouncement of judgment : 26.02.2026

Whether the pronouncement is of the
Operative part of the judgment? : NA

Whether the full judgment has been
Pronounced? : Yes

JUDGMENT AND ORDER (ORAL)

Heard Mr. Pran Borah, the learned Senior Counsel assisted by Mr. H. K. Sarma, the learned counsel appearing on behalf of the petitioners. Mr. D. Nath, the learned Senior Government Advocate appears on behalf of the respondents.

2. The present writ petition has been filed challenging the order dated 13.10.2025 issued by the District Magistrate, Kamrup whereby the petitioners' premises were sealed in connection with an ongoing investigation.

3. From a very perusal of the contents of the impugned order dated 13.10.2025, it is apparent that certain search and seizure were conducted at the premises of the petitioners at Chatabari under Boko Police Station by the Inspector of Police, CID (Investigating Agency/IO of the SIT) in presence of the Circle Officer and EM, Chhaygaon Revenue Circle in connection with CID P.S. Case No.18/2025 registered under Sections 61(2)/105(1)/106(1) of the Bharatiya Nyaya Sanhita, 2023 (wrongly written in the impugned order as Bharatiya Nagarik Suraksha Sanhita, 2023) read with Section 103 of the Bharatiya Nagarik Suraksha Sanhita (for short, 'BNSS').

4. It is apparent from a perusal of the impugned order that on the ground of seriousness of the case, the District Magistrate

temporarily sealed the premises of the petitioners. The short question which arises in the instant proceedings is as to whether the District Magistrate, Kamrup, had the authority and jurisdiction to seal the premises of the petitioners.

5. Mr. Pran Borah, the learned Senior Counsel who appears on behalf of the petitioners submitted that the District Magistrate, Kamrup had no jurisdiction or authority to pass the impugned order dated 13.10.2025. He submitted that the role of the District Magistrate would only come after there is an attachment and upon conclusion of the forfeiture of the proceedings that too by a competent Court of law. He submitted that the provision of BNSS would also show that the power reserved upon the District Magistrate is only to distribute amongst the persons who have suffered on account of the crime. In that regard, he has referred to Sub-sections (6) and (7) of Section 107 of the BNSS.

6. During the course of the hearing, this Court enquired with the learned Senior Government Advocate appearing on behalf of the respondents under what provision the said power was exercised by the District Magistrate taking into account that the power to seal is not available to the District Magistrate under the BNSS. The learned Senior Government Advocate submitted that the power can be traced to Section 107 of the BNSS. He further submitted that in the meantime, the State had also filed

application before the competent Court seeking an order of attachment in terms with Section 107 of the BNSS and the said matter is presently pending. He further submitted that in the circumstances if the impugned order is set aside, the properties which are proceeds of crime arising out of CID P.S. Case No.18/2025 would be difficult to be retrieved for initiating further proceedings in terms with Section 107 of the BNSS.

7. This Court has duly heard the learned counsels appearing on behalf of the parties and has also perused the materials on record including the respective pleadings before this Court. A perusal of the impugned order shows that the District Magistrate, Kamrup, i.e. the respondent No.4 had sealed the premises of the petitioners on the ground of an ongoing investigation of CID P.S. Case No.18/2025. The power to seal, attach, seize and forfeit are powers which have to be conferred by statute. In the instant case, it would be seen that there is a power to attach, forfeit and restore under Section 107 of the BNSS. This Court finds it very pertinent to reproduce Section 107 of the BNSS.

“107. Attachment, forfeiture or restoration of property.

(1) Where a police officer making an investigation has reason to believe that any property is derived or obtained, directly or indirectly, as a result of a criminal activity or from the commission of any offence, he may, with the approval of the Superintendent of

Police or Commissioner of Police, make an application to the Court or the Magistrate exercising jurisdiction to take cognizance of the offence or commit for trial or try the case, for the attachment of such property.

(2) If the Court or the Magistrate has reasons to believe, whether before or after taking evidence, that all or any of such properties are proceeds of crime, the Court or the Magistrate may issue a notice upon such person calling upon him to show cause within a period of fourteen days as to why an order of attachment shall not be made.

(3) Where the notice issued to any person under sub-section (2) specifies any property as being held by any other person on behalf of such person, a copy of the notice shall also be served upon such other person.

(4) The Court or the Magistrate may, after considering the explanation, if any, to the show-cause notice issued under sub-section (2) and the material fact available before such Court or Magistrate and after giving a reasonable opportunity of being heard to such person or persons, may pass an order of attachment, in respect of those properties which are found to be the proceeds of crime:

Provided that if such person does not appear before the Court or the Magistrate or represent his case before the Court or J Magistrate within a period of fourteen days specified in the show-cause notice, the Court or the Magistrate may proceed to pass the ex-parte order.

(5) Notwithstanding anything contained in sub-section (2), if the

Court or the Magistrate is of the opinion that issuance of notice under the said sub-section would defeat the object of attachment or seizure, the Court or Magistrate may by an interim order passed ex-parte direct attachment or seizure of such property, and such order shall remain in force till an order under sub-section (6) is passed.

(6) If the Court or the Magistrate finds the attached or seized properties to be the proceeds of crime, the Court or the Magistrate shall by order direct the District Magistrate to rateably distribute such proceeds of crime to the persons who are affected by such crime.

(7) On receipt of an order passed under sub-section (6), the District Magistrate shall, within a period of sixty days distribute the proceeds of crime either by himself or authorise any officer subordinate to him to effect such distribution.

(8) If there are no claimants to receive such proceeds or no claimant is ascertainable or there is any surplus after satisfying the claimants, such proceeds of crime shall stand forfeited to the Government. ”

8. A reading of the above Section would show that in terms with Clause (1) of Section 107 of the BNSS for the purpose of initiating a proceedings for attachment or forfeiture, the Police Officer making an investigation should have **reasons to believe** that any property is derived or obtained directly or indirectly as a result of a criminal activity or from the commission of an offence.

In other words, such satisfaction cannot be based upon vague assumptions, but on the basis of materials available with the Police Officer conducting the investigation. The concerned Police Officer conducting the investigation further on his/her own will cannot file an application before the Court or the Magistrate exercising jurisdiction to take cognizance of the offense or commit for trial or try the case on its own, but has to take the permission from the Superintendent of Police or the Commissioner of the Police as the case may be. These requirements are statutory safeguards provided by the Legislature, and as such, failure to comply with the safeguards renders such action bad in law.

9. It is further seen from a perusal of Section 107(2) of the BNSS that the power to attach is not merely dependent upon the Police Officer's having reasons to believe, but it is also dependent upon the Court or the Magistrate having **reasons to believe** before or after taking evidence that all or any of the properties for which the application is filed seeking attachment are proceeds of the crime. In other words, the Court or the Magistrate should have subjective satisfaction on the basis of the materials placed that there are reasons to believe that notice is required to be issued.

Sub-section (2) of Section 107 of the BNSS therefore makes it

clear that the Court or the Magistrate having reasons to believe may issue a notice upon such person(s) calling upon him/her/them to show cause within a period of 14 days as to why an order of attachment shall not be made. This provision is a further safeguard provided by the Legislature to the person whose property is sought to be attached as proceeds of crime. The words "if the Court or the Magistrate has reasons to believe" further makes it clear that issuance of notice is not merely on an asking by the Police officer. At the cost of repetition, it is observed that issuance of notice is based upon a substantive satisfaction of the Court or Magistrate arrived upon the materials placed that all or any of the properties are proceeds of crime.

10. Sub-section (3) and Sub-section (4) of Section 107 of the BNSS would show that the person who had been issued a notice under Sub-section (2) of Section 107 of the BNSS has a right to provide an explanation as well as place the material facts available before the Court or the Magistrate and the Court or the Magistrate has to give a further reasonable opportunity of being heard to such person or persons and thereafter can pass an order of attachment in respect to the properties which were found to be proceeds of the crime. The adjudication for passing an order of attachment is a serious step in the Adjudication on the aspect as to whether the property is/are proceeds of crime in

as much as the next step pursuant to such adjudication is distribution of such proceeds of crime.

11. It is also pertinent to observe that the proviso to Sub-section (4) of Section 107 of the BNSS further mandates that the Court or the Magistrate has a power to proceed ex-parte, should the person to whom the notice has been issued does not appear before the Court or the Magistrate within the period of 14 days specified in the show cause notice.

12. This Court also finds it very pertinent to take note of Sub-section (5) of Section 107 of the BNSS in as much a power is conferred upon the Court or Magistrate to pass an ex-parte order without notice under Sub-section (2) of Section 107 of the BNSS. This power can be exercised by the Court or the Magistrate when the Court or the Magistrate is of the opinion that issuance of notice under Sub-section (2) of Section 107 of the BNSS would defeat the very object of attachment or seizure. It is pertinent to observe that power cannot be exercised by any other authority under Section 107 of the BNSS except the Court or Magistrate as mentioned in Sub-section (1) of Section 107 of the BNSS.

13. Therefore, from the above, it is apparently clear that the impugned order dated 13.10.2025 is an order passed by an Authority having no competence or jurisdiction.

14. This Court also finds it very pertinent to take note of Sub-section (6) and Sub-section (7) of Section 107 of the BNSS in as much the role of the District Magistrate comes once there is an opinion rendered by the Court or the Magistrate that the property which has been attached or seized are proceeds of the crime and not prior thereto.

15. In view of the above, it is therefore clear that the impugned order dated 13.10.2025 cannot be sustained in law as the same has been passed by an Authority having no competence.

16. This Court also finds it very pertinent to take note of the submission made by Mr. D. Nath the learned Senior Government Advocate appearing on behalf of the respondents who submitted that before the Trial Court, an application has already been filed for attachment and/or seizure of the properties which were the subject matter of the impugned order dated 13.10.2025

17. Considering the above, the instant writ petition stands disposed of with the following observations and directions:-

(i) The impugned order dated 13.10.2025 passed by the District Magistrate, Kamrup impugned in the instant proceedings is set aside and quashed.

(ii) The Respondent Authorities, more particularly, the respondent No.4 is directed to forthwith de-seal the

properties which were the subject matter of the impugned order upon receipt of the certified copy of this order and not later than 3 days.

(iii) The setting aside of the impugned order dated 13.10.2025 shall not affect the proceedings pending before the learned Trial Court wherein proceedings under Section 107 of the BNSS is pending for attachment and/or seizure of the properties.

JUDGE

Pradip Kumar Kalita  Digitally signed by Pradip Kumar Kalita
Date: 2026.02.27 19:00:19 +05'30'

Comparing Assistant