

GAHC040003732025

2026:GAU-AP:677



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

Case No. : Crl.Petn./46/2025

Riddam Kato Son of Shri Duken Kato, resident of Sipu Colony, Aalo, West Siang District, Arunachal Pradesh.

VERSUS

The State of AP and 7 Ors
represented by the PP of AP

2:Karsen Lollen
Age: 0 Occupation :
Son of Shri Mokar Lollen
Dego Village PO and PS Aalo
West Siang District
Arunachal Pradesh.

3:Doli Kami
Age: 0 Occupation :
Son of Shri Pagdo Kami
Panya Village PO and PS Aalo
West Siang District
Arunachal Pradesh.

4:Mige Ngomdir
Age: 0 Occupation :
Son of Shri Lime Ngomdir
Beye Village
PO and PS Aalo
West Siang District
Arunachal Pradesh.

5:Kenli Lollen
Age: 0 Occupation :
Son of Late Geken Lollen
resident of Bile Village
PO and PS Aalo

West Siang District
Arunachal Pradesh.

6:Jomgum Ete
Age: 0 Occupation :
Son of Shri Tumlar Ete
Kuge Pomte Village
PO and PS Aalo
West Siang District
Arunachal Pradesh.

7:Dugnya Ado
Age: 0 Occupation :
Son of Shri Binduk Ado
Kombi Jirdin Village
PO and PS Aalo
West Siang District
Arunachal Pradesh.

8:Mimar Doji
Age: 0 Occupation :
Son of Shri Kemni Doje
Doji Jelly Village
PO and PS Aalo
West Siang District
Arunachal Pradesh

Advocate for the Petitioner : , Nyado Karga,Gumto Kato

Advocate for the Respondent : P P of AP, Jobang Modi,N Doji,Keten Tabang,Tagum Jamoh

::BEFORE::

HON'BLE MR. JUSTICE BUDI HABUNG

Advocate for the Petitioner	:	Mr. D. Mazumder, Sr. Adv.
		Mr. G. Kato, Adv.
Advocate for the respondents	:	Mr. D. Loyi, learned P.P
		Mr. T. Jamoh, Adv for R.Nos. 2-8.
Date on which judgment was reserved	:	30.06.2026
Date of pronouncement of judgment	:	24.07.2026
Whether the pronouncement is of the	:	NA
operative part of the judgment?		
Whether the full judgment has been	:	Yes
pronounced?		

JUDGMENT AND ORDER(CAV)

Heard Mr. Dilip Mazumdar, learned senior counsel, assisted by Mr. G. Kato, learned counsel for the petitioner. Also heard Mr. Duksor Loyi, learned Public Prosecutor, Arunachal Pradesh, appearing on behalf of respondent No. 1; and Mr. Tagum Jamoh, learned counsel appearing on behalf of respondent Nos. 2 to 8.

2. This petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been preferred seeking quashing of Charge-sheet No.71/2023 dated 23.12.2023 submitted in Aalo P.S. Case No. 49/2023 for offences under Section 447 of the Indian Penal Code read with Section 3 of the Prevention of Damage to Public Property Act, 1984 (PDPP Act), and the consequential criminal proceeding pending before the learned Chief Judicial Magistrate, Aalo.

3. The prosecution case, in brief, is that the petitioner and his father Duken Kato illegally encroached upon Government land adjoining the Government Higher Secondary School, Aalo, and thereby allegedly damaged the school boundary wall. The alleged encroachment of land measures approximately 50 cm on one end and 80 cm on the other end. It is further alleged that, while constructing a retaining-cum-boundary wall, the petitioner also caused damage to the septic Tank of Quarter No.G-17 and G-18. Accordingly, an FIR was registered and investigation was undertaken. Upon completion of investigation, the Investigating Officer submitted charge-sheet No.17/2023 against both the accused persons for the offences punishable under section 447 IPC R/w section 3 of PDPP Act.

4. The case of the petitioner is that the land in question was originally allotted to his grandmother vide Government allotment order No. LM/WS-394/21 dated 03.11.2022. Now the said land is under his possession where he has undertaken construction of an RCC building. The petitioner contended that the occupant of Quarter No.18 to enlarge her compound filled up the gap between boundary wall and Quarter No.18 with sand and gravel, which ultimately resulted in collapse of the boundary walls due to excessive pressure. Consequently, the Deputy Commissioner issued a notice dated 09.09.2022 directing the restoration of the retaining wall. Learned counsel for petitioner submits that the petitioner had reconstructed the retaining-cum-boundary wall in compliance with the said notice issued by the Deputy Commissioner with a

view to protect the Government Quarter No. G-18. It is submitted that any alleged encroachment occurred was done inadvertently during such reconstruction and it was without any criminal intention. Learned counsel for the petitioner further submits that subsequently the petitioner voluntarily offered to surrender the alleged encroached portion of land measuring approximately 50 cm on one end and 80 cm on the other end. In the fact and circumstances of the case, it is submitted that continuation of the criminal proceeding would amounts to an abuse of the process of law.

5. Learned counsel for the petitioner further submits that this Court, by judgment dated 31.01.2025 passed in Criminal Petition No.12(AP)/2024 (**Shri Duken Kato v. The state of Arunachal Pradesh & Ors**) has already quashed the proceeding against the petitioner's father Shri Duken Kato (Co-accused) arising out of the very same charge-sheet in the Aalo P.S case No.49/2023, and, therefore, the petitioner is also entitled to similar relief.

6. Per contra, the learned Public Prosecutor as well as the learned counsel appearing for the private respondents No.2 to 8 oppose the petition. They submit that the investigation has disclosed sufficient materials constituting a prima facie case against the petitioner for commission of the alleged offence. It is contended that the petitioner himself admitted that he had undertaken the construction of retaining wall and boundary wall. It is further pointed out that, by applications dated 31.08.2023 and 11.09.2023, the petitioner himself has sought permission to surrender the encroached portion of land measuring 50 CM at one end and 80 CM at the other end of the wall constructed by Paktu Ao Youth Welfare Association (PAYWA) at Sipu. According to the learned counsel for the respondents, these raises disputed questions of fact which can only be adjudicated during trial.

7. I have considered the rival submissions and perused the materials available on record.

8. The jurisdiction of this Court under Section 528 BNSS is extraordinary in nature and is required to be exercised sparingly. While considering a petition seeking quashing of a charge sheet or the criminal proceeding, the Court is not expected to appreciate the evidence or adjudicate disputed questions of fact at that stage. If the allegations contained in the FIR, the charge-sheet and the accompanying materials disclose the commission of a cognizable offence,

the criminal proceeding ordinarily should not be interfered with, particularly in a contested matter such as the present one.

9. The investigation and the police papers disclose that the petitioner himself repeatedly represented before the authorities that he was carrying out the construction over the allotted land and had admittedly constructed the retaining wall and the boundary wall. The verification report dated 30.08.2023 and the corrigendum dated 04.09.2023 issued by the District Land Revenue and Settlement Officer, Aalo, reveal on record that the area under the possession of the petitioner had encroached upon the school boundary by about 50 cm on one end and 80 cm on the other end. Further, the statements of witnesses, recorded under Section 161 CrPC including those of the informants and the occupants of the Government Quarters, also alleges that the reconstruction of another wall by dismantling the previous one resulted in damage to septic tank and also caused crack to the Government quarter. Furthermore, the Memorandum of Observation prepared by the Investigating Officer at the place of occurrence further records that the petitioner had constructed the retaining wall due to which the septic tank of Government quarter No. G-18 has been damaged though subsequently it was repaired by the petitioner. Besides these materials, the petitioner's own repeated representations submitted to the Deputy Commissioner, Aalo offering to surrender the alleged encroached portion of land also form part of the documents for prosecution case.

10. Whether alleged encroachment and the damage of the Government property were intentional or accidental; whether such damages occurred while reconstructing the retaining wall in compliance with the notice issued by the Deputy Commission; whether the petitioner acted in good faith; and whether ingredients of Section 3 of the PDPP Act is ultimately attracted are all matters involved with disputed questions of fact. They required appreciation of oral and documentary evidence during trial. Such issues involved with disputed questions of fact cannot ordinarily be adjudicated by this Court in exercise of its inherent jurisdiction under Section 528 BNSS.

11. In the facts and circumstances of the case, the reliance placed by the petitioner upon the judgment dated 31.01.2025 passed in Criminal Petition No. 12(AP)/2024, whereby, his father

has been discharged, is misconceived. The proceedings against the petitioner's father Duken Kato were quashed because this Court on his own admission found that the father was not in possession of the property and that the present petitioner himself repeatedly represented before the authorities that he was in possession of the property, and the construction was undertaken by him. The petitioner further clarified that all future correspondence in relation thereto should be addressed to him. Therefore, the reasons which persuaded this Court to quash the proceedings against the father are personal to him and cannot automatically guarantee the benefit to the present petitioner. The claim was categorical that it was the present petitioner who is carrying out the construction of residential building near Qtr No. G-18 and not his father Shri Duken Kato. The said judgment, therefore, proceeded on facts personal to the father Duken Kato. As such the said judgment does not exonerate the present petitioner as the entire complaint and the prosecution materials for commission of the alleged offence are all against the present petitioner. Moreover, the trial Court record reveals that cognizance has already been taken by the competent Court and process has been issued. At this stage, this Court refrain from expressing any final opinion on whether the dispute is purely civil in nature or otherwise, as such questions are best left to be determined during trial.

12. Likewise, the petitioner's subsequent offer to surrender the alleged encroached portion or his claims that he had already reconstructed the retaining wall to protect the Government quarter may constitute matters of defence for the petitioner. However, such circumstances do not, by themselves, render the prosecution groundless so as to justify quashing of the criminal proceeding at the threshold.

13. Upon consideration of the FIR, the charge-sheet and the materials collected during investigation, this Court is of the considered opinion that a prima facie case is disclosed against the petitioner. It cannot, therefore, be said that the prosecution case is legally untenable as to warrant interference with the trial of the case in exercise of inherent jurisdiction under Section 528 BNSS.

14. Accordingly, the Criminal Petition is dismissed.

15. Consequently, the interim order dated 12.03.2025 passed by this Court, whereby further

proceedings pursuant to Charge-sheet No.71/2023 were stayed, stands vacated.

16. The learned Chief Judicial Magistrate, Aalo, shall proceed with the case in accordance with law and dispose of the same expeditiously.

17. It is made clear that the observations made herein are confined only to the adjudication of the present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023. The learned Trial Court shall decide the case independently on the basis of the evidence adduced before it, being uninfluenced by any observation made in this judgment.

18. Let the Trial Court records be transmitted forthwith.

19. With the above, the petition shall stand disposed of.

JUDGE

Comparing Assistant