GAHC040009672025 2026:GAU-AP:1143

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

Case No. : Crl.Petn./125/2025

Miss Asha Miji
Daughter of Shri Kalung Miji, resident of Lada Village, PO Lada, PS Seppa, East Kameng District, Arunachal Pradesh.

VERSUS

The State of AP and 2 Ors
represented by the PP of AP

2:Smti Amak Singhi
Age: 0
Occupation :
Wife of Shri Jaida Singhi
resident of Type-III Colony
Seppa
PO and PS Seppa
East Kameng District
Arunachal Pradesh.

3:Jaida Singhi
Age: 0
Occupation :
Son of Dali Singhi
resident of Attarang Village
Seppa
PO and PS Seppa
East Kameng District
Arunachal Pradesh

Advocate for the Petitioner : Khoda Tama, Radhe Sumpa,Tasso Dodung,R Barman,Khoda Yubey,Jambey Tsering,Sumit Chhetri,T Lampung

Advocate for the Respondent : P P of AP, Legal Aid Counsel,Jaya Doji

BEFORE

HON'BLE MRS. MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocate for the Petitioner : Mr. Khoda Tama

Advocate for the Respondent No.1 : Mr. D. Loyi, P.P (AP)

Advocate for the Respondent No.2 : Ms. Jaya Doji
Legal Aid Counsel

Date on which judgment is reserved : 09.11.2026

Date of pronouncement of judgment :12.11.2026

Whether the pronouncement is of the Operative part of the judgment ? : No

Whether full judgment has been pronounced ? : Yes

JUDGMENT & ORDER (CAV)

Date : 12-11-2026

By filing the instant application under section 528 of the BNSS, the petitioner has prayed for quashing of the FIR dated 28.05.2025 which was registered as Seppa Women PS Case No.9/2025 under section 316(2)/85/82(1)/3(5) of the BNS lodged by the respondent No.2 in as far the petitioner is concerned. By filing an additional affidavit, the petitioner has also brought on record the charge-sheet No.16/2025 filed during the

pendency of the present case under section 85/49/318(3) and 3(5) of the BNS and has additionally prayed for quashing of the said charge-sheet and also the consequential order dated 15.01.2026 by which cognizance was taken in the corresponding GR case No.34/2025 and all consequential proceedings in thepending case before the learned CJM Seppa, East Kameng District, Arunachal Pradesh in respect of the petitioner only.

2. Heard learned counsel for the petitioner Mr. Khoda Tama. Also heard the learned P.P. Mr. D. Loyi for the State respondents and Ms. Jaya Doji, Legal Aid Counsel for the respondent No.2. In respect of respondent No.3 the steps for service of noticewas taken through the Chief Judicial Magistrate Seppa, East Kameng district and by a letter dated 4th July 2025, the Sheristadar of the CJM's Court has confirmed that the notice has been duly served on the respondent No.3 at his official quarter at Type-IV colony Seppa. However, none appears for the respondent No.3.

3. The case of the petitioner as projected in the application is that an FIR dated 28.05.2025 was lodged by the respondent No.2 alleging that petitioner and the respondent No.3 are in an illicit extra marital relationship and are attempting to solemnise their marriage. It was also alleged in the FIR that the respondent No.3 and the petitioner have also violated certain terms and conditions of an agreement entered between them on 14.10.2024. The said FIR was registered as Seppa Women PS Case No.9/2025 under section 316(2)/85/82(1)/3(5) of the BNS. It is stated that even if the allegation made in the FIR dated 28.05.2025 is taken as the gospel truth, there is no offence attracted against the petitioner.

4. It is the petitioner's case that she and the respondent No.3 were initially friends and over time a mutual emotional bond developed between them which turned into a relationship. As a result of this relationship the petitioner became pregnant and upon learning of such fact, the respondent No.2 and her family members compelled the petitioner and her family members to sign an agreement dated 14.10.2024 and exerted pressure on the petitioner to terminate the unborn child. The petitioner put her signature under duress in the said settlement agreement. In the said settlement agreement dated 14.10.2024 it is mentioned that an amount of Rs.25,00,000/- was also paid to the petitioner as maintenance/compensation. Further, it was also stated in the settlement agreement dated 14.10.2024 that the petitioner and the respondent No.3 would not contact each other in future and if they try to contact or correspond with each other the petitioner shall be liable to pay a sum of Rs.10 crore to the respondent No.2.

5. It is further stated that the supporters of the respondent No.2 and her family members have resorted to violence and unlawful acts by physically breaking into the residential house of the petitioner's parents located at Type-III colony near Town Church Seppa and damage the house. It is also stated that a serious incident had occurred on 15.05.2025 at the family residence near Town Church Seppa, wherein a group of unknown individuals reportedly acting on the direction of the respondent No.2 forcibly trespassed into the residence and vandalised properties, looted valuables, damaged CCTV cameras and unlawfully took possession of the premises and the tenants were also threaten to vacate the house within a week. Due to such threats the petitioner and her

family could not lodge an FIR against them at Seppa and instead had to file a Zero FIR at Naharlagun Police Station through the mother of the petitioner, Piya Miji on 27.05.2025.

6. During the pendency of the instant petition, the investigating officer has filed the charge-sheet No.16/2025 dated 14.08.2025 and subsequently cognizance has been taken by the impugned order dated 15.01.2026 by the learned CJM, Seppa, East Kameng district. The matter is now at the stage of consideration of charge. In the charge-sheet so filed, the petitioner has been arrayed as an accused along with the respondent No.3 and has been charged with offences under section 85/49/318(3) and section 3(5) of the BNS. Being aggrieved, the petitioner has come before this Court by filing the instant petition under section 528of the BNSS.

7. The learned counsel for the petitioner submits that a bare reading of the FIR does not even remotely disclose the commission of any alleged offence under section 85/49/318(3) and section 3(5) of the BNS and there is no incriminating materials and ingredients of the alleged offences in the charge-sheet. The prosecution case arises out of an alleged extra marital relationship between the petitioner and the respondent No.3 who is the husband of the respondent No.2 and also alleged non compliance with the settlement agreement dated 14.10.2024 and 30.11.2024.Even if those allegations are presumed to be true, the alleged breach of a private settlement does not by itself constitute any of the offences charged. The prosecution must establish the separate statutory ingredients of each offence and cannot substitute moral disapproval or breach of a private settlement for those ingredients.

8. It is submitted that section 85 of the BNS applies to a person who is the husband or relative of the husband of a woman who subjects her to cruelty. The petitioner is neither the husband of respondent No.2 nor a relative of her husband. Hence, the essential requirement of section 85 BNS is not satisfied in this case. Section 49 of the BNS concerns punishment for abetment and it is not a substitute for identifying the act allegedly abetted. The prosecution must disclose the principal offence and establish the requisite connection between the alleged abetment and the offence. The mere fact of a relationship or alleged breach of settlement terms is insufficient to establish the offence of abetment. Section 3(5) BNS concerns joint liability where a criminal act is done by several persons in furtherance of their common intention. It is not an independent substantive offence. The prosecution must identify the underlying criminal act and material indicating the common intention and participation required by the section. The mere existence of a relationship between two adults or their joint presence at a particular place does not establish common intention to commit an offence.

9. It is the submission of the learned counsel that the alleged extra marital relationship between the petitioner and the respondent No.3 is not by itself a criminal offence and further an alleged breach of a private agreement cannot independently create criminal liability. Further, the materials produced by the prosecution does not reveal any specific deception, fraudulent or dishonest inducement or legally protected transaction as required by section 318(3) BNS. Section 49 BNS is not an independent substantive offence and the materials on record do not identify a specific offence intentionally instigated or aided by the

petitioner, or the necessary correction between the alleged abetment and the principal act. Section 3(5) BNS cannot operate independently of a criminal act and the requisite common intention and a mere existence of a relationship or association is not enough to establish common intention.

10. Learned counsel for the petitioner therefore prays that the impugned FIR dated 28.05.2025, the impugned charge-sheet No.16/2025, the order taking cognizance dated 15.01.2026 and the consequential criminal proceeding in GR No.34/2025 may be quashed and set aside.

11. The learned counsel for the petitioner has relied on the following cases in support of his submission:-

(i) ***State of Haryana vs Bhajan Lal*** *reported in* ***1992 Supp(1)SCC 335***

(ii) ***Neeharika Infrastructure(P) Ltd vs State of Maharashtra*** *reported in* ***(2021) 19 SCC 401***

12. The learned P.P. Mr. D. Loyi in his usual fairness has submitted that in the present case none of the sections of the BNS charged against the petitioner are attracted. He submits that if at all there is any breach of the terms of settlement dated 14.10.2024, it would be a case of civil liability.

13. The learned Legal Aid counsel Ms. Jaya Doji appearing for the respondent No.2 by relying on the affidavit filed on behalf of respondent No.2 submits that the present petition is misconceived and devoid of merit. It is stated that the allegations in the FIR and the charge-sheet disclose clear cognizable offences warranting trial.

14. The learned counsel submits that the respondent No.2 has lodged the FIR against the petitioner for violation of the terms and conditions of

the agreement dated 14.10.2024 and 30.11.2024. It is stated that the petitioner has made contradictory statement in paragraph 4 and 5 of the petition by stating on one hand that she had never contacted the respondent No.3 after the agreement dated 14.10.2024 but on the other hand she states that in the month of May 2025 she boarded the vehicle of respondent No.3 to return to Seppa. It was specificcaly agreed in the agreement dated 14.10.2024 that in the event the petitioner continues or renews any relationship with respondent No.3, she shall be liable to pay a penalty of Rs.10crore to the respondent No.2. The petitioner fully understood the terms and voluntarily accepted the terms of the said agreement.

15. However after the signing of the agreement dated 14.10.2024 the petitioner again eloped with the respondent No.3 on 05.05.2025 and had also undergone IVF procedure in Guwahati as husband and wife and the petitioner had terminated the pregnancy without the knowledge of the respondent No.2. Subsequent inquiry further reveal that the petitioner and the respondent No.3 had purportedly performed a second marriage under customary practices.

16. In view of the above circumstances, the respondent No.2 had lodged the impugned FIR and the allegations made in the FIR are not purely matrimonial in nature but disclose serious criminal offences and having found prima facie case against the petitioner the charge-sheet has been submitted.

17. The learned counsel for the respondent No.2 further submits that the depositions of the witnesses in support of the respondent No.2 have all deposed that the petitioner had violated the terms and conditions of the

agreement dated 14.10.2024 and 30.11.2024. It is the submission of the learned counsel that section 49 of the BNS is attracted in the instant case as the petitioner has abetted with the respondent No.3 in committing the offence under section 85 BNSamd 318(3) BNS. Section 3(5) of the BNS is also attracted as the petitioner and the respondent No.3 had committed the offence in furtherance of common intention.

18. Learned counsel submits that the law is settled that criminal proceedings should not be quashed when the FIR discloses prima facie offences and disputed question of fact are to be decided only during the trial. She has therefore submitted that the petitioner has not made out a case to warrant the interference of this Court under section 528 of the BNSS.

19. The submissions made by the learned counsel for the parties have been duly considered and the Trial Court Records have been examined.

20. The law regarding to the exercise of inherent power of this Court under section 528 BNSS is no longer res integra. The Supreme Court in the case *Bhajan Lal (Supra)* held that the High Court in exercise of its inherent powers under section 482 Cr.PC/528 BNS can quash an FIR or criminal proceeding where allowing them to continue would amount to an abuse of the process of law or where intervention is necessary to secure the ends of justice. The Supreme Court identified 7 categories of cases where the High Court may exercise its inherent jurisdiction to quash criminal proceedings:

> *(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 Act concerned (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 Act concerned, 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.

21. These 7 categories are illustrative and not exhaustive. The inherent power must be exercised sparingly, and with circumspection. Unless the allegation even if accepted in their entirety fail to disclose a commission of an offence or falls within any of the categories illustrated in the *Bhajan Lal case*, the Court would ordinarily refrain from interfering with the criminal proceeding at the threshold.

22. The facts and circumstances will differ from case to case and the Court has to apply the principles laid down in *Bhajan Lal* and the *Neeharika Infrastructure* to find out whether the particular case falls within any of the categories so as to exercise its inherent jurisdiction.

23. Upon examining the charges against the petitioner and upon going through the FIR, it appears that the instant case basically arises out of an extra marital relationship between the petitioner and the respondent No.3. In order to establish a case under section 85 BNS, the essential ingredient is that the victim must be a woman and the accused must be either the husband of the woman or a relative of her husband. The petitioner does not fall under any of these categories and on this ground alone it is seen that the ingredient of section 85 BNS is absent. Section 49 BNS is not an independent definition of abetment. It prescribes the punishment where the act abetted is committed in consequence of the abetment. The prosecution must establish that the accused abetted the commission of a particular offence and that the abetment was by

instigation, conspiracy or intentional aid. Section 49 BNS cannot be established merely by proving that the accused was acquainted with the principal offender or was present at the scene. In the instant case the charge-sheet does not indicate the principal offence and therefore section 49 cannot survive without there being an offence. And this Court had already held that the petitioner cannot be charged with section 85 BNS. Section 318(2) BNS describes punishment for the offence of cheating defined under section 318(1) BNS. The prosecution has to establish deception, fraudulent or dishonest inducement, damage or harm and *mensrea*. The materials have to show that the accused deceived another person by making a false representation or by dishonest concealment of facts. Further, the accused has to fraudulently or dishonestly induce the victim to deliver property or consent to its retention by another person, alternatively, intentionally induce that person to do or omit something which he would not otherwise have done or omitted. The induced act or omission must cause, or be likely to cause, damage or harm to that person in body, mind, reputation or property and most importantly the accused must have the requisite fraudulent or dishonest intention at the time of the deception and inducement. It is to be noted that a subsequent failure to honour an agreement, repay a loan or perform a contractual obligation, does not by itself establish cheating. The prosecution must demonstrate dishonest or fraudulent intention at the very inception when the inducement was made.This court is unable to find any ingredient of Section 318 (1) BNS in this case. Section 3(5) BNS embodies the principle of joint or constructive criminal liability. Where a criminal act is done by several persons in furtherance of their common intention, each person is

liable as if he had committed the entire act individually. The prosecution has to establish that a criminal act was committed; the act was committed by two or more persons; the accused shared a common intention to commit a particular criminal act; and the criminal act must have been done in furtherance of common intention shared by the accused persons. Common intention implies a pre-arranged plan and has to be established by evidence. Mere presence at the scene does not attract section 3(5). Most importantly section 3(5) BNS does not create a separate substantive offence. It must be read along with the substantive offence.

24. A bare perusal of the charge-sheet has revealed that the only ground on which the charge-sheet was filed against the petitioner is that during investigation the petitioner had kept in touch with the husband of the complainant in spite of signing two settlement agreements on 14.10.2024 and 30.11.2024, and knowingly ran away with a married man with two children and a living legal wife and went missing with him for almost a month.

25. On an overall consideration of the allegation in the FIR and charge-sheet and the materials collected during the investigation, this Court finds that the prosecution has failed to disclose the essential ingredients of offences against the petitioner. Even if the allegations are accepted in their entirety, they do not prima facie constitute the offences punishable under section 85, 49, 318(2) or section 3(5) of the BNS. This Court is conscious of the settled principle that at the stage of consideration of a petition under section 528 Cr.PC, the Court is not required to assess the probative value of the evidence or determine the ultimate guilt or innocence of the accused. The present case however, does not involve an

assessment of the credibility of the witnesses or appreciation of disputed evidence. The deficiency lies in the absence of the very foundational ingredients necessary to constitute the alleged offences.

26. Permitting the prosecution to continue in the absence of essential ingredients of the offences would serve no legitimate purpose and would amount to subjecting the petitioner to a criminal trial without a legally sustainable basis. The case, therefore falls within the parameters laid down in *Bhajan Lal,* warranting exercise of the inherent jurisdiction of this Court.

27. In view of the above observations and discussions, this Court is of the considered opinion that the criminal proceedings against the petitioner cannot be permitted to continue.

28. Accordingly, the petition is allowed. The criminal proceedings in GR Case No.34/2025 as well as the FIR dated 28.05.2025, the charge-sheetNo.16/2025, and the subsequent proceedings in GR case 34/2025 are hereby quashed and set aside in so far as the petitioner is concerned.

29. It is made clear that the observations made herein are confined to the consideration of the present petition only and shall not affect the proceedings, if any against the other accused persons.

30. The Registry shall send back the Trial Court Records.

JUDGE

Comparing Assistant