GAHC010043672026

2026:GAU-AS:15466

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

Case No. : Crl.Pet./292/2026

NANDINI BARUAH
S/O D/O MRINMOY BARUAH
RESIDENT OF HOUSE NO. 3, LANE NO. 8, PADMA PATH, NEAR BRINDABAN GARDEN, R.G. BARUAH ROAD, ZOO ROAD, GUWAHATI-781024, DIST. KAMRUP (METRO), ASSAM

VERSUS

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

2:SELIMUL ISLAM
S/O NURUL ISLAM
RESIDENT OF HOUSE NO. 2
SILPUTA PATH BIKARAMPUR
P.S. DISPUR, GUWAHATI
DIST. KAMRUP (METRO)

Advocate for the Petitioner : MR. B K MAHAJAN, MR. D BORA,MR. N MAHAJAN,MR. P K DAS,MR. A CHAUDHURY

Advocate for the Respondent : PP, ASSAM, K RAHMAN(R-2)

BEFORE

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

13.10.2026

Heard Mr. D. Bora, learned counsel for the petitioner. Also heard Mr. K.K. Das, learned Additional Public Prosecutor, Assam, appearing for the State respondent No.1

and Mr. K. Rahman, learned counsel for the respondent No.2.

2. In this petition under Section 528 read with Section 438/442 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, the petitioner, namely, Nandini Baruah has challenged the order dated 21.01.2026, passed by the learned Special Judicial Magistrate, First Class, Kamrup(M), Guwahati, in connection with Dispur P.S. Case No.1256/2024, under Section 11(1)(a) of the Prevention of Cruelty to Animals Act, 1960. It is to be noted here that vide impugned order dated 21.01.2026, the learned Special Judicial Magistrate, First Class, Kamrup(M), Guwahati (Trial Court herein after) has accepted the Final Report No.933/2025, dated 25.08.2025.

3. Mr. Bora, learned counsel for the petitioner submits that the petitioner herein has lodged one FIR with the Officer-in-Charge, Dispur Police Station on 20.11.2024, alleging inter alia amongst others that the owner of the House No.13 Bye-Lane No.1 of Bikrampur Path, Japorigog, has subjected his pet dog to cruelty and the said incident has been reported to the NGO headed by the informant to rescue the dog, which is kept in balcony 24X7 hours and beaten up everyday and the witness has sent a video on WhatsApp as evidence of the same. Upon the said FIR, the Officer-in-Charge, Dispur P.S. has registered a case, being Dispur P.S. Case No.1256/2024, under Section 11(1)(a) of the Prevention of Cruelty to Animals Act, 1960 and endorsed S.I. Abhijit Gogoi to investigate the same. Thereafter, the Investigating Officer has out the investigation and on completion of investigation, the I.O. has returned the case in F.R., being F.R. No.933/2025, dated 25.08.2025.

4. Thereafter, the learned Trial Court has issued noticed to the petitioner, but the said notice was not served upon the petitioner and without service of notice, the learned Trial Court, vide impugned order, dated 21.01.2026, has accepted the final report.

5. And being aggrieved, the petitioner approached this Court by filing the present petition challenging the order dated 21.01.2026, on the following grounds:-

I. The final report was accepted without following the guidelines laid down by Hon'ble Supreme Court.

II. The case was registered under the Prevention of Cruelty to Animals Act, 1960 under Section 11(1)(a) of the said Act and the accused has clearly been identified and video footage has also been captured showing the respondent No.2 assaulting and abusing the animal with PVC wiring pipe along with requisite certificate under Section 63(4)(c) of BSA, 2023 making the video footage admissible in evidence and the petitioner had also challenged the order giving zimma of the abused animal to the respondent No.2 by filing criminal revision petition, being Criminal Revision No.87/2024 and the learned Sessions Judge, Kamrup(M), Guwahati, vide judgment dated 24.04.2025, has made a pertinent observation that prima facie in the view of the learned Court the offence is of grave nature, beating of a helpless animal kept confined in a balcony all the times, if true cannot be regarded as an act lacking gravity and there is a possibility of repeated abuse along with video footage and as such, the order is liable to be set aside.

III. Perusal of the final report indicates that the Investigating Agency found the case to be true, but in a mechanical manner stated that they did not find any clue of evidence during investigation in spite of having sufficient evidence including video footage as well as statement of witnesses, and moreover, on perusal of the final report it can be seen the video footages are not reflected in the final report and the informant i.e. the petitioner herein, is shown as a witness and as such, the impugned order dated 21.01.2026, is liable to be set aside and quashed.

IV. The informant has not been served with a notice, as mandated by Hon'ble Supreme Court in the case of **Bhagwant Singh vs. Commissioner of Police**, reported in **(1985) 2 SCC 537** and that the notices were sent to

mobile Nos.9101026703 & 7002447793, which do not belongs to the petitioner.

V. The mode of service of notice has not been followed as prescribed under Chapter VI of BNSS corresponding to Chapter VI of Cr.P.C.

VI. The electronic or verbal communication of notice is not a mode of communication authorized under the law laid down by Hon'ble Supreme Court in catena of decision.

VII. The owner of the animal in question is prima facie guilty of abusing the said animal, which has not been looked into by the investigating agency.

VIII. The learned Trial Court has failed to take into account Section 29 read with Section 11(2) of the Prevention of Cruelty to Animals Act, 1960.

IX. The investigating agency has failed to look into the pain and suffering of the animal and under the above mentioned facts and circumstances, it is contended to allow this petition.

6. Mr. Bora, learned counsel for the petitioner submits that the investigating agency has failed to carry out the investigation in right manner and it has conducted the investigation perfunctorily and in spite of furnishing of relevant video of keeping the animal in the balcony 24X7 hours, the investigating agency and also the learned Trial Court failed to consider the same. He also submits that notice to the informant has not been properly served as required by a decision of Hon'ble Supreme Court in the case of **Bhagwant Singh (supra)** and that the notice has not been served as required by Chapter VI of the BNSS and under the given facts and circumstances, he submits that the impugned order dated 21.01.2026 is liable to be interfered with.

7. Per contra, Mr. Das, learned Additional P.P. submits that notice upon the petitioner was served as per report of the Officer-in-Charge, Dispur Police Station, which is available at page No.41 of the petition and that the learned Trial Court has rightly accepted the final report, after serving notice upon the petitioner, and as such,

this petition is devoid of merit and therefore, he has contended to dismiss the same.

8. Per contra, Mr. Rahman, learned counsel for the respondent No.2, submits that the learned Trial Court has rightly accepted the final report and that notice was served upon the petitioner, but in spite of receipt of notice, she failed to turn up and as such, this petition is devoid of merit and therefore, he has contended to dismiss the petition. Mr. Rahman also submitted that he has filed one interlocutory application seeking custody of the animal as the final report has been accepted by the learned Trial Court and being the owner of the animal, he is entitled to receive the same in his custody as the offences as alleged appears to be not made out against him and therefore, he has contended to release the seized animal in his custody.

9. Having heard the submission of learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record and also perused the final report dated 25.08.2025, by which the learned Trial has accepted the final report in Dispur P.S. Case No.1256/2024.

10. The legal position in respect of service of notice is well settled in case of **Bhagwant Singh (supra)**, wherein Hon'ble Supreme Court has held that when a Magistrate received a police report under Section 173(2)(i) of the Cr.P.C., now corresponding provision under the BNSS, 2023 and is proposed not to take cognizance/to drop the proceeding or not to proceed against some persons named in the FIR, the Magistrate must give notice to the informant and provide an opportunity of being heard and this is mandatory. In the said case, Hon'ble Supreme Court has rejected the argument that difficulty of delay in effecting service would justify denying the opportunity, the difficulty of service of notice on the informant cannot possibly provides and any justification for depriving the informant of opportunity of being heard and the informant is also entitled to a copy of the police report under Section 173(2). Thus, a notice cannot be treated as duly been served merely because it is issued or because the informant did not appear. There must be material on record

showing actual service. It is well settled that the Magistrate must ensure that the notice is properly served and the service report is available on the file before accepting a final/closure report. If the service is not proved, the order accepting the final report is liable to be quashed and the matter may be remanded for fresh consideration after due notice.

11. In the instant case, from the police report available at page No.41, it becomes apparent that one Pankaj Talukdar, LNK of Dispur P.S. has visited the residence of the informant and reported her over phone in mobile No.9101830488 and apprise her about the notice, who requested him to send a copy of the notice by WhatsApp and it appears that the learned Trial Court has acted upon the said report and accepted the final report.

12. It is well settled in catena of decision that service of notice by WhatsApp is not a mode prescribed under the provision of the BNSS, 2023. Reference in this context can be made to a decision of Hon'ble Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation**, reported in **2025 INSC 909**. In the said case Hon'ble Supreme Court has held that service of Notice under Section 41A Cr.P.C./Section 35 BNSS must follow the mode prescribed under Chapter VI of the Cr.P.C./BNSS. WhatsApp or other electronic modes are not recognized as a valid alternative or substitute. And in that view of the matter and as a logical corollary, it cannot be said that notice upon the petitioner was served properly. And since the final report is accepted by the learned Trial Court vide impugned order dated 21.01.2026, without service of notice, the impugned order dated 21.01.2026, fails to withstand the legal scrutiny.

13. And in that view of the matter, this Court is inclined to set aside the impugned order, dated 21.01.2026, and to remand the matter to the learned Trial Court to serve a copy of the notice along with the final report upon the petitioner and thereafter, afford an opportunity of being heard to the petitioner and only thereafter, proceed to

accept or to reject the final report.

14. The Registry shall return the record to the learned Trial Court with a copy of this order.

15. Since the respondent No.2 has also filed one interlocutory application seeking custody of the seized animal, this Court is of the view that the same can be disposed of by directing the learned Trial Court to pass appropriate order in respect of custody of the animal in the final order of accepting or rejecting the final report submitted by police.

JUDGE

Comparing Assistant