GAHC010055182026

2026:GAU-AS:17432

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

Case No. : Crl.Pet./410/2026

ANSULA BRAHMA
S/O DURGAMOHAN BRAHMA, R/O VILL. WEST DANGARKTI, P.O. DOTMA, P.S. DOTMA, DIST. KOKRAJHAR, BTR, ASSAM, PIN 783347

VERSUS

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

2:DIPUL BRAHMA
SON OF MAHESWAR BRAHMA
RESIDENT OF VILL- GANGANWGWR
TITAGURI
PT.I
P.O. TITAGURI
P.S. KOKRAJHAR
DIST. KOKRAJHAR
BTR
ASSAM
PIN- 78337

Advocate for the Petitioner : MR. T DEURI, U BHARADWAJ,MS. L WANGSA,MRS. R S DEURI

Advocate for the Respondent : PP, ASSAM, MR. N GOGOI (R-2),MR. A SARANIA (R-2),MR. M SARANIA (R-2)

BEFORE

HONOURABLE MR. JUSTICE ANJAN MONI KALITA

Advocates for the petitioner : Mr. T. Deuri

Advocate for the respondents : Mr. R.J. Baruah, APP for
Opp. Party No. 1
Mr. M. Sarania for
Opp. Party No.2

Date on which judgment is reserved : N/A.

Date of pronouncement of judgment : 25.11.2026

Whether the pronouncement is of
the operative part of the judgment : N/A.

Whether the full judgment has been
pronounced : Yes

JUDGMENT AND ORDER (ORAL)

Heard Mr. T. Deuri, the learned counsel appearing for petitioner. Also heard Mr. M. Sarania, the learned counsel for the opposite party No. 2 as well as Mr. R.J. Baruah, the learned Additional Public Prosecutor for the opposite party No. 1.

2. This instant application under Section 528 of the Bharatiya Nagarik

Suraksha Sanhita, 2023 (BNSS for short) has been filed for setting aside and quashing the impugned order dated 12.12.2025 passed by the Court of learned Sub-Divisional Judicial Magistrate (S), Kokrajhar, Assam [SDJM(S) for short], in connection with CR (N.I.) Case No. 48/2025, by which the learned SDJM (S) took cognizance and issued summons against the accused-petitioner for an offence under Section 138 of the Negotiable Instrument Act, 1881 (NI Act, 1881 for short).

3. The case of the petitioner is that the opposite party No. 2 had filed a complaint case, registered and numbered as CR (N.I.) Case No. 48/2025, stating *inter-alia* that the accused-petitioner had approached the opposite party No. 2 by stating that he was in need of some financial assistance for business purpose. Accordingly, he requested for a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs) from the opposite party No. 2. On 07.09.2024, the accused-petitioner borrowed the aforesaid sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs) only from the opposite party No. 2 with a promise to return the same within a stipulated period of time. However, since the money was not returned, the opposite party No. 2 demanded the said amount, on which the accused-petitioner issued a cheque bearing registration No. 553783 dated 22.10.2025 for an amount of Rs.25,00,000/- (Rupees Twenty Five Lakhs) only drawn on State Bank of India in favour of the opposite party No. 2. Accordingly, on 28.10.2025, the opposite party No. 2 presented the said cheque for encashment in the Sate Bank of India, Kokrajhar Branch, but the said cheque was returned unpaid by the bank with remark "Funds Insufficient".

4. Faced with the aforesaid situation, the opposite party No. 2 issued a

Demand Notice dated 30.10.2025 to the accused-petitioner demanding payment of the cheque amount within the statutory period which was duly received by the accused/petitioner on 01.11.2025. However, the accused-petitioner failed to make any payment of the aforesaid amount and accordingly, the opposite party No. 2 instituted the complaint case under Section 138 of the N.I. Act against the accused-petitioner.

5. On receipt of the complaint, the learned SDJM (S), Kokrajhar, Assam vide the order dated 12.12.2025 took cognizance of the offence and issued summons against the accused-petitioner for an offence under Section 138 of the NI Act, 1881.

6. It is the case of the accused-petitioner that the learned SDJM (S), Kokrajhar ought not to have passed the aforesaid order of taking cognizance in the instant case as no notice has been issued under Section 223 (1) of the BNSS, 2023 to the accused-applicant in the instant case before taking cognizance of the offence. Therefore, it is submitted that the aforesaid order dated 12.12.2025 is bad in law and the same should be set aside and quashed.

7. The learned counsel appearing for the accused-applicant submits that in terms of Section 223 (1) of the BNSS, 2023, when a complaint is filed before a Magistrate, the Magistrate is required to issue a notice to the accused person by providing him an opportunity of hearing before the cognizance of the offence taken under the complaint. Since the same has not been done in the instant case, the order dated 12.12.2026 is bad in law and therefore, the same should be set aside and quashed.

8. On the other hand, Mr. M. Sarania, the learned counsel appearing for the opposite party No. 2, submits that there is no infirmity in the order dated 12.12.2025 passed by the learned SDJM (S), Kokrajhar as the same has been passed per law, which has already been settled by the Hon'ble Supreme Court in many cases. He submits that the Hon'ble Supreme Court in the case of *Sanjabij Tari v. Kishore S. Borcar and another* reported in *AIR Online 2025 SC 980*, has specifically held that since the NI Act is a special enactment, there is no need for the Magistrate to issue summons to the accused before taking cognizance (under Section 223 of the BNSS) of complaints filed under Section 138 of the NI Act.

9. He submits that same view has been taken by the Hon'ble Gauhati High Court in the case of *PD Savera LLP Versus Galacon Infrastructure and Projects Pvt Ltd and 3 others* (in Crl.Rev.P/5/2026) decided on 09.01.2026.

10. Referring to the aforesaid two cases, he submits that since the NI Act is a special act, the provisions under Section 223 (1) of the BNSS, 2023, shall not be applicable in the instant case and the learned Magistrate is only required to comply with the provisions of Section 142 of the NI Act while taking cognizance of the offences. He submits that there is no further requirement before taking cognizance, except those provided in Section 142 of the NI Act. The provisions of the BNSS, 2023, are being of general nature, the provisions under Section 142 of the NI Act, which is a special Act, will prevail.

11. Mr. T. Deuri, the learned counsel for the accused-petitioner submits that in a recent case of *Parvinder Singh v. Directorate of Enforcement* reported in *2026*

CRL. L.J. 3084, the Hon'ble Supreme while dealing with the issue of notice before cognizance in a case involved in PMLA, has come to a finding that the Magistrate is prohibited from taking cognizance of the offence, unless the accused is given an opportunity of being heard. He submits that since the PMLA is also a special act, similar to the NI Act, the observation and finding of the Hon'ble Supreme Court in the case of Parvinder Singh (supra) shall be applicable in the instant case.

12. This Court has heard the submissions made by the learned counsel appearing for the respective parties. It is beyond doubt that the NI Act is a special Act and in view of Section 5 of the BNSS, read with Section 142 and Section 143 of the NI Act, it is clear that while taking cognizance in an offence under the NI Act, 1881, the specific provisions as laid down under Section 142 are required to be complied with while taking cognizance of an offence.

13. In this connection, it may be relevant to refer to the case of *P. Mohan Raj & others Vs. M/S. Shah Brothers Ispat Pvt. Ltd.* reported in *AIR 2021 SC 1308* wherein the Hon'ble Supreme Court observed that the provisions contained in Section 138 of the NI Act are hybrid provisions to enforce payment under a bounced cheque, if it is enforceable in Civil Law. It is held that on a bare reading of Section 142 of the NI Act, the procedure under the Cr.P.C. has been departed from. First and foremost, no Court is to take cognizance of an offence punishable under Section 138 of the NI Act except on a complaint made in writing by the payee or the holder in due course of the cheque – the victim. By Section 147 of the NI Act, offences under the NI Act are made compoundable without any intervention of the Court as is required by Section 320(2) of the

Cr.P.C. (Section 359 of the BNSS). It is observed that Section 138 of the NI Act proceedings can be said to be a "Civil Sheep" in a "Criminal Wolf's" clothing, as it is interest of the victim that is sought to be protected; the larger interest of the State being subsumed in the victim alone moving a Court in the cheque bouncing cases.

14. From the above observations of the Hon'ble Supreme Court, it is clear that the scheme of the NI Act is made for the purpose of protection and relief to the victim in a limited time. With this intention, the trial under the NI Act has been made as a summary trial wherein the victim can get relief within a short time. Section 143 of the NI Act provides the power to the Court to try the cases whereas Section 144 provides the mode of service of summons. It is also seen that Section 145 of the NI Act provides the provisions for filing the evidence by way of an affidavit. All these aspects make the NI Act a special Act with special provisions different from other complaint cases filed under BNSS, 2023.

15. It is also clear that the objects, reasons and the scheme of the NI Act is distinguishable from the scheme of the PMLA Act where the provisions are different and BNSS is applicable. Therefore, the scope of both the Acts are different and cannot be equated.

16. While dealing with a case of NI Act, the Hon'ble Supreme Court in the case of Sanjabij Tari (supra), as we have already discussed, has held as follows :-

> "*E. Recently, the High Court of Karnataka in Ashok v. Fayaz Aahmad, 2025 SCC OnLine Kar 490: (AIROnline 2025 KAR 448) has taken the view*

that since NI Act is a special enactment, there is no need for the Magistrate to issue summons to the accused before taking cognizance (under Section 223 of BNSS) of complaints filed under Section 138 of NI Act. This Court is in agreement with the view taken by the High Court of Karnataka. Consequently, this Court directs that there shall be no requirement to issue summons to the accused in terms of Section 223 of BNSS i.e., at the pre-cognizance stage."

17. Following the aforesaid principle, a Coordinate Bench of the Gauhati High Court in the case of PD Saver LLP (supra) has observed as follows :-

"*8. The law has been settled by the Hon'ble Supreme Court in Sanjabij Tari vs. Kishore S. Borcar and another, 2025 INSC 1158 wherein it has been held that since N.I. Act is a special enactment, there is no need for the Magistrate to issue summons to the accused before taking cognizance [under Section 223 of BNSS] of complaints filed under Section 138 of N.I. Act. Consequently, the Supreme Court has directed that there shall be no requirement to issue summons to the accused in terms of Section 223 of BNSS i.e. at the pre-cognizance stage.*

18. From the above, it is very much clear that the Hon'ble Supreme Court has clarified that there is no requirement to issue summons to the accused in terms of Section 223 of the BNSS, involving a case of NI Act. In the instant case in hand, a challenge has been made to the issue of summons to the accused-petitioner before cognizance is taken.

19. Taking in view the aforesaid observations of the Hon'ble Supreme Court, this Court does not find any infirmity in issuing summons to the accused-petitioner before taking cognizance of the offence in terms of Section 142 of the NI Act.

20. Accordingly, this Court does not find any merit in the instant case and the instant Criminal Petition stands dismissed.

JUDGE

Comparing Assistant