GAHC010161062025

REPORTABLE
2026:GAU-AS:14285

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

Case No. : Crl.Pet./895/2025

ABDUR RAKIB AND ORS
S/O- RAMJAN ALI.
R/O- VILL.- BOROGAON SILBARI, P.O.- JALABILA, P.S.- BOGRIBARI, DIST.- KOKRAJHAR, BTR, ASSAM.

2: RABEYA KHATUN
W/O- RAMJAN ALI.
R/O- VILL.- BOROGAON SILBARI
P.O.- JALABILA
P.S.- BOGRIBARI
DIST.- KOKRAJHAR BTR
ASSAM.

3: RAMJAN ALI
S/O- LATE DILE RAHMAN.
R/O- VILL.- BOROGAON SILBARI
P.O.- JALABILA
P.S.- BOGRIBARI
DIST.- KOKRAJHAR BTR ASSAM.

4: AYSHA KHATUN
W/O- SAYED ABDUL MALIK @ SAIAD ABDUL MALIK.
R/O- VILL.- BOROGAON SILBARI
P.O.- JALABILA
P.S.- BOGRIBARI
DIST.- KOKRAJHAR
BTR
ASSAM.

5: SAIAD ABDUL MALIK @ SAYED ABDUL MALIK.
S/O- RAMJAN ALI.
R/O- VILL.- BOROGAON SILBARI
P.O.- JALABILA

P.S.- BOGRIBARI
DIST.- KOKRAJHAR
BTR
ASSAM

VERSUS

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

2:MAFUJA BEGUM
D/O- MOBARAK ALI.
VILL.- MATIABOG
P.O. AND P.S.- GAURIPUR
DIST.- DHUBRI
ASSAM
PIN -783331

BEFORE

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner(s): Mr M Khan
Mr A K Dey
Mr J Akhtar
Mr R Islam

Advocate for the respondent(s): Mr B Sarma, APP, R-1
Mr D K Agarwal, R-2

Date on which judgment was reserved : **NA**

Date of pronouncement of judgment : **05.10.2026**

Whether the pronouncement is of the : **NA**

operative part of the judgment?

Whether the full judgment has been : **Yes**

pronounced?

JUDGMENT AND ORDER (ORAL)

By this application filed under Section 528 of the BNSS, 2023, the petitioners have prayed for quashing of the FIR being Bagribari PS Case No. 29 of 2025, registered under Section 85/82(1)/83/316(2) of the BNS, 2023, as well as the charge sheet submitted vide Charge Sheet No. 29 of 2025, dated 18.05.2025. The petitioner has also challenged the order dated 19.06.2025, by which cognizance of offence under Section 85/82(1) as well as 316(2) of the BNS, 2023, has been taken against the petitioner No. 1 and cognizance of offence under Section 85/316(2) of BNS, 2023, has been taken against the petitioner Nos. 2 to 5.

FACTS:

2. The case of the petitioners is that the informants submitted a complaint before the Chief Judicial Magistrate, Kokrajhar, against them as well as 4 other persons, stating, *inter alia,* that complainant No. 1 got married with petitioner no. 1 on 02.08.2023, and at the time of the marriage, as per demand of the petitioners, the informants had given various articles to the petitioners. The complainant No. 1, thereafter, had started conjugal life with petitioner No. 1, at her matrimonial house. It was further stated that initially, the relationship was cordial, but later, petitioner No. 1 developed strange habits and that he started humiliating respondent No. 2 by abusing her with filthy language. The informant also stated that petitioner No. 1 had started assaulting the complainant No. 1, i.e., respondent No. 2. The petitioner No. 1 was also stated to have not allowed the respondent No. 2, to stay in his room. It is also stated that petitioner Nos. 2, 3 and 4 had instigated petitioner No. 1 and demanded more dowry and also demanded an amount of Rs. 10 lacs. She stated that her father had given many articles including a vehicle to the petitioners, but all the petitioners including

other accused persons is said to have dragged her out of her matrimonial house on 02.01.2024. She, thereafter, stated that the said matter was compromised with interference of her family members and that the petitioners' side had promised that they will never assault respondent No. 2 again. The respondent No. 2, further stated that the said compromise had no effect and that petitioners Nos. 2, 3 and 4 again instigated petitioner No. 1 and instead of making petitioner No. 1, understand his mistakes, instigated the petitioner No. 1 to commit tortures upon respondent No. 2. She then stated that all the accused persons, including the petitioners, had beaten her up and thrown her out of her house and also that, petitioner No. 1 threatened respondent No. 2, not to return to her matrimonial house and if she does, she will be again thrown out. The informant also stated that thereafter, she and her relatives tried to reconcile the marriage, but petitioner No. 1 did not listen and that he later got married to another girl. In the said complaint petition, it was stated that the informant had lodged an FIR before the In-charge of Bagribari Police Station, but no action was taken, and as such, she filed the complaint before the Court.

3. Pursuant to the said complaint, the Court of Chief Judicial Magistrate, Kokrajhar, by order dated 08.05.2025, had held that on perusal of the complaint, as well as the affidavit filed by the complainant, stating the reason, why she chose to file the complaint, ordered the Police to investigate the said case. By the said order, the Court forwarded the complaint petition to the OC, Bagribari Police Station for registering a case under proper section of law.

4. The case was, as such, registered by the Police personnel of Bagribari PS as PS Case No. 29 of 2025 and the case was investigated. On completion of the investigation, the Investigating Officer submitted charge sheet vide Charge

Sheet No. 29 of 2025, on 18.05.2025. In the said charge sheet, it is stipulated that the petitioner entered into a second marriage despite subsistence of his first marriage with the complainant. It is also stated that petitioner No. 1 and his family members, dishonestly misappropriated the *Stridhan* articles and converted the same to their own use. Further, it is stated that respondent No. 2 left her matrimonial house due to the cruelty and harassment meted out to her, by her husband and his immediate family members. However, by the said charge sheet, it is stated that no material evidences were found against accused Nos. 6 to 9 and they were discharged and the charge sheet was submitted against the petitioners only.

5. The said charge sheet was submitted before the Court of Chief Judicial Magistrate, Kokrajhar, and the said Court had transferred the said case to the Court of SDJM (S), Kokrajhar, and the said Court by order dated 19.06.2025, on perusal of case records, held that *prima facie* case is established against the petitioners and took cognizance of offence separately against the petitioner No. 1 and petitioner Nos. 2 to 5. Against petitioner No. 1, cognizance of offence was taken under Section 85/82(1) as well as Section 316(2) of the BNS, 2023, and against the petitioner Nos. 2 to 5, cognizance of offence was taken under Sections 85/316(2) of BNS, 2023.

6. The learned counsel for the petitioner submits that the allegations against the petitioners were not specific, rather although he said that some specific allegations were against the petitioner No. 1 but against the petitioner Nos. 2 to 5, except for stating that they had instigated, no specific allegations were made against them. He stated that although the informant stated in the complaint that all the accused persons dragged her out of the matrimonial

house, but in the charge sheet it is stated that the complainant left her matrimonial house herself. He also submits that there are more accused persons in the complaint petition and the same allegations were made against them, but accused persons arrayed from 6 to 9 in the complaint petition, were discharged. The counsel, to substantiate his argument has placed reliance on a judgment passed by the Supreme Court of India delivered in ***Disha Kapoor vs. State of Uttar Pradesh***, reported in **2025 INSC 649.**

7. On the other hand, Mr. Agarwal, learned counsel for the respondent No. 2 submits that after 2 months of marriage, petitioner No. 1, had started abusing respondent No. 2, and had assaulted her and had not allowed respondent No. 2, to sleep in his room. He further submits that the petitioner Nos. 2 to 4 had instigated petitioner No. 1 to demand money from the family of respondent No. 2. He also stated that all the petitioners had mercilessly beaten up respondent No. 2 and that petitioner Nos. 2 to 4, had never tried to make petitioner No. 1, understand the value of marital life. He, as such submits that the Court had rightly taken cognizance of offences under the aforesaid Sections, against petitioner No. 1 and the other petitioners.

8. The learned APP for the State by supporting the contentions of the learned counsel for the respondent No. 2 had stated that *prima facie,* cognizable offence is made out in the complaint and as such, the same is not amenable for quashing. He also submits that upon a full fledged investigation, the Investigating Officer had submitted the charge sheet and the Court, after perusal of the Police papers, had taken cognizance of the offence.

9. I have heard the counsels and I have gone through the records.

10. At the outset, this Court had noticed an averment made in the complaint petition, wherein the complainant stated that before submission of the complaint before the CJM, at Kokrajhar, she had lodged an ejahar before the In-Charge of Bagribari Police Station, but no action was taken in connection with the same and as such, she filed the complaint case. The prayer made in the said complaint was to the effect that the Court should register the said complaint and in alternative another prayer is made, praying that the Court may send the complaint to the Officer-In-Charge of Bagribari Police Station for registration and investigation to the allegations made in the complaint petition. It is a settled law that before entertaining the case under Section 156(3) of the CrPC, it should be seen that the complainant had availed the remedy provided under Section 154(1) as well as Section 154(3) of the CrPC. In the complaint petition, there is no averment that since the In-Charge of Bagribari Police Station had not taken any action, the complainant had approached the Superintendent of Police. There is also no averment that getting no response, the complainant had approached under Section 156(3) of the CrPC. Not approaching under Section 154(3) of the CrPC, makes a complaint unsustainable in law and on putting the query to the learned counsels, the counsel appearing for the respondent had placed one decision of the Hon'ble Supreme Court delivered in ***Anurag Bhatnagar and Another versus State (NCT of Delhi)***, reported in **2025 SCC Online SC 1514**, wherein the Apex Court had held that the although the Magistrate before passing the order for registration of the FIR, under Section 156(3) CrPC, is required to see as to whether the informant had exhausted his remedies under Section 156(3) CrPC, but in the facts of the said case, although irregularity was detected, but on the ground of no prejudice being caused to any party, the said complaint was not interfered with.

11. However, in ***Sakiri Vasu vs. State of Uttar Pradesh***, reported in **(2008) 2 SCC 409**, the Apex Court had held that if a person has grievance that the Police Station is not registering the FIR, under Section 154 CrPC, he can then approach before the Superintendent of Police under Section 154(3), CrPC, by an application in writing and if the same does not yield any satisfactory result, then he can approach before the Magistrate by filing an application under Section 156(3) CrPC. This is a settled position of law. It is also averred therein that the said facts should be stated in the complaint filed before the Magistrate.

12. In the instant case, it is seen that the complainant had not stated as to whether she had approached the Superintendent of Police under Section 154(3) of CrPC. However, in the order dated 08.05.2025, it was stipulated by the Court that an affidavit was filed by the complainant stating the reasons as to why she chose to lodge the complaint in the Court. Filing of an affidavit with the reasons has been made a mandatory requirement by the Hon'ble Supreme Court in ***Priyanka Srivastav vs. State of UP***, reported in **(2015) 6 SCC 287**. As such, this Court does not deem it fit to interfere with the complaint petition on the said ground.

12. Having dealt with the said issue, this Court will now examine as to whether the complaint can be quashed in exercise of its inherent jurisdiction. It is no longer res integra that if the complaint, taken at their face value and accepted in its entirety, do make out a case against the accused person, the same cannot be quashed by the High Court by exercising power under Section 528 of the BNSS, 2023. The same has been held by the Hon'ble Supreme Court in ***State of Haryana Vs. Bhajan Lal***, reported in **1992 Suppl. 1 SCC 335**. In the instant case, the complainant stated in clear terms in the complaint that

during marriage, her family had given various articles and the accused persons by taking all the articles, took her to her matrimonial house and that the accused persons, i.e., the petitioners had lived in the same shared house. It was also stated that initial two months of marriage was good, but her husband, i.e., petitioner No. 1 had started abusing her and that other petitioners instigated him in demanding dowry. She also stated that petitioner No. 1 had assaulted her and that all the accused persons, i.e., the rest of the petitioners dragged her out of matrimonial home, which was however, later compromised, but she stated that all the petitioners had committed tortures upon the complainant. In the said complaint, offences were clearly mentioned and from a bare reading of the same, it constitutes *prima facie,* cognizable offences and as held by the Hon'ble Supreme Court, such cases cannot be quashed. In the charge sheet, submitted by the Investigating Officer, it was clearly stated that witnesses stated that petitioner No. 1, along with his family members had dishonestly misappropriated the *Stridhan*. The IO, as such, had stated that sufficient evidences were found against the petitioners and as such, submitted the charge sheet. Further, in the order dated 19.06.2025, the Court of Sub-Divisional Judicial Magistrate (S), Kokrajhar, stated that on perusal of case records and the copies of the CD and documents, prima facie case was seen against the accused persons, and as such, cognizance was taken. It is further seen that cognizance of offence was taken separately in case of petitioner No. 1 and the rest of the petitioners. Against petitioner No. 1, cognizance of offence is taken under Section 85/82(1)/316(2) of the BNS, 2023, and against the rest of the petitioners, cognizance of offence under Section 85/316(2) of the BNS, 2023, was taken. This Court, as such, does not see any infirmity in the said order. As such, this Court does not interfere with the complaint or the charge sheet or the order

taking cognizance.

13. The present petition is as such, dismissed and disposed of.

JUDGE

Comparing Assistant