GAHC010209242026

2026:GAU-AS:15168

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

**Case No. : Crl.Rev.P./492/2026**

NRIPENDRA BHUYAN
SON OF LATE MITHARAMBHUYAN, RESIDENCE OF H. NO. 17 , APURBA MILAN GHARMILANPUR ROAD, BAMUNIMAIDAM, P.O P.S CHANDMARI, DIST. KAMRUP M, ASSAM PIN- 781021

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE P.P ASSAM.

2:SRI PRANAB KUMAR RABHA

SON OF LATE PABITRA KUMAR RABHA
RESIDENCE OF JATIA
P.O P.S KAHILIPARA
GUWAHATI
KAMRUP (M)
ASSAM
PIN78101

**Advocate for the Petitioner** : MR A CHAKRABORTY, MR. U CHOUDHURY,MR. B M CHOUDHURY,MS H.K. SUMI

**Advocate for the Respondent** : PP, ASSAM,

**BEFORE**
**HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

**Date : 08.10.2026**

Heard Mr. B.M. Choudhury, learned counsel for the petitioner. Also heard Mr.

P. Borthakur, learned Additional Public Prosecutor for the State respondent No. 1.

**2.** In this petition, under Section 442, read with Section 438 of the BNSS, 2023, the petitioner has challenged the judgment and order dated 13.08.2026, passed by the learned Additional Sessions Judge (FTC) No. 4, Kamrup(M), in Criminal Revision Case No. 8/2026.

**3.** It is to be noted here that vide judgment and order dated 13.08.2026, the learned Additional Sessions Judge (FTC) No. 4, Kamrup(M) ('revisional Court', for short) had set aside the order of taking cognizance, dated 27.11.2026, passed by the learned Judicial Magistrate First Class-05, Kamrup(M), in PRC Case No. 3719/2025.

**4.** It is also to be noted here that vide order dated 27.11.2026, the learned Judicial Magistrate First Class-05, Kamrup(M) ('trial Court', for short) had taken cognizance in the PRC Case No. 3719/2025, for the offences punishable under Sections 319(2)/216/336(3)/341(2) of BNS, 2023, against the respondent No. 2 herein and also issued summons to him.

**5.** Mr. Choudhury, learned counsel for the petitioner submits that upon a complaint lodged by the petitioner herein, namely, Shri Nripendra Bhuyan on 02.07.2025, the Officer-in-Charge of Dispur Police Station registered a case, bearing No. 571/2025, under Sections 319(2)/216/336(3)/341(2) of BNS, 2023, and accordingly, investigation was carried out and after completion of investigation, the I.O. had laid charge-sheet against the respondent No.2 herein, namely, Pranab Kumar Rabha, under Sections 319(2)/216/336(3)/ 341(2) of BNS, 2023, and thereafter, vide order, dated 27.11.2025, the learned trial Court had taken cognizance of the aforesaid offences. Mr. Choudhury also

submits that thereafter, the respondent No. 2 herein, had preferred one revision petition, being Criminal Revision Case No. 8/2026, challenging the order of taking cognizance by the learned Trial Court upon the Charge-sheet No. 389/2025, and thereafter, hearing both the parties, the learned revisional Court, vide impugned judgment and order dated 13.08.2026, had set aside the order of taking cognizance, by holding that the embargo under Section 215 of the BNSS, 2023, operates at the stage of cognizance.

**5.1.** Mr. Choudhury further submits that Section 215 of the BNSS, 2023, erstwhile Section 195 of the Code of Criminal Procedure, puts an embargo in taking cognizance, and according to him, the same embargo is not applicable in the present case, in view of the decision of a Constitutional Bench of Hon'ble Supreme Court in the case of **Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr.**, reported in **(2005) 4 SCC 370**, wherein it has been held that the expression - when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in a Court, should normally mean commission of such an offence after the document has actually been produced or given in evidence in the Court. Mr. Choudhury further submits that in the instant case, the respondent herein has allegedly possessed the seal of the Association and also he used the same and filed a petition before the Court, and that possession of seal itself is an offence, and as such, the embargo under Section 215 of the BNSS, 2023, is not at all applicable. He further submits that the decision of Supreme Court in the case of **Iqbal Singh Marwah** (supra), was not placed and considered by the learned revisional Court.

**6.** Per contra, Mr. Borthakur, learned Addl. P.P. also submits that the decision of Hon'ble Supreme Court in the case of **Iqbal Singh Marwah** (supra), was not placed before the learned revisional Court and had the same been placed, then

the outcome would have been different. Therefore, Mr. Borthakur submits that the matter may remanded to the learned revisional Court to examine the matter a fresh in the light the decision in **Iqbal Singh Marwah** (supra).

**7.** Having heard the submissions of the learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record, and also gone through the decision of the Hon'ble Supreme Court in the case of **Iqbal Singh Marwah** (supra) and also the impugned judgment and order dated 13.08.2026.

**8.** It is not in dispute that the decision of Hon'ble Supreme Court in the case of **Iqbal Singh Marwah** (supra) was not placed before the learned revisional Court. Notably, in paragraph No. 33 of the aforesaid decision, Hon'ble Supreme Court has held as under:

> "**33. In view of the discussion made above, we are of the opinion that *Sachida Nand Singh* has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in *custodia legis*."**

**9.** In the instant case, the allegation made in the complaint lodged by the petitioner herein is that - the Assam PWD Engineers Service Association (APWDESA) is a registered society and an Executive Committee of the said Association was constituted on 03.04.2024, with one Bhaben Sarma as President and the present petitioner as General Secretary. However, disputes arose between rival groups regarding control of the Association which was

carried to this Court by filing one CRP (1/0) No. 139/2024. Then vide order dated 13.06.2025, passed in 1.A.(C) No. 855/2025, the Committee constituted on 03.04.2024 was permitted to function till disposal of the injunction petition. Thereafter, the respondent herein had filed I.A.(C) No. 2125/2025 before this Court opposing withdrawal of W.A. No. 244/2022. In the said interlocutory application and affidavit, he allegedly described himself as President of APWDESA and used a seal bearing the description as President, Assam PWD Engineers' Service Association. The petitioner herein then lodged one complaint alleging that the revisionist forged the said seal with intent to defraud the Association and its members and used it before the this Court to support his claim that he was President, despite being aware of the order dated 13.06.2025.

**9.1.** Upon the said complaint Dispur Police Station case No. 571/2025, under Sections 319(2)/216/336(3)/341(2) of BNS, 2023, was registered and investigation was carried out, which culminated in filing of charge-sheet against the respondent No.2 herein, namely, Pranab Kumar Rabha, under Sections 319(2)/216/336(3)/ 341(2) of BNS, 2023, and thereafter, vide order dated 27.11.2025, the learned trial Court had taken cognizance of the aforesaid offences. Then the respondent No.2 herein challenged the order of taking cognizance dated 27.11.2025, by the learned Trial Court, and then vide impugned judgment and order dated 13.08.2026, had set aside the order of taking cognizance by holding that the embargo under Section 215 of the BNSS, 2023, operates at the stage of cognizance also.

**9.2.** But, it appears from a perusal of the Section 341 BNS that possession of any seal, plate or other instrument knowing the same to be counterfeit, itself is an offence. This section criminalizes making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 338. It provides as

under:-

**(1) Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 338 of this Sanhita, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

**(2) Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this Chapter other than section 338, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

**(3) Whoever possesses any seal, plate or other instrument knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.**

**(4) Whoever fraudulently or dishonestly uses as genuine any seal, plate or other instrument knowing or having reason to believe the same to be counterfeit, shall be punished in the same manner as if he had made or counterfeited such seal, plate or other instrument.**

**9.3.** And as pointed out by Mr. Choudhury, the respondent No.2 herein cannot possess the seal of the Association, as this Court has permitted the committee headed by the petitioner here, vide order dated 13.06.2025, passed in 1.A.(C) No. 855/2025, which was constituted on 03.04.2024, to function till disposal of the injunction petition. And as such, according to Mr. Choudhury, possession of the seal without being the President of the Association, not to speak of using the same, itself is an offence under Section 341 of the BNS, 2023 and that the embargo under Section 215 of the BNSS, 2023 is not applicable, in view of the proposition laid down in **Iqbal Singh Marwah** (supra).

**10.** Thus, this Court finds sufficient force in the submission of learned counsel for both the parties. The law is well settled in the case of **Iqbal Singh Marwah** (supra). But, the said decision was not placed before the learned revisional Court. Accordingly, the matter stands relegated to the learned revisional Court, to give a fresh consideration to the matter, in the light of the proposition laid down therein, especially in para No. 33, in the case of **Iqbal Singh Marwah** (supra), after affording an opportunity of being heard to both the parties. And in order to facilitate in carrying out such an exercise, the impugned judgment order, dated 13.08.2026, stands set aside and quashed.

**11.** In terms of above, this petition stands disposed of at this motion stage itself.

**JUDGE**

**Comparing Assistant**