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2026:GAU-AS:15158

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

Case No. : Crl.Pet./1427/2026

SRI SAURABH TALUKDAR
S/O- SRI SUREN TALUKDAR
R/O-NALBARI TOWN, NEAR NALBARI
DISTRICT JAIL, WARD NO.-5,
P.S.- NALBARI, ASSAM, PIN NO. 781335

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE LEARNED PUBLIC PROSECUTOR, ASSAM

2:SRI NIBARAN KALITA
S/O-TANURAM KALITA
R/O- VILL-SANTIPUR
NALBARI TOWN
WARD NO.-9

P.O.-NALBARI

P.S.- NALBARI

DIST.-NALBARI
ASSAM
PIN NO. 781335

Advocate for the Petitioner : MR. S SARMA, MR M BARMAN,B SAHA,S J KALITA,MR B P SARMAH,MR. C CHAKRAVARTY

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 08.10.2026

Heard Mr. S. Sarma, learned counsel for the petitioner. Also head Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent No. 1.

2. In this petition, under Section 528 of the BNSS, 2023, read with Article 227 of the Constitution of India, the petitioner has prayed for quashing the orders, dated 04.09.2025 and 06.09.2025, passed by the learned Chief Judicial Magistrate, Nalbari, in Nalbari P.S. Case No. 349/2023; and also the orders, dated 29.11.2025, 02.02.2026, 02.04.2026 and 04.06.2026, passed by the learned Judicial Magistrate First Class, Nalbari, in C.R. Case No. 176/2025 as well as the entire proceeding of C.R. Case No. 176/2025, pending before the learned Judicial Magistrate First Class, Nalbari.

3. Mr. Sarma, learned counsel for the petitioner, submits that on 12.08.2023, an emergency general meeting of the members of Shri Shri Hari Mandir, Nalbari was held, wherein the respondent No. 2 herein alleged that certain persons had assaulted him, torn his clothes and damaged his spectacles, and caused injury over his face and threatened him, and thereafter, on 16.08.2023, the respondent No. 2 lodged an FIR to that effect with the Officer-in-Charge, Nalbari P.S., upon which Nalbari P.S. Case No. 349/2023, under Sections 143/341/325/427/506 of the IPC was registered. Mr. Sarma submits that thereafter, investigation was carried out and the Investigating Officer, ultimately, submitted Final Report No. 87/2023 on 25.08.2023, on the ground that no sufficient incriminating materials or legally admissible evidence could be collected against the present petitioner, who was arrayed as accused in the said

case, and that the actual persons involved could not be identified and there was no independent eyewitness to the offence. Mr. Sarma also submits that on receipt of the said final report, notice was issued to the respondent No. 2 by the learned Court below, and then the respondent No. 2 filed one Protest Petition No. 238/2025, upon which vide order dated 04.09.2025, the learned Chief Judicial Magistrate, Nalbari had rejected the final report and directed registration of the protest petition as a complaint case, and thereafter, CR Case No. 176/2025, was registered.

3.1. Mr. Sarma further submits that the course of action so adopted by the learned Court below is not legally sustainable and it suffers from procedural irregularities. He has pointed out that the learned Judicial Magistrate First Class, Nalbari, to whom the case was made over at first, fixed the matter for recording the complainant's statement and subsequently, issued pre-cognizance notice. Mr. Sarma also submits that though the petitioner had appeared and was entitled to a hearing before the cognizance, no effective pre-cognizance hearing was taken place, as provided under Section 223(1) of the BNSS, 2023, and the learned Judicial Magistrate First Class, had directly proceeded with the recording of the complainant's deposition, and on 02.04.2026 and 04.06.2026, the statements of the complainant and his witnesses were recorded. Thereafter, on 04.06.2026, the learned Magistrate took cognizance against the petitioner and other accused persons, under Sections 191(2)/126(2)/324/351 of the BNS, 2023 and directed issuance of summons. The further submission of Mr. Sarma is that the statement recorded during the inquiry does not disclose any fresh, independent or reliable material against the petitioner and further, except those materials disclosed during the police investigation, and also no reason has also been assigned for rejecting the final report. Under such circumstances, Mr.

Sarma has contended to allow this petition.

4. Per contra, Mr. Borthakur, learned Additional Public Prosecutor for the State respondent No. 1 submits that since the case of the petitioner is that he has not been afforded an opportunity of being heard before taking cognizance of the matter, the impugned order of taking cognizance may be set aside and the matter may be remanded to the learned trial Court to afford an opportunity of being heard to the petitioner and thereafter, to pass a fresh order.

5. Having heard the submissions of 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 impugned orders dated 04.09.2025 and 06.09.2025, passed by the learned Chief Judicial Magistrate, Nalbari, in Nalbari P.S. Case No. 349/2023; and also the orders dated 29.11.2025, 02.02.2026, 02.04.2026 and 04.06.2026, passed by the learned Judicial Magistrate First Class, Nalbari, in C.R. Case No. 176/2025.

6. It appears that vide order dated 04.09.2025, the learned Chief Judicial Magistrate, Nalbari had rejected the final report submitted by the I.O. in Nalbari PS Case No. 349/2023, on the ground that the Protest Petition No. 238/2025, filed by the respondent No. 2 herein, contains the allegations in detail against the accused persons/petitioner herein, and there is scope for taking cognizance, and hence, rejected the said final report. It also appears that thereafter, vide order dated 06.09.2025, the learned Chief Judicial Magistrate, Nalbari had transferred the case to the Court of learned Judicial Magistrate First Class, Nalbari for trial and disposal, and on 06.09.2025, the learned Judicial Magistrate First Class had fixed the matter on 22.10.2025 for initial statement. Thereafter, vide order dated 29.11.2025, a pre-cognizance notice was issued to the accused persons, including the present petitioner, and vide order dated 02.02.2026, the

matter was fixed for initial deposition on 02.04.2026. Thereafter, on 02.04.2026, the initial deposition of the complainant, Nibaran Kalita, under Section 223 of the BNSS was recorded and thereafter, vide order dated 04.06.2026, the learned Judicial Magistrate First Class had taken cognizance of the offence under Sections 191(2)/126(2)/324/351 of the BNS, 2023, after recording the statements of Ashok Kr. Sarma and Nagen Deka, under Section 225 of the BNSS, 2023.

7. Thus, as submitted by Mr. Sarma, learned counsel for the petitioner and also considering the submission of Mr. Borthakur, learned Additional Public Prosecutor, and also having perused the impugned orders, this Court finds that no effective pre-cognizance hearing had taken place and the petitioner had not been afforded an opportunity of being heard, though pre-cognizance notice was issued to the petitioner herein, vide order dated 29.11.2025.

8. It is to be noted here that Section 223(1) of the BNSS, 2023, especially the first proviso to the said Section, provides that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard.

9. In the case of **Parvinder Singh Vs. Directorate of Enforcement**, reported in **2026 INSC 519**, Hon'ble Supreme Court has held that the first proviso to Section 223(1) of the BNSS, 2023, is substantive and mandatory. The word 'shall' leave no discretion. Cognizance taken without hearing the accused is void ab initio, even in Prevention of Money Laundering Act, 2002 case. It applies when cognizance is taken after BNSS came to force from 1st July, 2024. Even if the complaint was filed earlier, mere numbering or listing of the complaint is not an inquiry that would attract the saving clause under Section

531(2)(a) of the BNSS. Therefore, it becomes apparent that pre-cognizance hearing under the first proviso to Section 223(1) of the BNSS, 2023, is mandatory and cognizance without it is illegal and void.

10. In the instant case, vide order, dated 29.11.2025, the learned Judicial Magistrate First Class, Nalbari had issued pre-cognizance notice to the petitioner herein, fixing the matter on 02.02.2026, and on 02.02.2026, the petitioner entered appearance and the learned Judicial Magistrate First Class had fixed the matter for initial deposition on 02.04.2026, and thereafter, on 02.04.2026, initial deposition of one Nibaran Kalita/complainant/respondent No. 2 herein was recorded and the matter was fixed on 04.06.2026, and on that day, two more witnesses, namely, Ashok Kr. Sarma and Nagen Deka were examined. Thereafter, perusing the petition of the complainant and the statement of the complainant and his witnesses, cognizance was taken, under Sections under Sections 191(2)/126(2)/324/351 of the BNS, 2023, and the said order dated 04.06.2026, does not indicate giving an opportunity of being heard to the petitioner before taking cognizance, who remained absent on that day, vide petition No. 2025/26.

11. In that view of the matter, the impugned order dated 04.06.2026, fails to withstand the legal scrutiny and accordingly, the same stands set aside and quashed. The matter stands remanded to the learned Judicial Magistrate First Class, Nalbari to afford an opportunity of being heard to the petitioner in respect of pre-cognizance hearing, and thereafter, to pass a fresh order on the same.

12. Though, Mr. Sarma, learned counsel for the petitioner submits that the impugned order dated 04.09.2025, where the learned Chief Judicial Magistrate, Nalbari had rejected the final report submitted by the I.O. in Nalbari PS Case No. 349/2023, and decided to proceed with the protest petition filed by the

respondent No. 2, yet, it appears that the learned Chief Judicial Magistrate had recorded a reason that though the final report was submitted on the ground that there is lack of sufficient materials against the accused persons and that the actual accused persons could not be identified, the petition filed by the respondent No. 2 contains the allegation in detail against the accused persons, and as such, there is scope for taking cognizance. Mr. Sarma, learned counsel for the petitioner, however, has failed to demonstrate as to how this finding, so recorded by the learned Chief Judicial Magistrate, is illegal or improper. And in that view of the matter, the prayer for quashing the impugned order dated 04.09.2025, and subsequent orders, stands dismissed.

13. In terms of above, this petition stands disposed of.

JUDGE

Comparing Assistant