GAHC010289152025

2026:GAU-AS:16119

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

Case No. : Crl.Pet./14/2026

SHRI ANISH KUMAR ROY AND ANR
S/O. LATE NEPAL CHANDRA ROY, R/O DREAMLAND APARTMENT, H.NO. P-1, SANTI NAGAR PATH, P.O. ODALBAKRA, P.S. FATASIL AMBARI, DISTRICT - KAMRUP , GUWAHATI, ASSAM, PIN-- 781034, PH. NO- 8638441424.

2: SMTI ANIMA ROY
W/O LATE NEPAL CHANDRA ROY
R/O DREAMLAND APARTMENT
H.NO. P-1
SANTI NAGAR PATH
P.O. ODALBAKRA
P.S. FATASIL AMBARI
DISTRICT - KAMRUP (M)
GUWAHATI
ASSAM
PIN- 78103

VERSUS

SMTI BABLI DEY
W/O ANISH KUMAR ROY, D/O LATE SUNIL DEY, PERMANENT ADDRESS- DHIRENDRA NIWAR, 1ST FLOOR, ANANDA NAGAR, BYE LANE 2, WARD NO. 22, P.O. ODALBAKRA, P.S. FATASIL AMBARI, DISTRICT - KAMRUP(M), GUWAHATI, ASSAM, PIN- 781034 PRESENT ADDRESS- ASHIYANA APARTMENT, 1ST FLOOR, SHANTI NAGAR PATH, ADAGUDAM, LOKHRA ROAD, GUWAHATI, DIST. KAMRUP (METRO), ASSAM, PIN-781034

BEFORE
HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner(s): Mr. B. Deka

Mr. K. K. Bhuyan

Advocate for the respondent(s): Ms. M. Borah.

Date on which judgment was reserved : **09.10.2026**

Date of pronouncement of judgment : **03.11.2026**

Whether the pronouncement is of the operative part of the judgment? : **NA**

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

JUDGMENT AND ORDER (CAV)

The petitioners by this application, have endeavored to invoke the inherent powers of the High Court under Section 528 of the BNSS, 2023, along with the revisional power under Section 442 of the BNSS, 2023, for setting aside the order dated 27.08.2025, passed in C.R. Case No. 515 of 2024, by the Judicial Magistrate First Class No. 4, Kamrup (M), Guwahati, by which cognizance of offence under Section 115/351/85 of the BNS, 2023 was taken against the petitioners.

FACTS:

2. The case of the petitioners is that a complaint was filed by the respondent before the Court of Chief Judicial Magistrate, Kamrup (M), at Guwahati, under Section 223 of the BNSS, 2023, raising various grievances against the petitioners during her marital life with petitioner No. 1. The said allegations are enumerated here-in-below: -

i) The complainant/respondent stated that petitioner No. 1 is her husband and petitioner No. 2 is her mother-in-law, and that she married petitioner No.1, out of love affairs for about 3 years, on 05.05.2011, and further that after marriage petitioner No. 1 took the complainant to his rented residence at Maligaon, Kamakhya Colony at Guwahati, wherein petitioner No. 2 also stayed with them.

ii) The complainant stated that initially, the relationship was very cordial, but later, petitioner No. 1 started quarreling with the complainant over small issues and that petitioner No. 1 demanded money from the complainant and since the complainant is a housewife, she sought financial help from her sisters and brothers, and she further stated that on failure to fulfill the said financial needs, petitioner No. 1 used to physically and mentally torture her. She further stated that petitioner No. 1 took an amount of Rs. 15,000/- from her elder sister as a loan for purchasing a two-wheeler, but she stated that petitioner No. 1 never returned the said money to her sister.

iii) The complainant thereafter stated that she brought gold jewellery of approximate 150 grams during the marriage from her parent's house and that petitioner No. 1, within 3 months of the marriage sold the gold chain, 4 numbers of gold buttons, 2 numbers of gold rings, gifted to him by the relatives of the complainant. She also stated that petitioner No. 1 keeps on asking her to give him, her ornaments, so that he can sell and start a business and on the fear that her ornaments would be sold, she kept those gold ornaments at her parents' residence for safe custody,

and on knowing the same, petitioner No. 1 misbehaved with her and on one night, he came in an intoxicated state, and abused her by using filthy and slang language about her family members. The complainant stated that petitioner No. 2 supported petitioner No. 1 and instigated him to torture her.

iv) The complainant further stated that during the marriage, she brought number of *Stridhan* articles along with other necessary articles for the comfortable living of the couple and that she had apprehension that petitioners may use, for their own purpose and may misappropriate the same and may also damage.

v) The complainant thereafter stated that petitioner No. 1 used to come late at night regularly, and under the influence of alcohol, abused her as well as assaults her for which, it has become unbearable for her, and that her family members told her to leave her matrimonial house and go to her parents' house, but then she disagreed as she was deeply in love with petitioner No. 1. She stated that she compromised on various matters only to save her conjugal life and tried to fulfill his demands to whatever extent it was possible, but she stated that all her efforts were in vain.

vi) The complainant further stated that petitioner No. 2 although knew and saw the torture meted out to her by her son, but she gave support to her son to all the worst deeds committed by him. She stated that petitioner No. 1 had driven her out from his rented house several times

and on every occasion, petitioner No. 1 used to promise the parents and family members of the complainant that he will not continue any such torture and brings her back to her matrimonial house. However, she stated that for few days, petitioner No. 1 keeps his promise, but then again, he starts torturing her both physically and mentally, for which once in the year 2014-2015, she went to the All Women Police Station to lodge an FIR, against petitioner No. 1, but on the request made by him, the said FIR was not registered and a settlement was reached between them.

vii) She also stated that in the year 2017, she came to know that petitioner No. 1 had developed an illicit relationship with a woman and when she confronted him with the said fact, she was beaten up by petitioner No. 1 and that she was saved by her family members, and also that petitioner No. 2 instigated petitioner No. 1 by saying that if petitioner No. 1 is in love with that lady, he can marry her.

viii) Complainant further stated that there was an allegation that petitioner No. 1 had misappropriated an amount of Rs. 1,75,000/- while working in the private company, and that on the request made by the family members of the complainant, the Company did not lodge any FIR against petitioner No. 1, and that the family members of the complainant paid the said amount to the Company and for the said act, the petitioner No. 1 had to loose his job, and that he became penniless and that the relatives of the complainant helped them financially.

ix) The complainant stated that petitioner No. 1 used to jump from one private job to another, which led to severe financial crisis, for which, petitioner No. 1 could not maintain even the monthly basic needs and that the relatives of the complainant used to help them and fulfilled their demands by giving TV, inverter etc.

x) She, thereafter, stated that considering the poor financial life of the complainant and the petitioner No. 1, the brother of the complainant, along with his partner decided to gift a penthouse in the name of the complainant and that petitioner No. 1, threatened that the penthouse should be given in his name, as well as the complainant, and although the said house was given as a gift, but due to the pressure given by the petitioner No. 1, the brother of the complainant executed a sale agreement in the name of both the complainant and petitioner No. 1, which was notarized on 18th of December, 2020.

xi) The complainant stated that during the COVID period, her family members arranged all the financial needs of the complainant as petitioner No. 1 was jobless. She also stated that once when her sister refused to pay money to petitioner No. 1, the petitioner No. 1 misbehaved with her sister and tortured the complainant physically. She also stated that she suffered from COVID-19, and that petitioner No. 1, apart from paying Rs. 15,000/-, did not pay, for her treatment, which took place at Hyderabad and that her family members had borne all her medical expenses. The complainant thereafter stated that when she returned from Hyderabad on 10.04.2023, she directly went to her

parents' residence and that on the next day, i.e., on 11.04.2023, she came to her matrimonial house, but she found that her husband did not speak to her properly.

xii) The complainant stated that on 20th of April, 2023, when her husband came back from his office, he showed gold coins to his mother, which he got from his office for his best services and heard him saying that he would give the same to his nieces and that on hearing the same, she told him that instead of giving the gold coins to his nieces, he should pay off his debts to her family members. She then stated that on the same night, petitioner No. 1 came in a drunken state, quarreled with her, pushed her, to which petitioner No. 2 also did not object. She also stated that petitioner No. 1 had pulled her hair and her hair had come out and also that she was hit on her stomach and when she, in order to escape from the assault, tried to enter another room, petitioner No. 2 closed that room, thereby instigating petitioner No. 1. However, she stated that she went out and took shelter in a neighbour's house. The complainant then stated that she along with her brothers and sisters, on the next day, went to the Police Station, but due to the repeated requests, made by petitioner No. 1 that he will not commit any such acts in future, the FIR was not lodged. She then stated that thereafter, she stayed for a year in her parents' house, and although many attempts were made to reconcile their disputes, but she did not trust petitioner No. 1.

xiii) The complainant further stated in the complaint petition that on 10th of May, 2024, while her sister-in-law called her up over telephone, a

quarrel was already going on between the complainant and petitioner No. 1, and when her sister-in-law overheard the quarrel, during which, the complainant had to rush to the terrace of the house to save herself, the sister-in-law of the complainant informed the other relatives, who came to the house of the complainant and on finding the gate closed, the brother of the complainant jumped over the wall and saved his sister, and that other relatives went to the Police Station. It is further alleged that the Police personnel came to the house of the complainant and although initially, the other occupants of the building did not open the gate, but the Police personnel on opening the same, went and rescued the complainant. Thereafter, when both the complainant and petitioner No. 1 went to the Police Station, the Police personnel advised them to approach the proper forum.

xiv) The complainant, as such, stated that she had filed the instant complaint petition before the Court of Chief Judicial Magistrate, Kamrup (M), at Guwahati. In the said complaint, a prayer was made that the Court may take cognizance of offence under Section 61(2)/85/115(2)/ 296/351(2)(3) of the BNS, 2023.

3. The said complaint case was transferred by the Chief Judicial Magistrate, Kamrup (M) to the Judicial Magistrate First Class, No. 4, Kamrup (M) for disposal and the Learned Court, had fixed the case for necessary order, on 11.09.2024, vide order dated 20.08.2024. Thereafter, the complainant was examined on oath under Section 223 of the BNSS, 2023, by the said Court, and vide order dated 11.09.2024, issued notices to the petitioners to file their show-cause reply, fixing

the same on 24.10.2024.

4. The complainant during her examination by the Court, under Section 223 of the BNSS, 2023, as mentioned above, had stated in the following terms: -

i) She stated that she married petitioner No. 1, on 05.05.2011, out of a love relationship, and that she resided with him at the rented house at Maligaon, Guwahati, along with her mother-in-law. She then stated that after 3 months of marriage, petitioner No. 1, used to come late at night, intoxicated and used to verbally abuse her and her family members and that petitioner No. 1 had demanded money from her. She also stated that petitioner No. 1 had illicit relationship with other women and that he sold his gold jewellery which was gifted to him during marriage. She also stated that her family members used to support them during their financial crisis and that a house was supposed to be gifted to her, which was objected to, and on the pressure of petitioner No. 1, her brother had executed an agreement for sale in favour of her and her husband.

ii) She, thereafter, stated that in the year 2023, she went to Hyderabad for her intestinal problem and all her medical expenses were borne by her family members and that her husband had only paid an amount of Rs. 15,000/-.

iii) She, thereafter, stated that on 20.04.2023, petitioner No. 1 came home in a drunken state and after fighting with her, pulled her hair and kicked her in her stomach and that she sustained injuries and had to take medical help and

that her mother-in-law did nothing to stop petitioner No. 1. She stated that to escape from further assault, she took shelter in the house of one neighbour and that she went to the Police Station and informed the matter.

iv) She then stated that after a year of her staying at her parents' house, petitioner No. 1 took her to her matrimonial house by promising that he will never assault her, but she stated that on 10.05.2024, he fought with her again and on the next day, she went to her parents' house, unable to bear the torture. She, thereafter stated that her Stridhan articles are still lying in her matrimonial house.

By considering the said statements, along with the complaint, the Court of JMFC, Kamrup (M), had issued notices to the petitioners.

5. On 20.02.2025, the petitioners had filed their show-cause reply as ordered by the Court of JMFC, Kamrup (M), as stated above.

6. In the said show clause reply, the petitioners, apart from denying certain statements made by the complainant, had stated as follows: -

i) He stated that although it is true that complainant had brought gold jewelleries from her paternal house, but he is not aware as to the amount of the same. He further stated that complainant had taken back all her gold jewelleries to her parents' house within a period of three months of her marriage, saying that she will keep the jewelleries in her mother's bank locker.

ii) The petitioners had also admitted that *Stridhan* articles are brought to their house, along with certain gifted articles by the brothers of the complainant, which are lying in their house.

iii) He then stated that the complainant always pressurized him to purchase a flat which was not possible for him due to his financial issues. He stated that it is a fact that the younger brother of the complainant is a builder by profession, who runs a company along with his business partner. He thereafter stated that it was the complainant, who had given a proposal to purchase a flat from her brother at a cheaper rate and that petitioner No. 1 agreed to the said proposal and after holding several discussions, he agreed to purchase a flat on a total consideration of Rs. 10,50,000/-. He further stated that the brother of the complainant and his business partner had taken the total amount of Rs. 10,50,000/- from petitioner No. 1, on 26.12.2016, in cash, and on 29.11.2019, upon completion of the construction of the flat, the same was handed over to the petitioner No. 1 and the complainant, and since then, the petitioners and complainant No. 1 used to reside therein. He also stated that an agreement of sale was executed and was notarized.

iv) Petitioners also stated that when the wife of petitioner No. 1 was ill, petitioner No. 1 had taken a loan of Rs. 25,000/- from his company and gave it to her relatives for her treatment. Petitioner No. 1 further stated that when the complainant was ill, he had taken all steps towards her treatment.

v) Regarding the allegations of physical assault upon the complainant, petitioner No. 1 vehemently denied the same and had called upon the

complainant to strictly prove the allegations.

vi) He also stated that the flat was purchased by petitioner No. 1 by giving the entire consideration and it was not given for free to the complainant or to him. He further stated that later, he came to know that the flat that was constructed and given to them was an illegal construction as there was no building permission and that it can be demolished any moment by the Guwahati Municipal Development Authority or the Guwahati Municipal Corporation. He, thereafter, stated that when he confronted the brother of the complainant about the same, the brother of the complainant assaulted him physically and mentally and threatened him along with his mother to vacate the flat and when they refused to vacate the flat, the brothers of the complainant again assaulted them and that thereafter complainant went to her parents' house.

vi) Petitioners further stated that he had to go out on tour for his official work leaving his mother alone in the flat and due to the threatening given by the relatives of the complainant, he was feeling unsafe and as such, he went to the Police Station to lodge an FIR and that he had also made an intimation to the Officer on Special Duty to the Hon'ble CM of Assam and the said intimation was forwarded to the Officer-in-Charge of the concerned Police Station, to do the needful.

7. On the basis of the said show-cause reply, and the case of the complainant, the Court of JMFC, Kamrup (M) vide order dated 20.02.2025, had fixed the case, for pre-cognizance hearing.

8. Thereafter, by order dated 27.08.2025, the said Court, after hearing both the sides, on the point of cognizance, and on examination of complainant's statement as well as the contents of the complaint and upon finding prima facie grounds / sufficient grounds, against the petitioners, issued summons, i.e., took cognizance of offence under Sections 115/351/85 of the BNS, 2023. It is this cognizance order that the petitioners have put to challenge before this Court by filing the present petition.

SUBMISSIONS:

9. Mr. Bibaswan Deka, learned counsel for the petitioners have placed the following submissions:

i) The complaint arose out of a matrimonial discord which is a dispute of civil nature between petitioner No. 1 and the respondent.

ii) The ingredients of Section 85 of the BNS, 2023, is not attracted in the present case.

iii) The general allegations of quarrel, use of filthy language, coming home late, do not amount to cruelty, as defined under Section 85 of the BNS, 2023.

iv) The allegation that petitioner No. 1 had sold gold jewellery that was gifted to him is unsustainable, since he had sold the jewellery given to him and

not of his wife.

v) It is already admitted by the complainant that she had taken her ornaments to her parents' house, which shows that ornaments were never in custody or possession of petitioner No. 1.

vi) The allegations made against petitioner No. 2 are vague, omnibus and without any specific particulars.

vii) The main cause of dispute between the complainant and petitioner No. 1, which can be discerned is the residential flat that has been constructed by the younger brother of the complainant and purchased by Petitioner No. 1. He stated that the entire issues involved with regard to the flat is mentioned in the written statement as well as in the complaint petition itself and the sale agreement. He submits that the entire consideration was paid to the brother of the complainant by petitioner No. 1 as stated in the sale agreement and since the complainant is a housewife, there can be no question of payment been made by the complainant. He further stated that had it been a gift by the brother of the complainant to the complainant as alleged in the complaint, the question of consideration would not have found place in the sale agreement. As such, he states that Section 85 of BNS, is not at all attracted.

viii) The allegation of physical assault mentioned in the complaint on two occasions, i.e., on 20.04.2023, and 10.05.2024, were with regard to the penthouse property, which was exaggerated.

ix) The medical documents that were annexed by the complainant were not related to the dates, i.e., on 20.04.2023 and 10.05.2024. Rather, they were related to the period in the year 2022. As such, he states that the ingredients of Section 115 of BNS, are also not attracted.

x) There is no specific averment in the complaint that the complainant was put under threat with any injury to the complainant or her reputation or property which have caused her to do any act, which she is not legally bound to do or to omit doing any act, and as such, he submits that the ingredients of Section 351 of BNS, 2023, is on the face of it, is not attracted.

xi) The complainant although had stated that on a number of occasions she had gone to lodge FIR before the Police Station, but she has not produced any copy of the FIR, or any settlement reached between them, as claimed by her.

xii) In fact, the petitioner No. 1, before submission of the present complaint by the complainant, have gone before the Officer-In-Charge of the concerned Police Station for lodging an FIR and had also submitted an intimation to the Officer on Special Duty (OSD) to the Hon'ble CM of Assam, on 20.05.2024, about the assaults and the threatening given to him and his mother, by the relatives of the complainant, which was sent for doing the needful to the officer-in-charge of the concerned Police Station.

10. To substantiate his arguments, the learned counsel has placed reliance on

the following judgments: -

A) ***Preeti Gupta & Anr. Vs. State of Jharkhand & Anr***.; reported in **(2010) 7 SCC 667.**

B) ***Kahkashan Kausar @ Sonam and Ors. Vs. State of Bihar & Ors.***; reported in **(2022) 6 SCC 599.**

C) Charul Shukla vs. State of UP & Ors. [Special Leave Petition (Criminal) No. 555/2024.

D) ***Central Bureau of Investigation vs. K Narayana Rao;*** reported in **(2012) 9 SCC 512**.

11. Per contra, Ms. Mira Borah, learned counsel for the sole respondent, has placed the following submissions:-

i) Petitioner No. 1, after few months of the marriage had started quarrelling with the respondent over small issues and had demanded money from her in a drunken state and that the petitioner became a habitual drunker and by coming late at night, tortured the respondent mentally and physically. She also stated that petitioner No. 1 had sold jewelleries gifted to him by the relatives of the complainant.

ii) Due to the actions of the petitioner No. 1, the respondent was compelled

to keep her golden jewelleries at her parents' house and that for the said reason, petitioner No. 1, assaulted the respondent in presence of petitioner No. 2 and that petitioner No. 2 instead of saving the respondent, had instigated petitioner No. 1, in his actions. She stated that respondent wanted to lodge an FIR, but due to repeated requests by the petitioners, the said FIR was not registered.

iii) During 2017, petitioner No. 1 developed an illicit relationship with another woman and when he was confronted with the same, he had beaten up the complainant.

iv) The brother of the complainant wanted to gift a penthouse to the complainant, but petitioner No. 1 objected to the same and forced the said brother to execute a sale agreement on behalf of both the complainant and petitioner No. 1, which was accordingly done, but no money or consideration was taken for the said house.

v) During the year 2023, when the respondent was suffering and was taken to Hyderabad for treatment, petitioner No. 1 gave her an amount of Rs. 15,000/- only and the rest of the medical expenses were borne by the relatives of the complainant, and when she came back from her treatment, petitioner No. 1 stopped talking to her showing complete negligence.

vi) On 20.04.2023, petitioner No. 1 came back home in a drunken state and while he showed his mother the gold coins that he received from his company

and told her that he would gift those to his nieces, the respondent requested petitioner No. 1 to clear off his debt towards her relatives by using the gold coins and on hearing the same, a quarrel ensued and that petitioner No. 1 pulled her hair and kicked her on her stomach, and that the respondent to save herself, went to her neighbour's house. She also stated that during that juncture, respondent wanted to file an FIR but due to the repeated requests of petitioner No. 1, the same was not filed and that for a year, respondent stayed in her paternal house. She further stated that however, on various promises being made by petitioner No. 1, respondent came to her matrimonial house.

vii) She also apprised this Court about the quarrel that took place on 10.05.2024, subsequent to which, Police visited her house and advised her to approach the appropriate forum. She also stated that the respondent had filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

viii) The learned counsel further stated that the actions of the petitioners would come within the definition of cruelty as defined under Section 86 of the BNS, 2023. She further submits that the instant case is not a case for quashing as held by the Apex Court in ***State of Haryana vs. Bhajan Lal;*** reported in **1992 Suppl. (1) SCC 335**. The learned counsel has also relied on the judgment delivered by the Apex Court in ***Dr Lokesh B. H. & Others vs. State of Karnataka,*** reported in **2026 SCC Online SC 1470.**

ANALYSIS AND FINDINGS

12. Before delving into the issues at hand, it is imperative upon this Court to examine Section 190 as well as Section 200 of the CrPC, which is now Section 210 and Section 223 of the BNSS, 2023. For better appreciation of the question as to how and when, a Magistrate can take cognizance of an offence, it is appropriate to take note of the provisions enshrined under Section 210 of the Code, which runs as follows: -

"***210. Cognizance of offences by Magistrate. -*** *(1)Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-*

(a) upon receiving a complaint of facts, including any complaint filed by a person authorised under any special law, which constitutes such offence;

(b) upon a police report (submitted in any mode including electronic mode) of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2)The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

13. A careful reading of Sub-Section (1) of Section 210 of BNSS clearly shows that a Magistrate can take cognizance of an offence in three different modes; a) upon receipt of a complaint of facts constituting such offence, b) upon receipt of a Police report of such facts, c) upon information received from any person other than a Police Officer or upon his own knowledge that such offence has been committed.

14. This Court would now turn to Section 223 of the BNSS, 2023, which reads as follows: -

"***223. Examination of complainant.*** *(1) A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:*

Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:

Provided further that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:

Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

(2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless-

(a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and

(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received."

15. A careful reading of Section 223 of BNSS, 2023, makes it abundantly clear that a Magistrate, while taking cognizance of an offence upon a complaint, shall examine on oath, the complainant or the witnesses present, if any, and the substance of such examination shall be reduced in writing and shall be signed by the complainant and the witnesses and also by the Magistrate. However, such examination can be dispensed with under the contingencies namely, if a public servant acted or purported to act, in discharge of his official duties or if the Magistrate makes over the case to another Magistrate. A careful analysis of

Section 210 and Section 223 of the BNSS, 2023, clearly reveals as to what a Magistrate shall do when he takes cognizance of an offence, on receiving a complaint of the facts, which constitute such offence. The question which requires adjudication is that, as to whether the learned Magistrate can take cognizance of offence before examining the complainant or after the examination thereof.

16. While considering these aspects, what is required to bear in mind is that cognizance has not been defined under the Code. The word 'cognizance', as has been held by the Hon'ble Apex Court, indicates the point when a Magistrate or a Judge at the very beginning, takes judicial notice of an offence. The Apex Court in ***R.R. Chari vs. State of Uttar Pradesh,*** reported in 1951 SCR 312, quoted with approval the observations made by Das Gupta J., in ***Superintendent and Remembrancer, Legal Affairs, West Bengal vs. Abani Kumar Banerjee***, reported in **AIR 1950 Calcutta 437**, with regard to the question as to when a Magistrate can be said to have taken cognizance. The relevant observations are quoted here-in-below: -

> "*What is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any magistrate has taken cognizance of any offence under Section 190 (1) (a) Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter- proceeding under Section 200 and thereafter sending it for inquiry and*

report under Section 202. When the magistrate applies his mind not for the purpose of proceeding under the subsequent Sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

17. On an examination of the aforesaid ruling, it can be deduced that on receiving a complaint, the Magistrate has to apply his mind for the purpose of proceeding under Section 223 of BNSS and the succeeding provisions and in that event, it can be said that the Magistrate had taken cognizance of the offence within the meaning of Section 210 (1) (a) of BNSS, 2023. It logically follows from the conjoint reading of Section 210 and Section 223 of the BNSS, 2023, that when a Magistrate, on receiving a complaint, records the statement of a complainant, he can be said to have, in the absence of anything shown to the contrary, taken cognizance of the offence. No specific order is required to be passed by the Magistrate, mentioning that he has taken cognizance of the offence. The cognizance has to be inferred from the preliminary action taken by the Magistrate.

18. What emerges from the above discussion is that when the Magistrate initially applies his mind to the contents of the complaint and becomes conscious and aware of the allegations made therein and decides to examine the validity of the said complaint by examining the complainant, he can be said to have taken cognizance. In other words, it is only upon taking of cognizance of an offence that the Magistrate can, thereafter, while taking the said

cognizance, examine the complainant on oath, under Section 223 of the BNSS, 2023. It is specifically provided under the said provision that the Magistrate, while taking cognizance of an offence, under Section 210 of the BNSS, 2023, shall examine the complainant on oath or witnesses present, if any. In ***Pradyut Kumar Das vs. Ajit Bora***; reported in 2006 (2) GLT 574, the Hon'ble Gauhati High Court has held as follows: -

*"24. * * * * * * * * * When, however, the complaint has been made not by a public servant in the discharge of his duties or the complaint has not been made by a Court, the Magistrate, if satisfied that the complaint needs to be proceeded further and decides to examine the complainant under Section 200, he is said to have been taken cognizance. The fallout of this discussion is that the taking of cognizance is really initial application of mind by the Magistrate for the purpose of determining if he shall proceed in terms of the provisions of Chapter XV of the Code or not."*

19. There however appears a difference in Section 223 of BNSS, 2023 and Section 200 of the old Code i.e. the CrPC. In Section 200 of the CrPC, it was provided that a Magistrate taking cognizance of an offence on complaint, shall examine the complainant or any other witness on oath, whereas in the new code i.e. under Section 223 of BNSS, 2023, it is provided that a Magistrate having jurisdiction, while taking cognizance of an offence on complaint, shall examine the complainant on oath or other witness, if present. The word that has been newly introduced is "while" in Section 223 of BNSS, 2023. The term "while" as per Merriam Websters dictionary, carries the meaning "during the time". As such it can safely be deduced that during the time of taking

cognizance, the Magistrate shall examine the complainant or other witness, if any, on oath. By no stretch of reasoning, it can be said that before taking cognizance, the complainant needs to be examined.

20. There is yet another difference between Section 200 of the CrPC and Section 223 of the BNSS, 2023 to the effect that the first proviso appended to Section 223 of the BNSS, 2023 was not present in the earlier code, which is reproduced below: -

> "*Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:"*

As such, it is made mandatory that the accused person has to be heard before taking cognizance.

21. In the instant case, it is noticed that pursuant to the complaint filed by the complainant, i.e., the respondent herein, the Court of JMFC No. 4, Kamrup (M), Guwahati, had examined the complainant on oath, under Section 223 of the BNSS, 2023, and issued notices to the petitioners to submit their show cause reply vide order dated 11.09.2024. The said exercise of the Court in examining the complainant on oath, under Section 223 of the BNSS, 2023, itself shows that cognizance was already taken before the same, since the examination succeeds cognizance as per Section 210 and Section 223 of the BNSS, 2023. It is further seen in the said order that the Court had stipulated that on examination of the show cause reply, the said Court would decide as to whether the Court will

proceed against the petitioners as per the complaint, which shows that the Court had not taken the cognizance at that point, which is not as per law. However, hearing the accused person i.e., the petitioners is a mandatory requirement before taking cognizance.

22. Thereafter, it is further noticed that on consideration of the show cause reply and the complainant's statement as well as the contents of the complaint, the learned Court, vide order dated 27.08.2025, had issued summons to the petitioners and it is stipulated in the said order that prima facie grounds to proceed against the petitioners were found. It is further noticed that by order dated 20.02.2025, the learned Court had fixed another date for pre-cognizance hearing after the said show cause reply was filed. There is a clear distinction between pre-cognizance stage and post-cognizance stage. When a Magistrate, instead of taking cognizance under Section 210 (1) of the BNSS, 2023, sends the case for investigation by the Police under Section 156 (3) CrPC, which is now Section 175 (3) of the BNSS, 2023, then, in that case, it will be, in the pre-cognizance stage, but, when the Magistrate records the statement of the complainant on oath, by proceeding under Section 223 of the BNSS, 2023, the Magistrate can be said to have taken cognizance of the offence before or while recording of the said statement. While Section 175 (3) of the BNSS, 2023, deals with Magistrate's power to direct investigation at pre-cognizance stage, Section 225 of the BNSS, 2023, empowers the Magistrate to direct investigation by Police at post-cognizance stage. The Code had made the clear distinction between pre-cognizance and post-cognizance stage. As such, the exercise done by the learned Court of JMFC, is not as per law.

23. Now, the next question that needs to be adjudicated is to how does a Magistrate, while taking cognizance of an offence, on complaint, indicate his satisfaction regarding the ground for proceeding against the accused person. In taking recourse to such a process, it is consistently held by the Apex Court that Magistrate must apply his mind on the allegation mentioned in the complaint, regarding commission of the offence. In ***Darshan Singh Ram Kishan vs. State of Maharashtra,*** reported in **(1971) 2 SCC 654**, it was held that process of taking cognizance does not involve any formal action, but it occurs as soon as the Magistrate applies his mind to the allegations and, thereafter, takes judicial notice of the offence. The observation is quoted as follows:-

> "*8. As provided by Section 190 of the Code of Criminal Procedure, a Magistrate may take cognizance of an offence either, (a) upon receiving a complaint, or (b) upon a police report, or (c) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been held, taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report.*"

24. In ***State of West Bengal vs. Md Khalid***; reported in **(1995) 1 SCC 684,** it has been held that while exercising the power to take cognizance, a Magistrate has to see whether there is any basis for initiating judicial proceeding. The relevant portion is quoted here-in-below: -

> *"43. * * * * * * In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons."*

25. From a bare reading of the observations made by the Apex Court, it is seen that under Section 210 of the BNSS, 2023, it is the application of judicial mind in the complaint that constitutes cognizance. Cognizance is taken of cases and not of persons. The Magistrate has to be satisfied whether there is sufficient ground for proceeding or not or whether there is sufficient ground for conviction. No doubt, no formal order or a speaking order is required to be passed at this stage, but at the same time, the Magistrate is not to act as a post-office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate, which shows his satisfaction regarding the allegations made in the complaint that the same are prima facie true. In

Mehmood U.L Rahman & Ors vs. Khazir Mohammad Tunda & Ors, reported in **(2015) 12 SCC 420**, the Hon'ble Supreme Court has held as follows:-

"*23. The steps taken by the Magistrate under Section 190(1) (a) of CrPC followed by Section 204 of CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court.*

The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court.

No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 of CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly.

In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the

statements recorded and the result of inquiry or report of investigation under Section 202 of CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 of CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction.

If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 of CrPC, the High Court under Section 482 of CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before criminal court as an accused is serious matter affecting one's dignity, self respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.

24. Having gone through the order passed by the Magistrate, we are satisfied that there is no indication on the application of mind by the learned Magistrate in taking cognizance and issuing process to the appellants. The contention that the application of mind has to be inferred cannot be appreciated. The further contention that without application of mind, the process will not be issued cannot also be appreciated. Though no formal or speaking or reasoned orders are required at the stage of Section 190/204 CrPC, there must be sufficient indication on the application of mind by the Magistrate to the facts constituting commission of an offence and the statements recorded under Section 200 of CrPC so as to proceed against the offender. No doubt, the High Court is right in holding that the veracity of the allegations is a question of evidence. Question is not about

veracity of the allegations; but whether the respondents are answerable at all before the criminal court. There is no indication in that regard in the order passed by the learned Magistrate. We, hence, set aside the order dated 03.04.2007 passed by the Judicial Magistrate First Class, Srinagar and the impugned order passed by the High Court. The matter is remitted to the Magistrate for fresh consideration and further action, if required to be taken in accordance with law."

25.1. In the instant case, in the order taking cognizance dated 27.08.2025, apart from stating that the Court had considered the statement of the complainant as well as the contents of the complaint and heard the counsels for both sides, no other averments are made in the order showing that the Magistrate is satisfied that the allegations made in the complaint when considered along with the statement recorded, are prima facie true, which, in the considered opinion of the Court is not as per law.

26. Next point to be considered by this court is as to whether the offences for which cognizance was taken, against the petitioners, was correctly taken or not. It is seen that the cognizance was taken for the offences under Sections 115/351/85 of the BNS, 2023. Section 85 of the BNS, 2023 is quoted here-in-below: -

"*85.* ***Husband or relative of husband of a woman subjecting her to cruelty.-*** *Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*"

27. In order to establish an offence under Section 85 of the BNS, 2023, the prosecution must establish: -

a) that the woman is married,

b) she has been subjected to cruelty or harassment,

c) such cruelty or harassment must have been shown to have been inflicted either by her husband or by the relatives of her husband.

The word cruelty has been explained in Section 86 of BNS, 2023 and it consists of two clauses; (a) and (b). It has been provided that to establish cruelty, it must be shown that the action of the respondent is of such a nature that is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. It is also provided that harassment should be of such a nature so that it coerces her or any person related to her, to meet any unlawful demand of any property or valuable security or on account of failure to meet such demand. In the present complaint, it is stated, without any specific particulars, as to the alleged demand of money or property made by the petitioner No. 1. It was further stated in the complaint about an amount of Rs. 15,000/-, which was taken by petitioner No. 1, from the sister of the complainant as a loan amount, which, however, was allegedly not returned as stated by the complainant. It was also stated that petitioner No. 1 had sold the ornaments given to him at the time of marriage, but as far as, her ornaments are concerned, the same were kept in the house of the parents of the

complainant, which shows that it was not misappropriated by petitioners. As far as the *Stridhan* articles are concerned, the same are admitted by petitioner No. 1 as lying in the matrimonial house of the complainant, for which other recourse to law is available. Further, it is noticed that the medical documents that the complainant had annexed in the complaint, does not show any bodily injury being inflicted upon the complainant.

Furthermore, the complainant was admittedly ill and the medical certificates were in connection thereof. Further, the house that was alleged to have been gifted by the brother of the complainant, was also not stated by the complainant that the same was demanded by the petitioners. It is also noticed in the agreement for sale that full consideration was paid for the said house by the petitioner No. 1. As such, the ingredients of Section 85 of the BNS, 2023, are not attracted in the instant case.

In **Belide Swagath Kumar Vs. State of Telangana,** reported in **2025 INSC 1471**, the Hon'ble Apex Court had held as follows: -

> *"24. * * * * * * * Merely stating that the Accused-Appellant has mentally harassed the complainant-Respondent No. 2 with respect to a demand of dowry does not fulfil the ingredients of Section 498A of the Indian Penal Code especially in the face of absence of any cogent material or evidence on record to substantiate the said allegations. The term "cruelty" cannot be established without specific instances. The tendency of invoking these sections, without mentioning any specific details, weakens the case of prosecution and casts serious aspersions on the viability of the version of*

the complainant. Therefore, this Court cannot ignore the missing specifics in an FIR which is the premise of invoking criminal machinery of the State. In such cases involving allegations of cruelty and harassment, there would normally be a series of offending acts, which would be required to be spelt out by the complainant against perpetrators in specific terms to involve such perpetrators into the criminal proceedings sought to be initiated against them and therefore mere general allegations of harassment without pointing out the specifics against such persons would not be sufficient to continue criminal proceedings."

28. As far as the allegations against the mother-in-law of the complainant i.e. petitioner No. 2, are concerned, the same are as follows: -

(a) petitioner No. 2 supported petitioner No. 1 and instigated him to torture her.
(b) petitioner No. 2 although knew and saw the torture meted out to her by her son, but she gave support to her son to all the worst deeds committed by him.

(c) petitioner No. 2 instigated petitioner No. 1 by saying that if petitioner No. 1 is in love with the lady, with whom it was alleged that Petitioner No. 1 had illicit relationship, he can marry her.

(d) when petitioner No. 1 came in a drunken state and quarreled with the complainant and pushed her, petitioner No. 2 did not object.

(e) when complainant in order to escape from assault, tried to enter another room, petitioner No. 2 closed that room, thereby instigating petitioner No. 1.

These are the primary allegations against petitioner No. 2. The petitioner No. 2 is of 67 years of age in the year 2025 and as such it cannot be expected that

she will meddle into the quarrels between the complainant and petitioner No. 1 and settle disputes. Further in what way petitioner No. 2 instigated or supported petitioner No. 1 is not specified. The two numbers of allegations that petitioner No. 2 retorted that petitioner No. 1 can marry the woman, with whom it is alleged that petitioner No. 1 had illicit relationship, is without any basis in as much as the allegation itself is without any substantiating materials. Further in the statement made by the complainant under Section 223 of the BNSS, 2023, it was stated that petitioner No. 1 had relationship with many women.

The other allegation that petitioner No. 2 closed the room to which the complainant wanted to enter to save herself from assault is without any detail. The residence is a flat where there are so many rooms and the room to which the complainant wanted to enter may belong to petitioner No. 2, who stayed away from the alleged quarrels, she being an aged lady. Furthermore, the said allegation is not stated by the complainant in her statement under Section 223 of the BNSS, 2023 that complainant wanted to enter a room, which petitioner No. 2 had closed. As such, the allegations against petitioner No. 2 are omnibus and this Court interferes with the same.

The Hon'ble Supreme Court had held time and again that without specific allegation against the relatives of the husband, the criminal prosecution should not be allowed to continue. In **Dara Lakshmi Narayana & Ors Vs. State of Telangana**, reported in **(2025) 3 SCC 735**, the Apex Court had held as follows: -

> "*25. A mere reference to the names of family members in a criminal case arising out of a matrimonial dispute, without specific allegations indicating their active involvement should be nipped in the bud. It is a well-recognised fact, borne out of judicial experience, that there is often a tendency to*

implicate all the members of the husband's family when domestic disputes arise out of a matrimonial discord. Such generalised and sweeping accusations unsupported by concrete evidence or particularised allegations cannot form the basis for criminal prosecution. Courts must exercise caution in such cases to prevent misuse of legal provisions and the legal process and avoid unnecessary harassment of innocent family members. In the present case, Appellant Nos. 2 to 6, who are the members of the family of Appellant No. 1 have been living in different cities and have not resided in the matrimonial house of Appellant No. 1 and Respondent No. 2 herein. Hence, they cannot be dragged into criminal prosecution and the same would be an abuse of the process of the law in the absence of specific allegations made against each of them."

29. The learned Court had also taken cognizance under Section 115 of the BNS, 2023, and the said Section read as follows:-

"***115. Voluntarily causing hurt. -*** *(1) Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".*

2) Whoever, except in the case provided for by sub-section (1) of section 122 voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both."

30. Section 115 of the BNS, 2023, penalizes the act of causing hurt, whereby any voluntary act or omission either causes bodily pain, disease or infirmity. There must be some kind of hurt voluntarily inflicted. A person can be convicted only when the prosecution is able to prove that the said acts were done intentionally or with knowledge that such acts would cause hurt to the victim.

31. In the instant case, the complainant had stated in the complaint that on 20th of April, 2023, at night, petitioner No. 1, came in a drunken state, and assaulted the victim. She also stated that under the influence of alcohol, petitioner No. 1 pulled the hair of the complainant and a handful of hair was plucked out from the head and that the petitioner No. 1 had also kicked on her stomach. She also stated that in the daytime, the petitioner No. 1 had come with some gold coins gifted to him by the Company, where he worked and over giving the same to the nieces of the petitioner No. 1, there was a quarrel. However, the complainant had not substantiated the statements with any medical documents in the said complaint petition with regard to the said incident. In the copy of the interlocutory application filed by the complainant for vacation of the stay order, certain medical documents were annexed, which although reflected that patient was taken to the hospital for bodily injury, but the reports suggested no abnormality in the same. Further, the dates on which the complainant was taken to the hospital, also does not tally with the dates given in the complaint petition. It is also noticed that one photograph was annexed to the said petition, showing removal of some hairs from the head, but it is not clear as to whether the photograph belonged to the complainant or someone else. Furthermore, although in her statement recorded under Section 223 of the BNSS, 2023, she stated that she had to take medical consultation but

no documents to that effect, was annexed by her. There is a further statement by her that on that night, she escaped to the house of one of her neighbours, but there is no statement by the said neighbour in the instant proceeding, rather there are no other witnesses substantiating her claim, if not medical certificate.

32. A further incident was stated by the complainant, which was alleged to have taken place on 10th of May, 2024, at around 10:30 am. This Court notices that on the said day, when the brother and sister of the complainant went to the house of the complainant to save her, the gate was found closed and the time of incident was 10:30 am, and it was further stated that the brother jumped over the boundary wall and saved the complainant from the clutches of petitioner No. 1, and further, when sister of the complainant came back with Police personnel, the occupants of the building did not open the gate and on the interference of the Police personnel, the gate was opened and that finally, the Police personnel advised the complainant and others to approach the appropriate forum. It is also noticed that although the complainant stated that she was assaulted a number of times and she desired to lodge ejahar, but none of them were actually lodged before the Police, rather it is noticed that petitioner No. 1 had tried to lodge an FIR before the concerned Police Station, but on refusal to register the same, he had given a report to the Officer-On-Special-Duty to Hon'ble CM, who had, on its turn, forwarded the same to the Officer-In-Charge of the concerned Police Station to do the needful. Further, no medical certificate was also annexed by the complainant with regard to the incident alleged to have happened on 10th of May, 2024 or statement of any other witness substantiating the same. Furthermore, in the statement of the complainant

under Section 223 of the BNSS, 2023, she had simply stated that on 10.05.2024, the petitioner No. 1 fought with her again. As such, the ingredients under Section 115 of the BNS, 2023, are not attracted.

In **Ishwar Chand Sharma and Others vs. State of Uttar Pradesh and Another,** reported in **2026 INSC 587**, the Hon'ble Apex Court has held as under:-

> *"7.8 * * * * * * * * * It is trite law that in order to establish an offence of voluntarily causing hurt, punishable under Section 115 of BNS, prosecution has to satisfy the key ingredients of the said Section, that is to say, the prosecution has to produce material in order to show prima facie that bodily pain, disease or infirmity was caused by the accused persons, in order to qualify as voluntarily causing hurt. It is observed that no material in terms of an injury report or any medical report has been filed so as to further substantiate the said allegations. In this regard, the prosecution has produced merely the statements of the prosecutrix and complainant to substantiate their claims. Although production of an injury report is not a sine qua non for proving an offence under Section 115 of BNS and even if there are no visible injuries, the offence has to be established by other evidence to show that bodily pain, disease or infirmity was caused but at the same time, a trial cannot be allowed to proceed merely on a bald statement of allegation that the prosecutrix was hurt when no other detail or specific acts have been mentioned or alleged. A mere bald allegation without any supporting detail or materials cannot straight away lead to setting criminal law in motion."*

33. The learned Court of JMFC had also taken cognizance of offence under Section 351 of the BNS, 2023, which is quoted here-in-below: -

"***351. Criminal intimidation. -*** *(1) Whoever threatens another by any means, with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.*

Explanation. - A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration.

A, for the purpose of inducing B to resist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

(2) Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(3) Whoever commits the offence of criminal intimidation by threatening to cause death or grievous hurt, or to cause the destruction of any property by

fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

(4) Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence under sub-section (1)."

34. A simple reading of the definition of criminal intimidation, indicates that there must be an act of threatening to another person, of causing an injury to the person, reputation or property of the person threatened or to the person, in whom, the threatened person is interested and the threat must be, with the intent to cause alarm to the person threatened or it must be to do any act, which he is not legally bound to do, or omit to do such an act, which he is legally entitled to do. In the instant case, there is no specific allegation that the complainant has been threatened or she was put to alarm of any bodily injury to do certain act or to omit to do certain act. The allegation is that the petitioner No. 1 had abused the complainant and assaulted her. Mere expression of any words without any intention to cause alarm, would not be sufficient to bring in the application of this Section. Materials have to be placed on record to show that the intention is to cause alarm to the complainant. In **Ishwar Chand Sharma and Others vs. State of Uttar Pradesh and Another (supra)**, the

Hon'ble Apex Court has held as under:-

"*7.9 The complainant has further failed to produce any material in support of the allegations of abuses meted out by appellant Nos.2 and 3 to the prosecutrix. It has been merely stated that she was abused and threatened that she may be killed. It has been time and again held by this Court that in order to establish an offence of criminal intimidation punishable under Section 351 of BNS merely stating that the victim was abused is not sufficient. For the essential ingredients to satisfy invocation of the said offence, the prosecution has to produce material to the effect that the accused specifically threatened the victim and that such threat consisted of some specific injury to his person, reputation or property or to the person, reputation or property of someone in whom he was interested. It further needs to be satisfied that the said specific act or omission was done with an intent to cause alarm to that person or to cause that person to do any act which he was not legally bound to do or to omit to do any act which he or she was legally entitled to do. A plain reading of the complaint reveals that the same did not specify the abusive words used or anything specific that was said to the prosecutrix. Rather, it has been merely stated that appellant Nos.2 and 3 abused and threatened the prosecutrix. No material has been produced which specify what the threat actually was, how the said threat was carried out and what was actually stated in terms of the threat. Vague and general allegations are not sufficient to sustain criminal charges formed under the said provision as there have to be cogent facts, discernible from the general accusation so as to show that the said threat was meted out to the prosecutrix, without which, this Court cannot allow*

continuance of criminal prosecution against the appellants herein."

As such, without any specific averment in the complaint about the threatening given to the complainant as defined under Section 351 of the BNS, 2023, the said Section 351 of the BNS, 2023, is also not attracted.

CONCLUSION:

35. In view of the findings narrated above, this Court has no alternative, but to interfere with the cognizance order taken by the learned Court of JMFC No. 4, Kamrup (M), at Guwahati. Accordingly, the order dated 27.08.2025, passed by the Court of JMFC No. 4, in CR Case No. 515 of 2024, is set aside and quashed. Consequently, interim order(s) passed earlier, if any, stands vacated.

36. Petition is allowed and disposed of.

JUDGE

Comparing Assistant