GAHC020004432026 2026:GAU-NL:623

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

Case No. : Crl. Pet./21/2026

NARINDER MOHAN AND ANR
WHOLE TIME DIRECTOR, M/S EASTMAN CASE AND FORGE LIMITED, G.T. ROAD, NEAR AIRPORT, LUDHIANA, PUNJAB, 141120

2: SHRI BARINDER KUMAR
ZONAL INCHARGE
ZONE B
M/S EASTMAN CAST AND FORGE LIMITED
G.T. ROAD
NEAR AIRPORT
LUDHIANA
PUNJAB - 14112

VERSUS

SHRI VIVODI MEKRO
PROPRIETOR OF M/S HILL AGRO AGENCY, P.R. HILL, KOHIMA, NAGALAND, S/O SHRI MEHOZU MEKRO, R/O HOUSE NO 1071B, BELOW ST. MARYS SCHOOL, LOWER LERIE COLONY, KOHIMA

Advocate for the Petitioner : MUGHAKA, N KERETSU

Advocate for the Respondent : NUKSUNGTILA, IMLIRENLA,NONGOSA

BEFORE:

HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocates:

For the Petitioners	: Sushant Kareer : A. Botsulum
For the Respondent	: Nongosa
Date of Hearing & Judgment	: **17.11.2026**
Whether the pronouncement is of the operative part of the Judgment?	: --
Whether the full Judgment has been pronounced?	: Yes

:JUDGMENT & ORDER (ORAL):

1. By filing the instant application under Section 528 of the BNSS, the Petitioners have prayed for quashing the Complaint Case No. 16/2025 pending before the Chief Judicial Magistrate, Kohima as well as the order dated 03.12.2025 passed by the Chief Judicial Magistrate, Kohima in Complaint Case No. 16/2025.

2. Heard learned counsel for the Petitioners, Mr. Sushant Kareer along with Mr. A. Botsulum. Also heard Mr. Nongosa, learned counsel for the sole Respondent.

3. The case of the Petitioners as projected in the application is that the Petitioners' company and the Respondent/Complainant had a longstanding business relationship wherein the Respondent firm, namely, M/s Hills Agro Agency used to purchase goods on credit basis from the Petitioners'

company. In the meantime towards discharge of a legally enforceable liability arising out of such commercial transactions, the Respondent had issued cheque bearing No. "038170" dated 27.10.2025 amounting to Rs. 35,88,853/- drawn on Axis Bank Ltd., P.R. Hill, Kohima, Nagaland.

4. It is stated that prior to the presentation of the cheque, the Petitioners had issued a legal notice dated 16.10.2025 for recovery, demanding payment of the outstanding amount. The Respondent allegedly assured the Petitioners telephonically that sufficient balance would be maintained in the account of the Respondent and requested some time before presentation of the cheque. Relying upon such assurances, the Petitioners presented the Cheque for encashment through their bank, HDFC Bank Ltd., Ludhiana. However, the cheque was dishonored through the memo dated 01.11.2025, with remarks "Account Blocked". Consequently, proceedings under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the NI Act) were initiated by the Petitioners before the competent court at Ludhiana. However, in order to evade legal liabilities and to pressurize the Petitioners, the Respondent instituted the impugned Criminal Complaint before the learned Chief Judicial Magistrate, Kohima alleging offences under Sections 316, 318, 179, 180 R/W Section 3(5) of the BNS on the allegation that the cheque in question had been misused and fraudulently filled up by the Petitioners without the authority of the respondent complainant.

5. It is also the case of the Petitioners that upon the filing of the impugned Criminal Complaint No. 16/2025, the learned Trial Court issued

the impugned summoning order dated 03.12.2025 mechanically and without proper application of mind and without examining whether the basic ingredients of the alleged offences had been made out. Being aggrieved, the Petitioners have come before this Court by filing the instant petition under section 528 of the BNSS.

6. Learned counsel for the Petitioners submits that a bare perusal of the impugned complaint does not even remotely disclose the commission of any alleged offence under the sections of law as mentioned above and there are no incriminating materials and ingredients of the alleged offences in the complaint. The complaint must establish the separate statutory ingredients of each offence before the trial court can issue the summons. It is the submission of the learned counsel that it is settled law that summoning an accused is a serious matter and the Magistrate must apply his judicial mind to the facts and the law before issuing the process and a mechanical summoning order is liable to be interfered with by this Court.

7. It is also the submission of the learned counsel for the Petitioners that the Respondent has alleged in the complaint that the Accused No. 2 acquired two bank cheques from the Complainant as security for dealership explicitly for record/security keeping purpose only. And that on 31.10.2025, one of the complainant's cheques No. "038170" was fraudulently filled for a sum of Rs. 35,88,853/- and presented for encashment. In this regard, the learned counsel for the Petitioners submits that the Respondent could not have known the exact time when

the said post-dated cheque, which was given to the Petitioners' bank could be presented for encashment and claiming that they had to freeze the account when the cheque was presented clearly shows the *mala fide* intention of the Respondent. It is submitted that the said post-dated cheque was issued by the Respondent and upon presentation of the cheque, the Respondent deliberately stopped the payment and freezed their account.

8. It is the specific submission of the learned counsel for the Petitioners that an offence under sections 316, 318, 179, 180 read with Section 3(5) of the BNS is not made out as the said cheque was a post-dated cheque which was issued to the Petitioners against the material that was taken on credit by the Respondent. Subsequently, the cheque would not have been presented had there not been any balance which was due against the Complainant. The post-dated cheque was, therefore, used after the Complainant failed to clear the dues against the present Petitioners after numerous legal notices were sent to him.

9. It is also submitted that the cheque was presented with the exact amount that was due towards the Petitioners and the Complainant nowhere claims that the cheque in question was not issued by him. As admitted by the Complainant, the cheque was duly signed and handed over to the Petitioners and thus, in no way does it attract an offence under Sections 316, 318, 179, 180 read with Section 3(5) of the BNS amounting to forgery, cheating, criminal breach of trust or any other allegation against the Petitioners. On the other hand, there is a direct

admission of issuance of the cheque which forms the essence of proceedings against the Respondent under Section 138 of the NI Act.

10. It is further submitted by the learned counsel for the Petitioners that the Petitioners had issued a statutory notice under the NI Act upon the Respondent vide legal notice dated 07.11.2025. The Respondent had received the notice and was well aware that the cheque issued by him could not be encashed due to the fact that his account was frozen by him. Under Section 138 of the NI Act, the complainant can file a complaint only within one month from the date of the service of the statutory legal notice. Therefore, the complaint under Section 138 of the NI Act was filed by the Petitioners only on 09.12.2025. In the said criminal complaint filed before the competent court at Ludhiana, the Respondent had not been appearing before the learned court and therefore bailable warrants were issued against the present Respondent by an order dated 06.05.2026. Further, the Complainant has not filed any quashing petition pertaining to the said complaint under the NI Act pending before the learned Judicial Magistrate (First Class), Ludhiana, Punjab. It is the submission of the learned counsel that the present Respondent had filed the impugned complaint only after he received the legal notice dated 07.11.2025. Therefore, it can be clearly made out that the instant impugned complaint was false and frivolous and only preferred in order to avoid the legal action against him and respondent is trying not to pay the dues which are payable to the Petitioners.

11. It is submitted that since the Petitioners and the Respondent were in

a business relationship there was no occasion of making any entrustment to the Petitioners and moreover, no offence of forgery can be made out as the original cheque is not with the Complainant but the same is with the Petitioners at Ludhiana. The complaint has also not stated that there are no dues payable by the Respondent. The only dispute raised by the respondent is that there are discrepancies with regard to the entries in the ledgers and, therefore, the instant dispute is civil in nature and can be decided only in the appropriate civil forum.

12. Learned counsel, in view of the submissions made hereinabove submits that the continuance of the proceedings in Criminal Complaint Case No. 16/2025 pending before the learned Chief Judicial Magistrate, Kohima is an abuse of the due process of law and, therefore, prays that the impugned Criminal Complaint Case No. 16/2025 pending before the Chief Judicial Magistrate, Kohima and the impugned order dated 03.12.2025 are liable to be quashed and set aside. The learned counsel for the Petitioners has relied on the following cases in respect of his submissions:

i. ***M/s JM Laboratories & Ors. v. State of Andhra Pradesh & Anr.***, **2025 INSC 127**,

ii. ***Pepsi Foods Ltd., v. Special Judicial Magistrate***, **(1998) 5 SCC 749**.

13. Learned counsel for the sole Respondent, Mr. Nongosa relies on the affidavit filed on behalf of the Respondent and submits that the present

petition is misconceived and devoid of merit. It is stated that the allegations in the complaint disclose clear cognizable offences warranting trial.

14. Learned counsel submits that there are serious questions of fact involved with regard to an amount of Rs. 35,88,853/- which requires adducing evidence and cannot be decided in a quashing petition. It is submitted that the entire petition proceeds on the false premise that the Complainant owes an admitted sum of Rs. 35,88,853/- to the Petitioners/accused persons. However, as per the books of account maintained by the Complainant there is no amount of outstanding dues against the Petitioners.

15. It is further submitted by the learned counsel that the petition is filed only by Accused Nos. 1 and 3. However, the Petitioners are silent on the role of Accused No. 2, one Shri Bikram Dutta, who is not a party in the instant petition. However, the Accused No. 2/Bikram Dutta was the sole contact person for the Complainant in all transactions with the Petitioner's company. And in fact the company itself had suspected foul play on the part of Bikram Dutta and had lodged an FIR against the said Bikram Dutta. It is the submission of the learned counsel that the allegation of the impugned complaint case being a counter blast due to the filing of the complaint under the NI Act by the Petitioners is belied by the chronology of events inasmuch as the Respondent's complaint before the Chief Judicial Magistrate, Kohima was filed on 26.11.2025, before the Petitioners filed their complaint on 09.12.2025. There was, therefore, no proceedings

pending at Ludhiana on the date when the Respondent instituted the criminal complaint at Kohima.

16. Learned counsel has also submitted that the Respondent had not issued any post-dated cheque to the Petitioners towards discharge of any outstanding liability nor had he spoken telephonically with the Petitioners requesting time to maintain Rs. 36 Lakhs in his account. The only cheques handed over were two signed blank cheques in February, 2020 for security/record purposes. The Petitioners have deliberately sought to draw an inference that the cheque in question had been issued by the Respondent towards discharge of the alleged liability of Rs. 35,88,853/-. The factual position is that the said cheque was among two signed blank cheques handed over to the Petitioners as far back as in February, 2020 as security in connection with their business dealings and the same was subsequently filled up and presented by the Petitioners for an amount of Rs. 35,88,853/- without the authority and consent of the Respondent which amounts to criminal breach of trust. Learned counsel has also submitted that the Respondent has filed a criminal petition before the Punjab & Haryana High Court for quashing and setting aside of the Criminal Complaint No. COMA/67352/2025 pending disposal before the learned Judicial Magistrate (First Class), Ludhiana. The learned counsel has also submitted that the offences of cheating and forgery are clearly made out against the Petitioners as the blank cheque which was handed over by him has been filled up without his approval and the same has been presented for encashment without being authorized by him or without his knowledge.

17. Learned counsel submits that the law is well settled that criminal proceedings should not be quashed when the complaint discloses *prima facie* offences and disputed questions of fact are to be decided only during the trial. He has, therefore, submitted that the Petitioners have not made out a case to warrant the interference of this Court under Section 528 BNSS.

18. The submissions made by the learned counsel for the parties have been duly considered and the Trial Court Records have been examined.

19. The law regarding to exercise of inherent power of this Court under section 528, BNSS is no longer *res integra*. The Supreme Court in the case of ***State of Haryana v. Bhajan Lal***, **1992 Supp(1) SCC 335** has held that the high court in exercise of its inherent powers under section 482 of the CrPC/528 BNSS can quash an FIR or criminal proceeding where allowing them to continue would amount to an abuse of the process of law or whether intervention is necessary to secure the ends of justice. The Supreme Court has identified seven categories of cases where the High Court may exercise its inherent jurisdiction to quash criminal proceedings:

> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the first information report and other materials, if any, any, accompanying the FIR do not disclose a*

cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide

and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

20. These seven categories are illustrative and not exhaustive. The inherent power must be exercised sparingly and with circumspection. Unless the allegations, even if accepted in their entirety, fail to disclose a commission of an offence or falls within any of the categories illustrated in *Bhajan Lal*, the Court would essentially refrain from interfering with the criminal proceeding at the threshold.

21. The facts and circumstances will differ from case to case and the Court has to apply the principles laid down in *Bhajan Lal* and the subsequent case of ***Neeharika Infrastructure (P) Ltd. v. State of Maharashtra***, **(2021) 19 SCC 401**, in order to find out whether the particular case falls within any of the categories so as to exercise its inherent jurisdiction.

22. Upon examining the allegations against the Petitioners in the impugned Complaint Case No. 16/2025 it appears that the instant case basically arises out of a commercial business relationship between the Petitioners and the Respondent. This Court is of the view that Sections 179 and 180 are not attracted in the instant case as Section 179 of the BNS deals with using as genuine forged or counterfeit coin, government stamp, currency notes or bank notes and Section 180 BNS deals with the possession of forged or counterfeit coins, government stamps, currency notes or bank notes. In the instant case, the offence does not fall under

any of these categories as the dispute is with regard to a cheque and on this ground alone, the ingredients of Sections 179 and 180 of the BNS are absent.

23. Section 316 of the BNS deals with criminal breach of trust. In order to establish criminal breach of trust, there must be entrustment of property, i.e., the accused must have been entrusted with some property by the complainant and the accused must dishonestly misappropriate or confer the entrusted property to his own use. The important legal requirement for Section 316, BNS is that there must be entrustment of property or dominion over property. Mere possession or custody without the requisite entrustment will not constitute criminal breach of trust. Moreover, dishonest intention must be established at the inception. Mere failure to return property, inability to repay money or breach of contractual obligations does not by itself constitute criminal breach of trust. Criminal complaint must demonstrate how the accused dealt with entrusted property dishonestly. In the instant case, the ingredient of entrustment of property is completely missing inasmuch as the parties were in a business relationship and there was no situation where the Petitioners were entrusted with any property by the Respondent. Moreover, the original cheque has been admittedly handed over to the petitioners and it is in the possession of the Petitioners. Mere entrustment of a signed blank cheque as security followed by their subsequent filing and presentation do not establish criminal breach of trust especially when there is absence of sufficient evidence of dishonest intention and entrustment in a fiduciary capacity. In the opinion of this Court, the offence under Section 316 of the

BNS is also not attracted in the present case. More pertinently, the ground that the blank signed cheque was handed over only as security in a business transaction can be raised as a defense by the respondent in the Complaint case before the learned Judicial Magistrate (First Class), Ludhiana.

24. With regard to Section 318 BNS, the complaint must reveal that the accused had deceived a person by making a false representation or by dishonest concealment of material facts and by such deception the accused must fraudulently or dishonestly induce the deceived person to deliver any property to any person. Such act or commission must also cause or likely to cause damage or harm to the deceived person in body, mind, reputation or property. The intention to deceive must exist at the time of making the inducement and mere subsequent failure to fulfill the terms does not constitute cheating. Dishonest or fraudulent intention at the inception of the transaction is essential to constitute cheating. This Court is unable to find any ingredient of Section 318 BNS in this case.

25. On an overall consideration of the allegations in the impugned Criminal Complaint No. 16/2025, this Court finds that the complaint has failed to disclose the essential ingredients of alleged offences against the Petitioners. This Court is conscious of the settled principle that at the stage of consideration of a petition under section 528 of the BNSS, the Court is not required to assess the probation value of the evidence or determine the ultimate guilt or innocence of the accused. The present case, however, does not involve an assessment of the credibility of the

witnesses or appreciation of disputed evidence. The deficiency lies in the absence of the very foundational ingredients necessary to constitute the alleged offences.

26. It is pertinent that the affidavit filed by the Respondent itself reveals that the dispute is with regard to the amount owed by the Respondent towards the Petitioners and as to whether there was any amount due to be paid to the Petitioners. It is the Respondent's own admission that there are disputed question of facts in the present case inasmuch as the Petitioners have claimed that the Respondent owes a sum of Rs. 35,88,853/- to the Petitioners; whereas as per the books of account maintained by the Respondent, there is no amount of outstanding dues to be paid by the Respondent to the Petitioners. Such a dispute can only be decided by a civil court of competent jurisdiction.

27. Permitting the prosecution to continue in the absence of essential ingredients of the offences would serve no legitimate purpose and would amount to submitting the Petitioners to a criminal trial without a legally sustainable basis. The case, therefore, falls within the parameters laid down in *Bhajan Lal* warranting the exercise of the inherent jurisdiction of this Court.

28. In view of the above observations and discussions the petition is allowed and the criminal proceedings in Criminal Complaint Case No. 16/2025 pending before the learned Chief Judicial Magistrate, Kohima as well as the summoning order dated 03.12.2025 issued by the learned Chief Judicial Magistrate, Kohima are hereby quashed and set aside only

insofar as the two Petitioners are concerned.

29. It is made clear that the observations made herein are confined to the consideration of the present petition only and shall not affect the proceedings, if any, against the other accused persons.

30. The Registry shall send back the Trial Court Records expeditiously.

JUDGE

Comparing Assistant

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