

GAHC010031162026



2026:GAU-AS:14454

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

Case No. : Crl.Pet./233/2026

THE BRANCH MANAGER,
STATE BANK OF INDIA,
THANA CHARIALI BRANCH, P.O. AND P.S. DIBRUGARH, DIST.
DIBRUGARH, ASSAM, PIN-786001, REPRESENTED BY ITS BRANCH
MANAGER NAMELY SRI SUNIL PRASAD, AGED ABOUT 47 YEARS, SON OF
LT. DILIP NARAIN LAL, RESIDENT OF FLAT NO. 201, J.S.B.ANGAN, P.N.
ROAD, P.O. AND P.S. DIBRUGARH, DIST. DIBRUGARH, ASSAM, PIN-786001

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP BY THE PP, ASSAM

2:SMTI. MANJU SAIKIA @ MONJU SAIKIA
W/O LATE SUREN SAIKIA
R/O BORAGADHOI
P.O. AND P.S. DULIAJAN
DIST. DIBRUGARH
ASSAM PIN-786602.

3:SRI BULBUL SAIKIA
S/O LATE SUREN SAIKIA
R/O GANDHI NAGAR
PO. AND P.S. DIBRUGARH
DIST. DIBRUGARH
ASSAM PIN-786001

Advocate for the Petitioner : MR. B K SEN, F. SHAHIN, P SINGH, N HASAN, MR A HUSSAIN

Advocate for the Respondent : PP, ASSAM, A R ANSARI (R-2), MR. S MITRA (R-2), MR. A K BORO (R-2)

BEFORE
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

29-09-2026

Heard Mr. B. K. Sen, learned counsel for the petitioner and Ms. S. H. Borah, learned Additional Public Prosecutor, Assam for the respondent No.1. Also heard Mr. S. Mitra, learned counsel for the respondent No.2.

2. This is an application under Section 528 BNSS for quashing of the complaint Case and all subsequent proceedings in Complaint Case No. 89/2025, pending in the Court of learned Judicial Magistrate, First Class, Dibrugarh, Assam.

3. Mr. Sen, learned counsel for the petitioner submitted that the respondent No.2 as a complainant had instituted a complaint case before the learned CJM, Dibrugarh, which has been sent for disposal before the Court of learned JMFC, Dibrugarh and the complaint case, being C.R. Case No. 89/2025 was filed under Sections 316(2)/316(5)/318(1)/318(2)/318(3)/318(4)/336(3)/ 338/340(2)/31(2) of BNS, 2023 corresponding to Sections 406/409//415/417/418/420/467/468/471/120B of IPC.

4. He further submitted that from the plain reading of the complaint lodged by the respondent No.2, it is seen that even if the allegation is made in the complaint is taken at its face value, do not even prima facie constitute any cognizable offence to make out a case against the present accused/petitioner who is discharging his duty as a Branch Manager, SBI, Thana Chariali Branch, Dibrugarh.

5. The allegation brought in the complaint is basically against the proforma

respondent No.3, Bulbul Saikia, wherein, by misrepresentation and fraudulently he executed a sale deed in his favour by the husband of the respondent/complainant and also obtained a loan by inducing the present petitioner, i.e., the accused No.2 inspite of the fact that the property is not free from encumbrances as it was mortgaged by her deceased husband during his lifetime in favour Indian Bank (Allahabad Bank) for a loan. The complainant was also not aware about the loan taken by the accused No.1/respondent No.3, and they only came to know about the loan by mortgaging the land after receiving notice from the Bank authority. Thereafter, the Title Suit was also instituted by the complainant.

6. Thus, even from the plain reading of the complaint, it is seen that there is no allegation of forgery or cheating against the present petitioner/bank authority, rather, from the statement made in the complaint, it reveals that he is a victim of this case, wherein, the loan was granted to the accused No.1/respondent No.3 as per his inducement on the basis of the documents produced before the bank authority. Thus, there is no prima facie case against the present petitioner/accused No.2 to take cognizance against him.

7. Mr. Sen, learned counsel for the petitioner further submitted that the complaint had been instituted by suppressing the fact that after receiving the notice under the SARFAESI Act from the bank authority because of non-payment of dues, the complainant/respondent No.1 had instituted the civil suit and the criminal case. The civil suit was dismissed as the civil forum has no jurisdiction to try a case, wherein the notice is issued under the SARFAESI Act by the bank authority.

8. The complaint has been instituted only with a malafide intention to stop

the proceeding under the SARFAESI Act and considering this aspect also the complaint lodged against the present petitioner is liable to be set aside and quashed.

9. In that context, Mr. Sen, learned counsel also relied on a decision of the Apex Court in the case of **K. Virupaksha and another Vs. State of Karnataka and another** reported in **(2020) 4 SCC 440** and emphasized basically on para 17, which read as under:

“17. The appellants herein had also referred to the provision as contained in [Section 32](#) of the SARFAESI Act which provides for the immunity from prosecution since protection is provided thereunder for the action taken in good faith. The learned senior counsel for the Complainant has in that regard referred to the decision of this Court in the case of [General Officer Commanding, Rashtriya Rifles vs. Central Bureau of Investigation & Anr.](#) (2012) 6 SCC 228 to contend that the defence relating to good faith and public good are questions of fact and they are required to be proved by adducing evidence. Though on the proposition of law as enunciated therein there could be no cavil, that aspect of the matter is also an aspect which can be examined in the proceedings provided under the [SARFAESI Act](#). In a circumstance where we have already indicated that a criminal proceeding would not be sustainable in a matter of the present nature, exposing the appellants even on that count to the proceedings before the Investigating Officer or the criminal court would not be justified.”

10. He further submitted that from the contents of the complaint lodged by the respondent No.1 it prima facie reveals that it is purely a civil dispute, wherein the property dispute was in between the parties and suppressing this fact and with some misrepresentation one sale deed was alleged to have executed. But the said civil dispute has been given a criminal colour by the complainant, wherein, the petitioner/accused No.2 has no role, rather, he or the bank institution is a victim, wherefrom the loan was obtained and notice had to issue under the SARFAESI Act for non-payment of the loan.

11. In that context, Mr. Sen, learned counsel also relied on para 16 of the judgment and order dated passed in Crl. Appeal No. 1433/2024 (arising out of SLP (Crl) No. 10570/2023). Para 16 of the said judgment read as under:

*“16. This Court in **Paramjeet Batra Vs. State of Uttarakhand & Ors** has expounded on the scope of exercise of power under Section 482 CrPC whilst dealing with similar matters.*

7. While exercising its jurisdiction under [Section 482](#) of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.”

12. He further relied on another decision of the Apex Court in the case of **Priyanka Srivastava and another Vs. State of Uttar Pradesh and Ors** reported in **(2015) 6 SCC 287** and relied on para 12, 17, 18, 25 to 29, 31 and 33, wherein in para 33 it has been held as under:

“33. At this juncture, we may fruitfully refer to [Section 32](#) of the SARFAESI Act, which reads as follows :

"32. Protection of action taken in good faith.-No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act."

In the present case, we are obligated to say that learned Magistrate should have kept himself alive to the aforesaid provision before venturing into directing registration of the FIR under [Section 156\(3\)](#) Cr.P.C. It is because the Parliament in its wisdom has made such a provision to protect the secured creditors or any of its officers, and needles to emphasize, the legislative mandate, has to be kept in mind.”

13. By citing the above referred judgments, it is submitted by Mr. Sen, learned counsel that being an financial institution, the petitioner/accused No.2 cannot be prosecuted and cognizance cannot be taken against him without any involvement of the petitioner, rather, it is seen that the bank institution is also a victim, who granted loan on the inducement made by the accused No.1/respondent No.3. Thus, prima facie there is no case at all against the present petitioner/respondent No.2, even if the entire complaint is considered in its face value.

14. Accordingly, he submitted that it is a fit case for setting aside and quashing the entire criminal proceeding against the present petitioner/accused No.2 by invoking the power under Section 528 BNSS.

15. Mr. Mitra, learned counsel for the respondent No.2/complainant submitted in this regard that at this stage the discussion on the merit of the case does not arise at all, as the learned Trial Court has not taken cognizance against the present petitioner till date.

16. He further submitted that complying the provision under Section 223 BNSS, notice was issued to the accused persons named in the complaint petition before taking any cognizance at pre-cognizance stage.

17. He further submitted that as per the provision of Section 223 BNSS, the accused person is to be heard before taking any cognizance at pre-cognizance stage. In view of this, notice was also issued to both the accused persons by the Court to appear before the Court for hearing on cognizance. But on 16.02.2026, the learned Trial Court passed an order for examining the complainant and its witnesses on oath under Section 233 BNSS before hearing the accused/opposite party for taking cognizance of this case as per the guidelines passed by a Co-

ordinate Bench of this Court in Crl. Pet. No. 1126/2025 and accordingly, the complainant/respondent No.1 was directed to remain present on the next date for recording his initial deposition along with the statements of the witnesses. Thus, till date, the Court not even issued any pre-cognizance notice subsequently to the order dated 16.02.2026 for appearance of the petitioner/accused persons before the Court and only asked the complainant and his witnesses to remain present for recording his statement.

18. He further submitted that the Co-ordinate Bench of this Court while disposing the Crl. Pet. No. 1126/2025 dated 15.12.2025 had clarified the point whereby direction was given to the learned Trial Court for recording of the statement of the complainant and the witnesses on oath and thereafter, only, to proceed in terms of Sub Section (1) of Section 223 of the BNSS and Section 226 of BNSS. It has observed in para 27 of the said judgment that in terms of Sub Section (1) of Section 223 BNSS, the Court must issue notice to the accused only after recording the statement of the complainant and the witnesses, on oath, as in terms of Section 226 of BNSS, the Court has the power to dismiss the complaint on examination of the complainant and the witnesses, if any on oath. Thus, it is observed by the Court that in the event of exercising the power under Section 226 of BNSS, any prior notice to the accused before examination of the complainant and the witnesses is not required, rather, it would be futile exercise.

19. Considering the guideline passed in the above referred case, the learned Trial Court had not issued any subsequent notice or warrant etc., to the accused petitioner, rather, the case was fixed only for recording of initial deposition of the complainant and his witnesses. Accordingly, it is submitted by Mr. Mitra, learned counsel that the case is at a very pre-mature stage and the Court has not taken

cognizance against the accused petitioner, nor any pre-cognizance notice is issued to the petitioner at this stage in compliance of the guideline issued in Crl. Pet. No. 1126/2025. Thus, it is a pre-mature stage to file a petition under Section 528 BNSS for setting and quashing of the entire complaint and hence, the present petition is liable to be dismissed.

20. Ms. Borah, learned APP who is a formal party to this case also submitted that it is a very pre-mature stage to pass any order of quashing by invoking the power under Section 528 BNSS.

21. Heard the submissions made by the learned counsel for the parties and I have also perused the case record and the order passed by the learned Trial Court.

22. It is a fact that the present petitioner is a financial institution, who also made an accused in the complaint case as accused No.2 and at the same time, it is also a fact that notice under the SARFAESI Act already issued to the complainant for vacating the land, which was under mortgaged by accused No.1 while taking loan.

23. Admittedly, prima facie there is some civil dispute between the parties, but without going into the further detail of the case it is seen that presently the learned Trial Court has not taken any cognizance against the present petitioner. Initially one pre-cognizance notice was issued to the accused No.2/petitioner for hearing at the pre-cognizance stage. But subsequently, complying guideline passed in Crl. Pet. No. 1126/2025, the learned Trial Court had passed the order on 16.02.2026 and the case is fixed only for recording of initial deposition of the complainant and his witnesses, if any.

24. The order sheets reflect that the recording of the statement of the

complainant and the witnesses are not yet completed. So to arrive at a conclusion under Section 226 BNSS, the recording of initial deposition of complainant and the witnesses are required and then only a pre-cognizance notice can be issued to the accused persons under Section 223(1) of BNSS for hearing at the pre-cognizance stage. But, at this stage it is seen that the cognizance is also not taken by the learned Trial Court in the case nor any pre-cognizance notice is issued to the petitioner for taking cognizance. At the same time, as per proviso of 223(1) of BNSS, the petitioner/accused will get ample opportunity to place his case before the learned Trial Court before taking any cognizance under any appropriate section of law.

25. Thus, it is seen that the entire case is at very premature stage to pass any order of quashing of the complaint petition wherein, the cognizance of the case is also not taken by the learned Trial Court by applying its judicial mind under Section 226 or 223(1) of BNSS.

26. So, without further discussion on the merit of the case, this Court is of the opinion that the case is at very premature stage to pass any order on quashing of the entire criminal proceeding in regards to Complaint Case No. 89/2025 pending in the Court of learned Judicial Magistrate, First Class, Dibrugarh, Assam and all subsequent proceedings against the petitioner/accused No.2 at this stage by invoking the power under Section 528 BNSS.

27. In view of the above discussion, this criminal petition being devoid of any merit stands dismissed.

JUDGE

Comparing Assistant