GAHC040004962026

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

Case No. : Crl.Rev.P./5/2026

Chapu Makcha Son of Late Taga Makcha, resident of Forest Colony, Daporijo, PO and PS Daporijo, Upper Subansiri District, Arunachal Pradesh.

VERSUS

1. The State of AP through the PP of AP

2:Tapor Dupit Son of Late Tadik Dupit present resident of C/o Office of Superintendent of Police Daporijo Upper Subansniri District Arunachal Pradesh and permanent resident of Village Dupit PO and PS Taliha Upper Subansiri District AP

Advocate for the Petitioner : Duyu Laji, Ojong Nitik

Advocate for the Respondent : P P of AP, Mukbom Pertin,Mukbang Pertin,K Tayeng,Dakjum Riba,Rimo Riba,Karyom Dabi,Muk Pertin, Senior Advocate

BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 02.09.2026

Heard Mr. Duyu Laji, learned counsel for the petitioner. Also heard Mr. Token Ete, learned Addl. Public Prosecutor, Arunachal Pradesh, appearing on behalf of respondent No. 1, and Mr. Mukbang Pertin, learned counsel, appearing on behalf of respondent No. 2.

2. The present criminal revision petition under Sections 438/528 of the Bharatiya Nagarik Suraksha Sanhita(BNSS), 2023, has been preferred by the

petitioner against the order dated 22.01.2026 passed by the learned Chief Judicial Magistrate, Upper Subansiri District, Daporijo, in complaint case being C.R. Case No. 12/2025(Shri Chapu Makcha v. Shri Tapor Dupit), whereby, the complaint filed by the petitioner under Section 223 *read with* Section 227 of the Bharatiya Nagarik Suraksha Sanhita, 2023, alleging commission of the offences punishable under Sections 420/464/467/472/473 of the Indian Penal Code, 1860, has been dismissed at the threshold.

3. The respondent No. 2, by filing an affidavit-in-opposition, has raised objection as to the maintainability of the present criminal revision petition. The objection raised by the respondent No. 2, cannot be accepted. Section 438 of the Bharatiya Nagarik Suraksha Sanhita, 2023, confers revisional jurisdiction upon the High Court to examine the correctness, legality or propriety of any finding, sentence or order, as well as the regularity of any proceeding before the inferior criminal Court.

4. The impugned order dated 22.01.2026 passed by the learned Chief Judicial Magistrate, Upper Subansiri District, Daporijo, in complaint case being C.R. Case No. 12/2025(Shri Chapu Makcha v. Shri Tapor Dupit), whereby, the complaint itself has been dismissed, is not merely an interlocutory order. Therefore, the present criminal revision petition is maintainable.

5. The case of the petitioner is that a complaint was filed before the Court of the learned Chief Judicial Magistrate, Daporijo, inter alia, alleging, therein, that the petitioner had entered into an agreement with the respondent No. 2 in connection with certain loan transaction between him and the respondent 2. Subsequently, a gift deed dated 16.07.2021, was allegedly prepared by the respondent No. 2 by forging the petitioner’s signature and by using the counterfeit seal of the Judicial Magistrate. The respondent No. 2, thereafter,

transferred the Government allotted land of the petitioner to himself and on the basis of the aforesaid gift deed, he had obtained a new allotment of the said land in his own name.

6. This Court is of the view that the aforesaid aspects particularly regarding the genuineness or otherwise of the aforesaid gift deed, alleged forgery of the signature, alleged use of the counterfeit judicial seal and the circumstances in which the document came into existence, are matters which require consideration in accordance with the procedure prescribed for a complaint case. As such, at this stage, the Court is not required to record any finding upon the disputed question of fact.

7. Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023, prescribes the procedure to be followed by the Magistrate while taking cognizance of an offence on complaint. Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023, being relevant to the present case, is reproduced hereinbelow:

> "***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:…."***

8. The above provision of Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023, contemplates examination upon oath of the complainant and the witnesses present, subject to the statutory exceptions contained therein.

9. Section 226 of the Bharatiya Nagarik Suraksha Sanhita, 2023, specificially deals with dismissal of a complaint. Section 226, being relevant, is also reproduced hereinbelow:

> "***226. Dismissal of complaint. - If, after considering the statements on oath if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 225, the Magistrate is of opinion that there is mo sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."***

10. Section 227 of the Bharatiya Nagarik Suraksha Sanhita, 2023, on the other hand, provides that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceedings, the Magistrate will issue the process.

11. In the present case, the impugned order dated 22.01.2026 passed by the learned Chief Judicial Magistrate, Upper Subansiri District, Daporijo, in complaint case being C.R. Case No. 12/2025, neither disclosed that the petitioner/ complainant was examined on oath in accordance with the provisions of Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023, nor, does it disclose examination of any witnesses produced by the petitioner.

12. The learned Magistrate has proceeded to examine and consider the allegations made in the complaint on merit and has dismissed the complaint. The learned Magistrate recorded the finding that the dispute involved in the complaint, to be of civil in nature. The Magistrate also considered the delay in approaching the Court and the effect of the Government allotted land, without following the complaint procedure as provided in the Bharatiya Nagarik Suraksha Sanhita, 2023.

13. Mr. Pertin, learned counsel for the respondent No. 2, fairly submits that no notice was issued to the said respondent No. 2 before passing the impugned order dated 22.01.2026 passed by the learned Chief Judicial Magistrate, Upper Subansiri District, Daporijo, in complaint case being C.R. Case No. 12/2025.

14. This Court is of the view that whether the ingredients of the alleged offences are made-out or not; whether the allegation is purely civil in nature or not, has to be considered by the learned trial Court in accordance with law.

15. Learned Addl. Public Prosecutor, Arunachal Pradesh, also fairly submits that in the present case, the learned Magistrate after receipt of the complaint, ought to have examined the complainant and the witnesses and thereafter, he ought to have taken cognizance of the complaint after giving an opportunity to the respondent No. 2 of being heard or dismissed in terms of Section 226 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

16. In support of his submissions, the learned Addl. Public Prosecutor, Arunachal Pradesh, has referred to a decision rendered by the Hon'ble Supreme Court in the case of ***Dilip Kumar v. Brajraj Shrivastava & anr.*** reported in ***2023 SCC OnLine SC 916.*** Paragraph Nos. 4 and 5 being relevant, is reproduced below:

> "***4. We have carefully perused the order dated 18th September, 2008 passed by the learned Magistrate and earlier order of 22nd August, 2008. Under sub-Section (1) of Section 202 of the Cr. P.C., the learned Magistrate has a discretion either to inquire into the case himself, or to direct a Police Officer to investigate and submit a report. In this case, he took recourse to the first option. A perusal of the complaint shows that eight witnesses were specifically named in the complaint. The learned Magistrate did not examine any of them. In the order dated 18th September, 2008, the learned Magistrate has not recorded reasons for not recording the statements of other witnesses specifically cited in the complaint. The law is well settled, which is found to have been reiterated in the decision in the case of Mohinder Singh (supra). After taking recourse to sub-Section (1) of Section 202 of the Cr. P.C., before dismissing a complaint by taking recourse to Section 203 of the Cr. P.C., the learned Magistrate has to consider the statements of the complainant and his witnesses. In this case, the learned Magistrate has not examined the other witnesses. The view taken by this Court in the case of Nagawwa (supra) is no different.***
>
> ***5. Therefore, we find no error when the High Court came to the conclusion that the complaint deserves to be remanded from the stage of holding an inquiry under sub-Section (1) of Section 202 of the Cr. P.C."***

17. In view of the facts and circumstances of the case and upon hearing the parties and on perusal of the decision of the Hon'ble Supreme Court in ***Dilip***

Kumar v. Brajraj Shrivastava & anr.(supra), this Court finds that the impugned order dated 22.01.2026 passed by the learned Chief Judicial Magistrate, Upper Subansiri District, Daporijo, in complaint case being C.R. Case No. 12/2025, suffers from procedurral irregularity and cannot be sustained. Accordingly, the present criminal revision petition is allowed.

18. The impugned order dated 22.01.2026 passed by the learned Chief Judicial Magistrate, Upper Subansiri District, Daporijo, in complaint case being C.R. Case No. 12/2025(Shri Chapu Makcha v. Shri Tapor Dupit), is, accordingly, set aside and quashed.

19. The complaint case referred to above, being C.R. Case No. 12/2025 (Shri Chapu Makcha v. Shri Tapor Dupit) is restored to its original file and number. The learned Chief Judicial Magistrate, Daporijo, shall consider the complaint, afresh, and proceed strictly in accordance with the provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023. The learned Magistrate shall follow the procedure contemplated under Sections 223, 225, 226 and 227 of the Bharatiya Nagarik Suraksha Sanhita, 2023, as may be applicable.

20. In terms of the above observations, the instant criminal revision petition stands disposed of.

21. It is made clear that subject to what has been observed above, this Court has not expressed any opinion on the merits of the allegations. Therefore, the learned Magistrate shall consider the matter independently and uninfluenced by any observation made in this order.

JUDGE

Comparing Assistant