GAHC010255822025

2026:GAU-AS:15628

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

Case No. : Crl.Pet./1478/2025

SMTI PINKI CHUTIA
DAUGHTER OF SHRI PRABIN CHUTIA RESIDENT OF VILLAGE SISSIBORGAON POLICE STATION SILAPATHAR POST OFFICE SISSIBORGAON DISTRICT DHEMAJI,ASSAM

VERSUS

SRI RANDIP DAS
SON OF SHRI DHIREN DAS RESIDENT OF VILLAGE DEKASENCHOWA OFFICE CHAMGURI SATRA POLICE STATION MAJULI DISTRICT MAJULI, ASSAM

Advocate for the Petitioner : MR. D CHUTIA, MR. R SENSUA,MR. G KAUSHIK

Advocate for the Respondent : MR. U J SAIKIA,

BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

14.10.2026

1. Heard Mr. R. Sensua, learned counsel appearing for the petitioner. Also heard Mr. U.J. Saikia, learned counsel appearing for the sole respondent.

2. By this application filed under Section 528 of the BNSS, 2023 the petitioner

has challenged the order dated 25.06.2025 passed by the learned Chief Judicial Magistrate, Majuli whereby notice was issued to the petitioner directing her to appear before the said Court and make submissions on the question of taking cognizance against her.

3. The case of the petitioner is that the complainant lodged a complaint before the learned Chief Judicial Magistrate, Majuli on 13.06.2025. It is further stated in the complaint itself that the petitioner resides in the district of Dhemaji, Assam.

4. The learned counsel for the petitioner further submits that in terms of the mandate of law where a complaint is filed before a Magistrate and the accused resides at a place beyond the area in which the Magistrate exercises jurisdiction, the Magistrate is required to postpone the issuance of process against the accused and either inquire into the case himself or direct an investigation to be conducted by a police officer or by such other person as he deems fit for the purpose of determining whether there are sufficient grounds for proceeding with the case.

5. The learned counsel submits that the aforesaid procedure was not followed by the learned Magistrate. He further submits that although the complaint was filed on 13.06.2025 the learned Magistrate did not even record the statement on oath of the complainant or any other witness, if any, before proceeding to take cognizance and issuing notice to the petitioner.

6. In support of his submissions, the learned counsel has relied upon the following judgments of the Hon'ble Supreme Court:

1. *Uday Shankar Awasthi vs. State of Uttar Pradesh*, reported in *(2013) 2 SCC 435* and

2. *Vijay Dhanuka vs. Najima Mamtaj*, reported in *(2014) 14 SCC 638*.

7. The learned counsel submits that in the aforesaid judgments the Hon'ble Supreme Court has categorically held that in terms of Section 202 of the Code of Criminal Procedure, 1973 where the accused resides beyond the territorial jurisdiction of the Magistrate, the issuance of process must be postponed and an inquiry or investigation as contemplated under the said provision must be undertaken before the Magistrate decides whether sufficient grounds exist for proceeding against the accused.

8. Mr. U.J. Saikia, learned counsel appearing for the sole respondent on the other hand submits that the learned Magistrate has not taken cognizance of the offence under Sections 200/202 of the CrPC, rather only notice was issued to the petitioner directing her to appear before the Court and make submissions on the question of taking cognizance.

9. I have heard the learned counsel for the parties and perused the records. Section 202 of the Code of Criminal Procedure, 1973 corresponding to Section 225 of the 2023 BNSS provides that where a Magistrate finds that the accused resides at a place beyond the area in which the Magistrate exercises jurisdiction, the issuance of process shall be postponed and the Magistrate shall either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he deems fit for the purpose of determining whether sufficient grounds exist for proceeding with the case.

10. The Hon'ble Supreme Court in *Uday Shankar Awasthi vs. State of Uttar Pradesh* (supra) has categorically held that it is mandatory for the Magistrate to postpone the issuance of process where the accused resides beyond the territorial jurisdiction of the Magistrate and to conduct an inquiry in accordance

with the procedure prescribed by law.

11. It is seen that in the instant case, the learned Chief Judicial Magistrate, Majuli by order dated 25.06.2025 issued notice to the petitioner directing her to appear before the Court and make submissions on the question of taking cognizance against her. However, no such procedure is contemplated under the law.

12. In view of the above, this Court deems it appropriate to quash the order dated 25.06.2025 passed by the learned Chief Judicial Magistrate, Majuli. The learned Magistrate is directed to proceed with the matter in accordance with the procedure prescribed by law and pass appropriate orders accordingly.

13. The petition stands disposed of.

JUDGE

Comparing Assistant