

GAHC010037562025



2026:GAU-AS:900

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

Case No. : Crl.Pet./285/2025

NARJINA @ NARZINA KHATUN
D/O LT. ABDUL GAFUR SK.
RESIDENT OF VILLAGE FAKIRANIJHAR PART II, BARKANDA,
BILASIPARA,
DIST. DHUBRI, ASSAM
PIN-783348

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:ABDUL KADER KHAN
S/O LT. ABDUR RAHMAN KHAN
RESIDENT OF BILASHIPARA PATHAR
P.O. BILASHIPARA BAZAR
P.S. BARPETA ROAD
DIST. BARPETA
ASSAM
PIN-78103

Advocates for the appellant : Mr. S S Ahmed

Advocates for the respondents : Mr. H A Ahmed, for R-2

BEFORE
HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 08.01.2026

Date of pronouncement of judgment : 28.01.2026

Whether the pronouncement is of the : No.

operative part of the judgment ?

Whether the full judgment has been : Yes

pronounced?

JUDGMENT & ORDER (CAV)

(Sanjeev Kumar Sharma, J)

Heard Mr. S S Ahmed, learned counsel for the petitioner. Also heard Mr. H A Ahmed, learned counsel appearing for the respondent No. 2.

1. The instant criminal petition has been preferred seeking quashing of the impugned order of cognizance dated 23.11.2022 passed in C.R. Case No. 375/2022 by the learned JMFC, Barpeta, as well as the said proceedings themselves. The facts leading to the present criminal petition may be briefly summarized as follows.

2. The petitioner is the wife of the respondent O.P. No. 2. Their marriage took place in the year 2000, and she lived with the respondent No. 2 till 07.03.2022. In the course of the marriage, the petitioner gave birth to two male children, presently aged about 22 years and 12 years. During the subsistence of the marriage, the respondent O.P. No. 2 married again, and the petitioner was subjected to cruelty and torture at the hands of her husband/respondent/O.P. No. 2, as a result of which she left her matrimonial home and has been residing ever since at her parental home in Dhubri.

3. The petitioner instituted a petition against her husband being C.R. (D.V.) Case No. 163/2022 under Section 12 of the Protection of Women from Domestic Violence Act, 2005, as well as another case being Misc. Case No. 42/2022 under Section 125 Cr.P.C., both of which are pending before the learned Sub-Divisional Magistrate, Bilasipara, District Dhubri, wherein an order of interim maintenance of Rs. 5,000/- has been passed in favour of the present petitioner.

4. It is further stated that upon becoming aware of the aforesaid two cases, the respondent/O.P. No. 2 instituted the instant proceedings, i.e., C.R. Case No. 375/2022 under Sections 340, 294, 403, 406, and 34 of the IPC before the learned CJM, Barpeta, alleging that the petitioner had stolen all necessary documents of the respondent/O.P. No. 2 and the two children on 07.03.2022 and kept the same in her own custody. The said complaint case was transferred to the Court of the learned JMFC, First Class, who recorded the initial depositions of the complainant and his witnesses and subsequently, by order dated 23.11.2022, took cognizance against the petitioner, who was arrayed as accused No. 1 in the said complaint, and directed issuance of process accordingly.

5. Mr. S S Ahmed, learned counsel for the petitioner, submitted that the order taking cognizance of the complaint passed by the learned JMFC, Barpeta, is wholly illegal inasmuch as cognizance has been taken and process has been issued without following the mandatory provisions of Section 202 Cr.P.C. The Magistrate, after recording the depositions of the complainant and the witnesses present, was required to direct an investigation under sub-section (1) of Section 202 Cr.P.C., which the learned Magistrate failed to do. On this ground alone, the impugned order as well as the pending proceedings are unsustainable.

6. Per contra, learned counsel for the respondent No. 2 submitted that since the Magistrate recorded the depositions of the complainant as well as his witnesses, there was no necessity of ordering an enquiry/investigation by the police, notwithstanding the fact that the present petitioner/accused No. 1 is a resident of Dhubri, which is beyond the territorial jurisdiction of the learned JMFC, Barpeta.

7. It is not disputed that the present petitioner/accused No. 1 has been residing with her parents in Dhubri district after she left the matrimonial home on 07.03.2022. Section 200 Cr.P.C. reads as follows:—

“Section 200 Cr.P.C. – Examination of complainant

A Magistrate 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, *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 192:

Provided further that *if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-*

examine them.

Section 202 Cr.P.C. – Postponement of issue of process

*(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, **if he thinks fit**, and **shall**, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either—*

(a) inquire into the case himself; or

(b) direct an investigation to be made by a police officer or by such other person as he thinks fit,

for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that *no such direction for investigation shall be made—*

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present, if any, have been examined on oath under Section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that *if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall*

call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station, except the power to arrest without warrant."

8. A bare perusal of Section 202 Cr.P.C. would show that where the accused resides at a place beyond the jurisdiction of the Magistrate, the Magistrate is mandatorily required to postpone the issuance of process and either enquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. The only exception carved out therein is where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session in which case he is to act as per the proviso to Section 202(2). The further requirement is that, in other cases i.e. non-sessions triable cases, where the complaint is not made by a Court, the complainant and the witnesses present, if any, have to be examined on oath under Section 200 Cr.P.C, before directing investigation by the police.

9. In other words, clause (b) of the proviso to sub-section (1) of Section 202 Cr.P.C. would show that when a complaint is made by a private person or entity which is not a Court, it is mandatory for the Magistrate to examine the complainant and the witnesses present, if any, on oath under Section 200 Cr.P.C., and only thereafter is the Magistrate empowered to direct an investigation by a police officer or other person as he thinks fit, as contemplated under sub-section (1) of Section 202 Cr.P.C. Therefore, the contention of the

learned counsel for the respondent No. 2 that once the complainant and his witnesses have been examined, there is no necessity of directing an investigation even when the accused resides beyond the jurisdiction of the Magistrate is based on a misreading of the aforesaid provision does not merit acceptance. In the instant case, the learned JMFC straightaway took cognizance of the matter after recording the initial depositions of the complainant and the witnesses present, without directing an investigation to be made by a police officer or other person for the purpose of deciding whether or not there was sufficient ground for proceeding.

10. In view of the above, the impugned order dated 23.11.2022 passed by the learned JMFC, Barpeta, cannot be sustained.

11. It is further contended on behalf of the petitioner that no case is made out under Section 406 IPC, under which alone the learned Magistrate has taken cognizance. Learned counsel has taken the Court through the complaint petition, which is reproduced below:—

"U/S 380/294/403/406/34

Date of occurrence - 07.03.2022

Witness:- 1. Nazrul Islam

2. Hafizur Rahman

3. Amir Hussain Khan

4. Abdul Kashem Khan

5. Shiraj Khan

Respected Sir,

With due respect and humble submission the applicant begs to state that he is the resident of the afore mentioned locality. All the accused persons are of dishonest nature. In the year 2000 the applicant and accused no. 1 got married with Mohamedan laws and customs. With such marriage the applicant and accused no. 1 gave birth to two male children. Their names are Rajib Khan, age 11 yrs and Shiraj Khan, age 22 years. At present, Shiraj Khan is studying in Brahmasharjya Academy, Barpeta B.A. 6th Sem and Rajib khan is studying in Class 7 at Sublime Academy, Howly. Soon after the marriage the accused no. 1 had been torturing the applicant both mentally and physically. That 6 months before the occurrence of this incident the applicant gave the below mentioned documents to accused no. 1 and she kept those documents into her custody. But the accused no. 1 with ill and advice of the other accused persons stole the below mentioned documents on 07.003.2022 and money and kept at the aforesaid residence of the accused persons. In result of which the above said children of the accused could not submit their respective documents in their school and college respectively. For which they are not getting some benefits during education. Further for stealing some personal documents and things of the applicant by the accused, the applicant could not submit some documents at his work place and for stealing land documents of the applicant he cannot take bank loan with

mortgaging his land. The accused persons misbehaved the applicant with bad words when they were told to return such documents back to the applicant. The applicant tried a lot to to to get back the documents from the accused persons for which there is delay in filing of this case.

Under the above premises it is prayed that your honor would be pleased to register this case U/S 380/294/403/406/34 IPC and issue search warrant against the accused persons and seize the below scheduled documents from the accused persons and return it back to the applicant

OATH

I declare the above notes information to be true and sign this document on 02.08.2022

-Sd- Abdul kader Khan

Date 02.08.2022

List of documents and other things

Applicants:-

- 1. Land sale purchase agreement.*
- 2. Voter Id Card No. GML 1025623*
- 3. Pan Card No BHHPKI38IF*
- 4. Adhaar Card*

5. School Certificate

6. Admit Card

7. Identity card of work place SL NO. 45/18 dated 5.12.18

8. Appointment Letter

9. Land documents

10. Rs. 50,000/- cash

11. Bank Passbook, Cheque Book

12. LIC documents

13. Golden Ring

14. Driving License No. 1793/BNG/Pvt/0

Rajib Khan's

1. Adhaar Card

2. Documents of school

3. Bank Passbook

4. ATM card

Shiraj Khan's

1. Adhaar Card

2. Documents of school

3. Bank Passbook

4. ATM card

Copied by

Certified to be true

-sd- illegible

–sd- illegible

JAA, Office of the CJM

Head Administrative Officer

Barpeta O/O the CJM

Barpeta”

12. Since the learned Magistrate has taken cognizance of the offence under Section 406 IPC, it would be appropriate to refer to Section 405 IPC, which defines criminal breach of trust, for the sake of convenience:-

“Section 405 IPC – Criminal Breach of Trust

“Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits ‘criminal breach of trust.’”

13. A perusal of Section 405 IPC reveals that the essential ingredients of the said offence are as follows: (i) entrustment of property or dominion over property; (ii) dishonest misappropriation or conversion of such property to one’s own use by the person entrusted; and (iii) dishonest use or disposal of the property in violation of any direction of law or of any legal contract, express or implied.

14. A perusal of the complaint reveals that what the respondent No. 2/complainant had stated therein, inter alia, is that the complainant gave the documents mentioned in the list appended to the complaint to the present petitioner, who kept the same in her custody but subsequently stole them and kept them in the residence of her parents. There is no allegation that the petitioner dishonestly misappropriated or converted the said documents, articles, or any cash to her own use, nor is there any allegation that she dishonestly used or disposed of the property in violation of any direction of law or any legal contract, express or implied, which he has made touching the discharge of such trust, or that she has willfully suffered any other person so to do, which would amount to 'criminal breach of trust'. Further, there is no such allegation even in the depositions of the complainant and his witnesses recorded by the learned Magistrate.

15. From the above discussion, it is clearly discernible that no offence punishable under Section 406 IPC is made out even on the face of the complaint. Accordingly, following the ratio laid down by the Hon'ble Apex Court in ***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335***, the complaint deserves to be quashed.

16. In view of the aforesaid discussion, the impugned order dated 23.11.2022 as well as the criminal proceedings in Complaint Case No. 375/2022 are hereby quashed.

17. The Criminal Petition stands allowed.

JUDGE

Comparing Assistant