

GAHC010283322025



2026:GAU-AS:515

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

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

PD SAVERA LLP
A LIMITED LIABILITY PARTNERSHIP HAVING THEIR OFFICE AT- HOUSE
NO.41, DR. BK KAKOTI ROAD, ULUBARI MAIN ROAD, GUWAHATI-781007,
KAMRUPM, ASSAM REPRESENTED BY ITS DESIGNATED PARTNER- SRI
SIDHARTH SUREKA, SON OF BHAGWATI PRASAD AGARWALLA, M-

VERSUS

GALACON INFRASTRUCTURE AND PROJECTS PVT LTD AND 3 ORS.
NUMALIGARH REFINERY, GOLAGHAT, ASSAM-785699

2:BOBBA DHARMA TEJA
DIRECTOR
GALACON INFRASTRUCTURE AND PROJECTS PVT. LTD.
FLAT NO G3
TULIP GARDEN
PLOT NO-32C
VITTAL RAO NAGAR
HITECH CITY
HYDERABAD
TELANGANA-500081
M-9666123021

3:YASODHARA ANNE
ADDL. DIRECTOR
GALACON INFRASTRUCTURE AND PROJECTS PVT. LTD.
FLAT NO G3
TULIP GARDEN
PLOT NO-32C
VITTAL RAO NAGAR
HITECH CITY
HYDERABAD

TELANGANA-500081
M-9666123021

4:STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSA

Advocate for the Petitioner : MR. D SARAF, MR. S S GUPTA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT

09.01.2026

Heard Mr. D. Saraf, learned counsel for the petitioner and Ms. A. Begum, learned Additional Public Prosecutor for the respondent no. 4 State of Assam.

2. This criminal revision petition under Section 438 r/w 442 of the Bharatiya Nagarik Suraksha Sanhita [BNSS], 2023 has been preferred to assail an Order dated 25.09.2025 passed by the Court of learned Judicial Magistrate, First Class, Kamrup [M], Guwahati [‘the Trial Court’, for short] in N.I. Case no. 5075/2025 filed by the petitioner as the complainant.

3. In the complaint registered and numbered as N.I. Case no. 5075/2025, the complainant had arrayed the respondent nos. 1, 2 & 3 herein as the accused stating that a cheque bearing no. 000145 dated 30.06.2025 issued for a sum of Rs. 10,00,000/- stood dishonoured on being presented for collection. It has been projected that the respondent no. 2 and the respondent no. 3 are the Director and Additional Director of the respondent no. 1 company and they are in-charge of the affairs of the respondent no. 1 company. The cheque under reference was issued on behalf of the respondent no. 1 company and as such, being the in-charge of the day-to-day affairs of the respondent no. 1 company, both the respondent no. 2 and the respondent no. 3 along with the respondent no. 1 company are vicariously

liable for commission of the offence under Section 138 of the Negotiable Instrument [N.I.] Act, 1881, as amended. The complainant has stated that he has complied with all the procedural requirement in instituting the complaint for the offence under Section 138 of the N.I. Act.

4. Before the Trial Court, the complainant also submitted initial deposition –cum- written evidence-on-affidavit along with exhibits.

5. After hearing the learned counsel for the complainant, the Trial Court accepted the initial deposition –cum- written evidence-on-affidavit. On perusal of the contents of the complaint, initial deposition –cum- written evidence-on-affidavit and the exhibited documents, the Trial Court formed an opinion that there were sufficient ground for proceeding against the three accused persons, that is, the respondent nos. 1, 2 & 3. The Trial Court in the impugned Order dated 25.09.2025 has, however, recorded that before taking cognizance on the complaint, a notice should be issued to the accused persons to show cause as to why cognizance should not be taken against them in terms of Section 223, BNSS.

6. Sub-section [1] of Section 223, BNSS, 2023 is relevant for consideration of the issue regarding validity or otherwise of the Trial Court decision to issue notice prior to taking cognizance on the complaint registered as N.I. Case no. 5075/2025.

7. Sub-section [1] of Section 223, BNSS, 2023 reads as under :-

[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 :

Provided further 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 212.

Provided also that if the Magistrate makes over the case to another Magistrate under Section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

8. The law has been settled by the Hon'ble Supreme Court in Sanjabij Tari vs. Kishore S. Borcar and another, 2025 INSC 1158 wherein it has been held that since N.I. Act is a special enactment, there is no need for the Magistrate to issue summons to the accused before taking cognizance [under Section 223 of BNSS] of complaints filed under Section 138 of N.I. Act. Consequently, the Supreme Court has directed that there shall be no requirement to issue summons to the accused in terms of Section 223 of BNSS i.e. at the pre-cognizance stage.

9. Incidentally, the decision in Sanjabij Tari [supra] and the impugned order were passed on the same date, 25.09.2025.

10. In view of position of law settled by the Hon'ble Supreme Court in Sanjabij Tari [supra], the impugned Order of the Trial Court to the extent of issuing notice to the accused persons in the complaint, N.I. Case no. 5075/2025, that is, the respondent nos. 1, 2 & 3 is found to have suffered from infirmity for the reason that the Trial Court has proceeded to issue notice to them at the pre-cognizance stage in purported adherence to the first proviso to sub-section [1] of Section 223, BNSS. For the position settled by the Supreme Court, the impugned Order dated 25.09.2025 passed by the Trial Court is set aside and quashed to the

afore-stated extent.

11. As the position of law settled by the Supreme Court in the afore-stated manner, the criminal revision petition has been taken up for adjudication at the motion stage itself. For the very same reason, the matter of issuance of notice to the respondent nos. 1, 2 & 3 is found not necessary.

12. The learned Trial Court shall now take a fresh decision on the matter of cognizance and issuance of process to the accused persons.

13. The petitioner shall submit a certified copy of this order before the Trial Court so as to enable the Trial Court to take its decision afresh.

14. With the observation made and the direction given above, the criminal revision petition stands allowed to the extent indicated above.

JUDGE

Comparing Assistant