

GAHC010251722024



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

**Case No. : PIL/74/2024**

RITUMANI DEKA  
S/O SRI HARMOHAN DEKA, R/O VILL- SADILAPUR, NEAR SARAIGHAT  
JATIYA BIDYALAYA, P.O.-GAUHATI UNIVERSITY, P.S.-JALUKBARI, DIST-  
KAMRUP (M), ASSAM, PIN-781014

VERSUS

THE UNION OF INDIA AND 6 ORS  
REPRESENTED BY THE SECRETARY, MINISTRY OF LAW AND JUSTICE TO  
THE GOVT. OF INDIA, 4TH FLOOR, A-WING, SHASTRI BHAWAN, NEW  
DELHI-110001

2:THE MINISTRY OF PARLIAMENTARY AFFAIRS  
REPRESENTED BY ITS SECRETARY  
GOVT. OF INDIA  
ROOM NO. 92  
PARLIAMENT HOUSE  
NEW DELHI-110001

3:THE MINISTRY OF HOME AFFAIRS  
GOVT. OF INDIA  
REPRESENTED BY ITS SECRETARY  
GOVT. OF INDIA  
NORTH BLOCK  
CABINET SECRETARIAT  
RAISINA HILL  
NEW DELHI-110001

4:THE STATE OF ASSAM  
REPRESENTED BY THE CHIEF SECRETARY  
GOVT. OF ASSAM

JANATA BHAWAN  
DISPUR  
GUWAHATI-06

5:THE LAW AND JUSTICE DEPARTMENT  
REPRESENTED BY THE LEGAL REMEMBRANCER AND SECRETARY  
GOVT. OF ASSAM  
JANATA BHAWAN  
DISPUR  
GUWAHATI-06

6:THE HOME AND POLITICAL DEPARTMENT  
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY  
GOVT. OF ASSAM  
JANATA BHAWAN  
DISPUR  
GUWAHATI-06

7:THE DIRECTOR GENERAL OF POLICE  
GOVT. OF ASSAM  
ULUBARI  
GUWAHATI-78100

For petitioner(s)/appellant(s) : Mr. Ritumani Deka, petitioner-in-person

For respondent(s) : Mr. R.K.D. Choudhury, CGC  
Mr. R.K. Borah, Addl. Sr. GA, Assam

– BEFORE –

**HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI**  
**HON'BLE MR. JUSTICE KAUSHIK GOSWAMI**

**09.12.2024**

*(Vijay Bishnoi, CJ)*

This PIL petition is filed by the petitioner challenging the validity of sub-section (2) of Section 106 of the Bharatiya Nyaya Sanhita (BNS), 2023.

It is contended in the writ petition that sub-section (2) of Section 106 of the BNS is in violation of Article 20(3) of the Constitution of India, which provides that no person accused of any offence shall be compelled to be a witness against himself.

It is submitted that the Government of India, in exercise of the powers conferred by sub-section (2) of section 1 of the BNS, has issued a notification dated 23<sup>rd</sup> February, 2024 and has appointed the 1<sup>st</sup> day of July, 2024 as the date on which the provisions of the BNS shall come into force. It is noticed that the said notification specifically says that the provisions of the BNS, except the provision of sub-section (2) of section 106 shall come into force from 1<sup>st</sup> July, 2024.

From the above notification it is clear that the provision of sub-section (2) of section 106 of the BNS has not come into force till date. In such circumstances, the challenge of the petitioner to the provision of sub-section (2) of section 106 of the BNS is premature and, therefore, the question of granting the relief, as prayed for in the writ petition, by declaring the provision of sub-section (2) of section 106 of the BNS as unconstitutional, the same being violative of Article 20(3) of the Constitution of India, does not arise.

It is stated by the learned counsel for the petitioner that though the provision of sub-section (2) of section 106 of the BNS, 2023 has not come into force till date, but the Assam Police is registering cases under the said provision. As an instance of such cases, the petitioner has produced a copy of an FIR registered on 02.09.2024 by the Mukalmua Police Station in the district of Nalbari, Assam, wherein it is stated that the FIR has been registered under sub-section (2) of section 106 of the BNS.

Having heard the learned counsel for the parties, we are of the view that if the police is registering cases under sub-section (2) of section 106 of the BNS, though it has not come into force till date, the individual person against whom any such FIR is filed, is free to avail appropriate remedy available to him by approaching the competent court of law.

However, the Director General of Police, Assam, should take note of this fact and issue necessary direction to the police stations under his jurisdiction not to register any case under the provision of sub-section (2) of section 106 of the BNS, 2023, which has not come into force till date.

The petitioner is at liberty to place a copy of this order before the Director General of Police, Assam.

This PIL petition is disposed of with the above observations and directions.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**