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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 23rd February, 2024 and has appointed the 1st 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 1st 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