

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE (S),

SONITPUR, TEZPUR

G.R CASE NO:- 2588/11

Under section: - 380/468 IPC.

State

-VS-

Shri Mridul kumar Nath

.....accused.

Present: - O. Mize, A.J.S.

Counsel appeared:-

For the prosecution: - L.Hazarika.

For the defense: - N.M.Goswami, G.Das.

Evidence Recorded on: - 07.11.12, 21.11.12, 23.04.13, 30.07.13, 14.07.14,

01.12.14 & 21.01.15.

Argument Heard on: - 22.05.15.

Judgment Delivered on: - 30.05.15.

JUDGMENT

The prosecution's case in brief is that, on 29.11.11 the informant Smti. Anjuman Borah lodged a F.I.R at Borghat Police outpost informing that three numbers of Cheque book leaflets have been stolen from her cheque book.

The police registered the case and after investigation laid charge sheet u/s 380 I.P.C against accused Mridul kumar Nath.

The accused person was summoned to stand trial. Copies of the relevant documents were furnished to the accused person. Charge u/s 380 IPC was framed against the accused person. Later on charge under section 468 IPC was added. The charges were read over and explained to the accused person. The accused person pleaded not guilty and claimed to be tried.

The Prosecution examined eight witnesses and closed its evidence. The accused person was examined u/s 313 Cr.P.C in which he pleaded his innocence. The defense's side did not adduced evidence.

I have heard the argument of Id. Counsel for the accused person and also the Id. Asst.P.P for the state.

POINTS FOR DETERMINATION

1. Whether the accused person committed theft of three number of cheques bearing no.928437, 928438 & 928439 from the office chamber of Anjuman Borah and thereby committed an offence punishable u/s 380 IPC?
2. Whether the accused person committed forgery for the purpose of cheating and thereby committed an offence punishable u/s 468 IPC?

DECISION WITH REASONS

I have gone through the entire evidence on record. Pw1- Smti Anjuman Borah (informant) has deposed that she was informed about the incident by the SBI, Tezpur main branch. After getting the information she checked her cheque book and found her cheques missing. She informed Pw4 and Pw4 asked her to lodge FIR. In the cross-examination, Pw1 has deposed that she did not see when accused person was taking the cheque. It appears from the evidence of Pw1 that she does not know who had stolen the cheque from her cabin and how the cheque was stolen from her cabin. Pw2- Shri Ratul Nath & Pw3- Shri Uttam Kumar Pegu have deposed that they do not know anything about the incident.

Pw4- Shri Biren Das has deposed that SBI officer namely Bhagawati informed him that cheque of Pw1 did not match with the specimen signature. He asked Pw1 about the incident and Pw1 inform him that she did not issue any cheque. So,

there is contradiction in the evidence of Pw1 & Pw4. Because, Pw1 had deposed that she got the information about the incident from SBI. Thereafter, she informed Pw4 & Pw4 asked her to lodge FIR. But, Pw4 has also deposed that he was informed by the SBI and he asked about the incident to Pw1. In the cross-examination, Pw4 has deposed that the cheques were not seized in his presence. Pw4 has also deposed that, he had not seen the cheques being seized from the accused person.

It appears from the evidence of Pw5- Shri Dihren Kumar Kalita that Pw5 did not see the occurrence of the incident. Because, he has deposed that, he heard from Pw1 that three cheques had been stolen. In the cross-examination Pw5 has also deposed that he also heard about the recovery of the cheques.

It appears from the evidence of Pw7-Shri Dipankar Bhaawati that, the cheques were in the drop box. They came to know about the incident after collecting the cheques from the drop box. So, it appears that, anyone can drop the cheques in the drop box. The cheques can be dropped in the drop by any one even after writing the name of the accused person. None of the Pws has deposed that it was the accused person who had stolen the cheque or it was the accused person who dropped the cheque in the check box. It also appears from M.Ext.B & C (cheques) that both of the cheques were not issued in the favour/name of accused person. None of the Pws have also deposed that accused person had written the M.Ext.3 & M.Ext.D or it was sent to the handwriting expert.

It appears from the evidence of Pw6- Shri Sibananda Kakoty that, Pw6 has also not deposed that accused person had stolen the cheque or accused person had dropped the cheque in the drop box. In the cross-examination, Pw6 has deposed that he does not know the accused person and his hand writing. PW6 has also deposed that he does not know who filled up the cheque and deposit slip. Pw8- Shri Meda Prasad Upadhaya has also deposed in the cross-examination that he does not know who dropped the cheque in the drop box. He has also deposed that he does not know the signature of the accused person.

Hence, it appears from the evidence of Pws and above finding that the prosecution has failed to prove the alleged offences against the accused person. The evidence of Pws does not in any manner satisfy the requirement of section 380/468

IPC. It is settled law that in a criminal trial the prosecution is required to prove its case beyond all reasonable doubt. Therefore, accused person cannot be held liable for the alleged offences and accused person is deserves for acquittal from this case.

ORDER

In the view of the above findings and decision, accused Mridul kumar Nath is acquitted from the charges u/s 380/468 IPC. Set him at his liberty forthwith. Seized articles if any be given to its owner. The bail Bond of accused person will remain in force for six months from today. Accordingly the case is disposed of.

Given under the hand and seal of this court.

Sub-Divisional Judicial Magistrate (S),

Sonitpur, Tezpur

APPENDIX

Prosecution has examined the following witnesses:-

Pw1- Smti Anjuman Borah.

Pw2- Shri Ratul Nath.

Pw3- Shri Uttam Kumar Pegu @ Nath.

Pw4- Shri Biren Das.

Pw5- Shri Dihren Kumar Kalita.

Pw6- Shri Sibananda Kakoty.

Pw7-Shri Dipankar Bhaawati.

Pw8- Shri Meda Prasad Upadhaya.

Prosecution has exhibited the following documents:-

Ext.1- FIR.

Ext.1(1)- signature of Pw1.

Ext.2- seizure list.

Ext.2(1), 2(2) & 2(3)- signature of witnesses.

Ext.3-Seizure list.

Ext.3(1), 3(2) & 3(3)- signature of witnesses.

M.Ext. A, B & C- cheques.

M.Ext. D- deposit slip/form of SBI.

Defence's side has not examined any witness.