

**IN THE COURT OF THE ADDL. CHIEF JUDICIAL MAGISTRATE:
SONITPUR AT TEZPUR**

GR CASE NO 143/2009
(U/s 420/34 of IPC)

State

-Vs-

- 1. Sri Manoj Sonowal &**
 - 2. Sri Diganta Sonowal.**
- Accused persons.

Present: Smti Audri Bhattacharyya,
Addl. Chief Judicial Magistrate,
Sonitpur, Tezpur.

Appearances:

Mr M Hussain,
Learned Addl PP : For the prosecution.

Mr A Bhuyan,
Ld Counsel : For the accused.

Date of recording evidence : **08-12-2014, 29-01-2015,
05-05-2015.**

Date of hearing argument : **05-05-2015.**

Date of judgment : **05-05-2015.**

J U D G M E N T

The prosecution case in brief is that:

The complainant Sri Prabhat Saikia, TSI under Tezpur Police station lodged an ejarah alleging *inter-alia* that on 25-01-2009 he along with his staff conducted Naka- checking at Mahabhairab at 6.30 PM. They stopped one tempo and on checking recovered two pieces of duplicate

gold approximately 200 gms each from the possession of Sri Manoj Sonowal and Sri Diganta Sonowal. The complainant seized the duplicate gold and apprehends the accused persons.

2. On receipt of ejahar Tezpur PS case No 65/09 under Section 420/34 of IPC was registered and the case was entrusted for investigation. The IO taking up the duty of investigation, visited the place of occurrence, examined the witnesses and on conclusion of the investigation, submitted charge-sheet against the accused persons Manoj Sonowal and Diganta Sonowal under Section 420/34 of IPC. The main allegation against the accused persons is that they sold the duplicate gold looking articles in market representing them to be the original gold.

3. On taking cognizance, summons was issued to the accused persons and on receipt of summons the accused persons appeared before the Court and were furnished with copies of the relevant documents.

Heard both the sides pertaining to framing of charge. Considering the materials on case record and the case diary and upon hearing both the sides, prima facie materials were found against the accused under Section 420/34 of IPC. A formal charge was framed against the accused and the same on being read over and explained the accused persons pleaded not guilty and claimed to be tried.

4. POINTS FOR DETERMINATION:

- 1. Whether the accused persons, in furtherance of common intention, cheated the customers by dishonestly inducing them to deliver the property belonging to them and are committed the offence under Section 420/34 of IPC?***

Prosecution had examined three PWs including the informant & IO of the case. Statement of accused persons under Section 313 CPC is dispensed with as there found no incriminating against the accused persons. Heard the Learned Counsel for both the sides.

DISCUSSION, DECISION AND REASONS THEREOF:

5. I have carefully perused the evidences of PWs to arrive at a just decision in this case.

6. PW1 Sri Prabhat Saikia in his evidence deposed that on 25-01-2009 he along with his staff conducted Naka- checking at Mahabhairab at 6.30 PM and on checking recovered two pieces of duplicate gold approximately 200 gms each from the possession of Sri Manoj Sonowal and Sri Diganta Sonowal. He further deposed that the said gold looking araticles were taken to a jewelry shop and the jeweler confirmed that it was not gold. He lodged the ejahar vide Ext.1 and Ext.1(1) is his signature. Vide Ext.2 he seized two pieces of duplicated gold looking articles and Ext.2(1) is his signature. M Ext.1 is the seized articles. He also deposed that he had received information that the said two accused persons used to sale duplicate gold in the market.

7. PW2 Sri Boloram Chakraborty could not deposed anything regarding the occurrence.

8. PW3 Sri Preetam Saikia deposed in his evidence that after receipt of the ejahar from SI Prabhat Saikia, by the then OC, Tezpur Police station he was entrusted with duty of carrying out investigation. Ext.1(3) is the endorsement in his name and Ext.1(4) is the signature of OC

Promod Ch Sarmah. In the meantime, the complainant had already visited the place of occurrence, recorded the statement of witnesses brought the accused persons to the Police Station and seized two pieces of gold looking articles. PW3 only arrested the accused persons and forwarded them before Court and thereafter, he was transferred. Charge sheet was submitted by Sri Ranjit Kakati under Section 420/34 of IPC. Ext.3 is the charge sheet and ext. 3(1) is the signature of Ranjit Kakati.

9. I have carefully perused the evidences on record. From the cross-examination of PW1, it is reflected that no one from the public had lodged any ejahar against the accused persons alleging that they have cheated others by selling them duplicate gold. He deposed that he had only heard it from others that the accused used to sale duplicate gold. He also deposed that he had carried out the preliminary investigation of the case, recorded the statement of the witnesses and seized the duplicate gold. This also goes against the rule that the complainant and the investigating officer cannot be one and same person.

10 Finding of duplicate gold looking articles in the pocket of the accused persons did not itself constitute any offence unless it is proved that the public or any other persons was cheated by the accused persons and thereby induced to deliver any property to the accused persons. In the present case, there is no such evidence on record which reflects that the accused had cheated any other persons. Hence, offence under Section 420/34 of IPC is not attracted in this case.

Considering the above facts and circumstances of the case, I find that the prosecution has totally failed to prove the offences under Section 420/34 of IPC against the accused persons beyond all reasonable doubt. Hence, the accused persons are held not guilty of the said offences and are hereby acquitted and set at liberty forthwith.

The bail bond for accused stands extended till expiry of six months from today.

The case is disposed of on contest.

This Judgment is given under my hand and the seal of this Court on this **5th** day of **May, 2015**.

(Smti Audri Bhattacharyya)
Addl Chief Judicial Magistrate,
Sonitpur, Tezpur

Dictated and corrected by me:-

(Smti Audri Bhattacharyya)
Addl Chief Judicial Magistrate,
Sonitpur, Tezpur

Transcribed and typed by me:

(Pori Das)
-Steno-