

G.R No-2624 of 2011
(State of Assam Vs Sri Anil Kumar Mahanta & Anr)

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR

G. R. Case No. 2624 of 2011

Under section-468 of I.P.C

Present:-**Sri N. J. Haque, AJS,**
Chief Judicial Magistrate,
Sonitpur, Tezpur

State of Assam

-Vs-

1. Sri Anil Kumar Mahanta
S/O:- Late Jogdev Mahanta
R/O:- Gotlong
P/S:- Tezpur
Dist:- Sonitpur, Assam

2. Sri Dilip Kalita
S/O:- Late Ratneswar Kalita
R/O:- Dihingia Kalita Gaon
P/S:- Tezpur
Dist:- Sonitpur, Assam

.....Accused Persons

Advocate appeared:

Mr. N.K. Mishra, Addl. P.P..... For the State

Mr. P. K. Sharma & Anr, Ld. Advocates.....For the accused persons

Evidence recorded on	:- 17.08.2019 & 25.02.2021
Date of Statement of defence	:- 25.02.2021
Argument heard on	:- 25.02.2021
Judgment delivered on	:- 25.02.2021

J U D G M E N T

History of Prosecution's Case

1. Prosecution's case appears to be in a narrow campus is that on 03.12.2011 one Sri Homeswar Saikia, lodged an ejahar before the Officer-In-Charge of Tezpur Police Station through I/C of Borghat Police Outpost alleging inter alia that they had a firm called Punioni Samuiya Krishi Firm wherein they have 41 nos of members in the said firm. It is also stated that on 05.04.2011 at a place called

**G.R No-2624 of 2011
(State of Assam Vs Sri Anil Kumar Mahanta & Anr)**

Bihali under Bihali PS, the accused persons using forged signature and seal of their firm and prepared an agreement for the purpose of selling land to Sri Padma Kanta.

"INVESTIGATION"

2. On receipt of the ejahar, Tezpur P.S Case No. 1348 of 20111 u/s-420/468 of I.P.C was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet u/s-420/468 of I.P.C against the accused persons, namely, Sri Dilip Kalita and Sri Anil Kumar Mahanta.

CHARGE & TRIAL

3. In pursuant to the court's process, the accused persons appeared before the court and they were allowed to go on bail. Copies u/s-207 of CrPC was furnished to the above-named accused persons. After hearing both sides, charge of offence u/s-468 of I.P.C. was read over and explained to the accused persons by my Ld. Predecessor in office, to which they pleaded not guilty and claimed to be tried.

STATEMENT OF DEFENCE

4. The prosecution side to prove the guilty of the accused persons examined as many as 02 (Two) numbers of witnesses in support of this case. On perusal of the case record, it disclosed that instant case is pending since from the year 2011 and till date only two witnesses are examined out of which one is the informant. The prosecution side having sufficient opportunity failed to bring all the remaining PWs. Considering the nature of evidence and also considering the submission of prosecution, this court finds it sufficient to close the evidence of prosecution side. Accordingly, evidence of prosecution is closed. Accused persons are examined u/s-313 of Cr.P.C and their pleas of denial were recorded in separate sheet and the same kept with the case record. Accused declined to adduce evidence on their defence.

ARGUMENT

5. I have heard arguments of both sides, gone through the case record in the background of indications obtainable before this court by prosecution side.

**G.R No-2624 of 2011
(State of Assam Vs Sri Anil Kumar Mahanta & Anr)**

6. **The points for determination in this case :-**

Whether accused persons, on 05.04.2011 forged the signatures of Homeswar Saikia and Jogeswar Bora and prepared a document viz an agreement of sale intending that it shall be used for the purpose of cheating and thereby committed an offence punishable u/s-468 of IPC?

EVIDENCES OF PROSECUTION SIDE

7. In this case prosecution side to prove the disputations of the ejahar examined two numbers of witnesses including informant and for the sake of proper appreciation of evidences on record let us reproduce the evidences on record. PW-1, Sri Trailokya Katakki deposited before this court that he knows the informant of this case, who is a president of Punioni Samuiya Krishi Firm and he is the member of the said firm. He also deposed that the incident took place in the year 2011. He further deposed that he does not know the accused persons of this case. He deposed that their firm had 248 Bighas of land situated at Punioni village and there was an incident over the matter of selling the said land and due to that a village meeting was held. He admitted that he does not know for what incident the ejahar was lodged. Presently, the land of the said firm had already sold. His cross-examination was declined by the defence side.
8. PW-2, Sri Homeshwar Saikia being the informant of this case deposed that he does not know the accused persons of this case. He also deposed that in the year 2011, he was the president of Haleswar Punioni Samuiya Krishi Firma and at that time, Tailokko Katoki was elected as Secretary of Krishi Firm and during that time said Tailokko Katoki and another one attempted to sale land of firm to some other person. Thereafter, he lodged the ejahar with regard to the said incident. He identified his ejahar as Ext-1 wherein he put his signature as Ext-1(1). PW-1 in his cross-examination testified that the accused persons of this case have not involved with the alleged incident. He also deposed that after

G.R No-2624 of 2011
(State of Assam Vs Sri Anil Kumar Mahanta & Anr)

lodging the ejahar they all the members have received their respective share of land sold by Sri Tailokko Katoki.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

9. In this case the accusation flattened against the accused persons, namely, Sri Anil Kumar Mahanta and Sri Dilip Kalita by the prosecution seems to be in a nutshell is that on 05.04.2011 at a place called Bihali under Bihali PS the accused persons prepared forged agreement for the purpose of selling land to one Sri Padma Kanta. On the basis of the accusations, charge u/s-468 of IPC was framed against both the accused persons and the prosecution side desires to prove that there is a forgery in respect of an agreement, with an intention of using the same for the purpose of cheating.
10. In an offence of forgery, where there is no intention to cheat the offence u/s-468 of IPC is not committed. The offence is complete as soon as forgery with requisite intention to cheat with proof. Hence, from the common understanding of the aforesaid discussion, it revealed before this court that the prosecution has to establish that there is a forgery with intention of cheating. So, forgery with the intention of cheating must be proved for necessitating conviction of an accused.
11. Now, approaching to the evidence on record, it divulged before this court that the prosecution side examined as many as two numbers of witnesses including the informant. The prosecution side also exhibited the Ejahar as Ext 1. I have judiciously toured through the evidences on record and it finds that PW-1, Sri Trailokya Katakia deposed that the informant is a president of Punioni Samuiya Krishi Firm and the accused persons are not known to him. He also deposed that in the year 2011 an incident took place over the matter of selling of land of their said firm and in connection with the same, a village meeting was held. He admitted that he does not know for what incident the ejahar was lodged by the informant.
12. PW-2, Sri Homeshwar Saikia being the informant of this case deposed that he does not know the accused persons of this case and the incident took place in the year 2011. He also deposed that he was the president of Haleswar Punioni

G.R No-2624 of 2011
(State of Assam Vs Sri Anil Kumar Mahanta & Anr)

Samuiya Krishi Firma and at that time, Tailokko Katoki was elected as Secretary of Krishi Firm and during that time Tailokko Katoki and another one attempted to sale land of firm to some other person. PW-1 in his cross-examination testified that the accused persons of this case have not involved with the alleged incident and after lodging ejahar they all the members have received their respective share of land sold by Sri Tailokko Katoki.

13. On meticulous and careful perusal of the contention of the ejahar and in the light of the evidence presented by PW-2, it disclosed that that Tailokko Katoki (PW-1), Secretary of Krishi Firm attempted to sale land of firm to some other person. PW-2 in his cross-examination testified that the accused persons of this case not involved with the alleged incident and after lodging ejahar they all members have received their respective share of land sold by Sri Tailokko Katoki and he at the time of adducing his evidence did not supported and corroborated the such fact in his ejahar.
14. From the evidence of PW-2, nothing appears to be implicating against the accused persons as he deposed that Tailokko Katoki attempted to sale land of firm to some other person. PW-2 did not utter any single words implicating the accused persons stating that the accused persons of this case not involved with the alleged incident and as per his version said Tailokko Katoki attempted to sale the land of their firm and after lodging the ejahar they all have shared their respective shares of land sold by PW-1. PW-2 further not utters the name of accused persons before the court showing the involvement of this alleged incident. Hence, from his evidence, it is seen that he failed to corroborate and support of his own contentions as he contended in his ejahar.
15. The settled propositions of law never claimed the ejahar to be a substantive piece of evidence. In **'Ram Kumar Pande vs The State Of Madhya Pradesh AIR 1975 SC 1206,'** the Hon'ble Supreme Court observed that an FIR is not a substantive piece of evidence and it can only be used to corroborate the statement of the maker u/s- 157 of Indian Evidence Act or to contradict it u/s-145 of Indian Evidence Act. It can only be used for corroboration and contradiction purposes that to when FIR was lodged by a

G.R No-2624 of 2011
(State of Assam Vs Sri Anil Kumar Mahanta & Anr)

person having direct knowledge about the occurrence. In this case, informant himself admitted that he had lodged the ejahar. If so, then the contradictions disclosed from his evidence, makes his version to be contradictory.

16. PW-1 is not clear about the involvement of accused persons with the alleged incident as disclosed from his own testimony. Hence, in absence of any direct evidence it is very difficult to determine that the accused persons actually were involved with the alleged incident. The evidence presented by PW-1 not only makes the version of the informant (PW-2) doubtful but also creates a reasonable contradiction which cannot be thrown away. More also, the evidences offered by the prosecution side appears to be full with lots of shortcomings and those being contradictory in nature cannot be relied upon.
17. Now, coming to the indispensable constituents of offence punishable u/s-468 of IPC, this court at the outset sumptuously discussed that to hold a person guilty of commission of forgery the prosecution has to establish the fact of preparing a forged document with an intention of cheating. Undeniably, the prosecution side in this case failed to adduce any credible evidence upon which this court may presume that there was any intention on the part of both the accused persons that said document or agreement is to be used for the purpose of cheating, rather the version of PW-2 makes it definite that he wanted to get the share of land sold by PW-1. That means there was no attempt of cheating from the part of the accused persons to cheat anyone. Hence, it is seen that the intention of cheating does not appears to be proved against both the accused persons. More also, the informant (PW-2) himself admitted that the accused persons of this case not involved with the alleged incident.
18. To sum up the evidences on record, this court finds that prosecution side failed to establish that the photocopy of deed of agreement for sale vide M.R. No-384/2011, is a document prepared fetching forgery by the accused persons through presenting any dependable or truthful evidence. Furthermore, the prosecution failed to prove that whether the said document was prepared by the accused persons fetching forgery for the purpose of cheating using the said document.

G.R No-2624 of 2011
(State of Assam Vs Sri Anil Kumar Mahanta & Anr)

19. Therefore, in the light of all the aforesaid discussion this court is of considered opinion that ocular and documentary evidences presented by the prosecution side before this court appears to be full of lot of shortcomings and version of two witnesses generates sensible uncertainties upon which the court cannot put its dependence upon their evidence. Further, the prosecution side failed to establish the essential ingredients of the offence forgery against the accused presenting evidences of cogent in nature. The investigation steered seems to be full with deficiencies and indeed no endeavour made for discovering the fact forgery of a document by the accused persons.
20. In the result it may be securely resolved here by way of determining that neither the evidence of the informant nor the evidence of other independent witness appears to be truthful rather their evidence is full with lot of inadequacies. Thus, the court does not have any reluctance in holding the accused not guilty of commission of punishable u/s-468 of IPC. Accordingly, accused person is acquitted from the charge u/s-468 of IPC and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.
21. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 25th day of February, 2021 at Tezpur. Accordingly, the case is disposed of.

(Sri N. J. Haque)
Chief Judicial Magistrate,
Sonitpur: Tezpur

G.R No-2624 of 2011
(State of Assam Vs Sri Anil Kumar Mahanta & Anr)

ANNEXURE

1. Witnesses for Prosecution:-

PW-1:- Sri Trailokya Katakai

PW-2:- Sri Homeshwar Saikia, Informant

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext-1 :- FIR

Ext-1(1) :- Signature of PW-2

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

Chief Judicial Magistrate
Sonitpur, Tezpur