

**P.R No-183 of 2018**  
**(State of Assam Vs Md. Mainul Haque & Anr)**

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

**P. R. Case No. 183 of 2018**

Under section-448/294/506/34 of I.P.C

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

State of Assam

-Vs-

1. Md. Mainul Haque  
S/O:- Late Ibrahim Ali

2. Md. Mukut Ali  
S/O:- Late Ali Akbar

Both are R/O:- Kacharigaon

P/S:- Tezpur

Dist:-Sonitpur, Assam .....Accused Persons

**Advocate appeared:**

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

Mrs. Mousumi Bhagawati & Anr, Ld. Advocates..... For the accused persons

Evidence recorded on :- 08.02.2021

Date of Statement of defence :- 08.02.2021

Argument heard on :- 08.02.2021

Judgment delivered on :- 08.02.2021

**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 10.11.2019 one Smt. Momi Das Khan lodged an ejahar before the O/C of Tezpur P.S alleging inter alia that on 09.11.2017 at about 5:30 PM, while she was alone in the furniture shop of her husband situated at Kacharigaon, the FIR named accused persons without any reason illegally entered into the said shop and started abusing her

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with filthy languages. It is also alleged that the accused persons threatened her of dire consequences.

**"INVESTIGATION"**

2. On receipt of the ejahar, Tezpur P.S Case No. 2306 of 2017 under section-448/294/298/354/354(A)/506/34 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-448/294/506/34 of I.P.C against the accused persons.

**CHARGE & TRIAL**

3. In pursuant to the court's process, the accused person 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 side, particulars of offences u/s-448/294/506/34 of I.P.C. were read over and explained to the accused persons by my Ld. Predecessor in office, on which they pleaded not guilty and claimed to be tried.

**STATEMENT OF DEFENCE**

4. The prosecution side to prove the guilty of the accused person examined the informant-cum-victim of this case. Considering the testimony of the informant, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Examination of accused person under section-313 of Cr.P.C is dispensed with as from the testimony of the informant-cum-victim nothing implicating disclosed against the accused person.

**ARGUMENT**

5. I have heard arguments of both sides, gone through the case record in the backdrop of evidences presented before this court by prosecution side.

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

- (i) Whether on 09.11.2017 at about 5:30 PM at a place called Kacharigaon under Tezpur PS, the FIR named accused persons in furtherance of their common intention entered into the Furniture shop of informant's husband

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with intent to commit an offence and thereby committed an offence punishable under section-448/34 of IPC?

(ii) Whether the accused persons on the same date, time and place in furtherance of their common intention scolded the informant named Smt. Momi Das Khan using filthy languages and thereby committed an offence punishable u/s-294/34 of IPC?

(iii) Whether on the same date, time and place the accused persons in furtherance of their common intention committed criminal intimidation by threatening the informant Smt. Momi Das Khan with dire consequences of her life and thereby committed an offence punishable u/s-506/34 IPC?

**DECISION, DECISION AND THE REASON THEREOF:**

7. In this case, prosecution side has got the burden of prove that on the date of alleged incident at about 5:30 PM, while she was alone in the furniture shop of her husband situated at Kacharigaon, the FIR named accused persons without any reason illegally entered into the said shop and started abusing her with filthy languages. It is also alleged that the accused persons threatened her of dire consequences. In this case prosecution side to prove the case examined only the informant–cum-victim of this case. I have carefully travelled through the testimony of the prosecution witness in the backdrop of entire prosecution case and it finds:-
8. PW-1, Smt. Momi Das Khan being the informant–cum-victim of this case deposed before this court that she knows both the accused persons of this case and they are her neighbours. She further deposed that on 09.11.2017 at about 5:30 PM, she had an altercation with the accused and due to that she lodged the ejarah on misunderstanding against the accused persons. Now, she does not want to proceed further against the accused persons. She identified her signature as Ext-1 wherein she put her signature as Ext-1(1). PW-1 in her

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cross-examination testified that she does not have any objection if the accused gets acquittal from this case.

9. Hence, it apparently appears before this court that PW-1 being the informant-cum-victim of this case contradicted the entire contentions of the ejahar by way of testifying that she had an altercation with the accused persons and due to misunderstanding she lodged the instant case against the accused persons. PW-1 simply deposed before this court that now she does not want to proceed with this case further against the accused persons and thereafter, she does not have any objection if the accused persons are acquittal from this case.
10. To sum up the testimony of the informant-cum-victim, it reveals before this court that the informant-cum-victim appears to be contradictory with the entire contention of the ejahar and her testimony cannot be relied upon.
11. In view of the above evidence on record, I am of the opinion that prosecution side has failed to prove the charges against the accused persons, namely, Md. Mainul Haque and Md. Mukut Ali beyond reasonable doubt and as such the accused persons are acquitted from the charges u/s-448/294/506/34 of IPC and sets at liberty. Surety is extended for six months in view of section-437A of Cr PC.
12. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 08<sup>th</sup> day of February, 2021.

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

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**ANNEXURE**

**1. Witnesses for Prosecution:-**

PW-1:- Smt. Momi Das Khan, the Informant

**2. Witnesses for Defence: NIL**

**3. Court Witnesses: NIL**

**4. Prosecution Exhibits:**

Ext-1 :- FIR

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

**5. Defence Exhibits: NIL**

**6. Material Exhibits: NIL**

Chief Judicial Magistrate  
Sonitpur, Tezpur