

DISTRICT: SONITPUR

**IN THE COURT OF JUDICIAL MAGISTRATE 1<sup>ST</sup>**

**CLASS, TEZPUR, SONITPUR**

**Present: Smt. Priyanka Saikia, AJS**  
**Judicial Magistrate 1<sup>st</sup> Class Sonitpur, at Tezpur**

**G.R. Case No. 3408/2015**  
**under Sections 420, 468 of IPC.**

State of Assam

-Versus-

Smti Bakul Das

W/o- Late Upen Ch. Das,

R/o- N.B. Road, Ward No. 9,

P.S.- Tezpur,

Dist- Sonitpur, Assam

.....Accused Person

Date of evidence: 15.02.2018, 21.03.2018, 06.09.2018,  
15.03.2019

Date of argument: 21.12.2021

Date of judgment: 04.01.2022

Advocate appeared for the State: Smt. Bandana Boro, Ld.

APP

Advocate appeared for the accused person: Sri Babul  
Borthakur

## **JUDGMENT**

**1.** The informant, Andrew Daimari had lodged the ejahar in this case on 14.12.2015 alleging that he entered into an agreement with accused persons (1) Raju Das and (2) Smti Bakul Das for purchasing a shop from the accused persons and paid an amount of Rs.3,80,000/- as advance amount but later he came to know that the accused persons have already given the said shop at lease for a period of 10 years to one Ravi Singh of Mission Chariali and in that way cheated him. Hence, this case.

**2.** Upon receipt of the ejahar, the police registered Tezpur Police Station case no: 1706/2015 under Section 420, 468 of Indian Penal Code, 1860 (hereinafter referred to as IPC). After completion of the investigation the police submitted charge-sheet against the accused persons, (1) Raju Das and (2) Smti Bakul Das under Sections 420, 468 of IPC.

**3.** The accused persons entered trial and after furnishing the accused persons with the copies of the relevant documents in compliance with Section 207 of Cr.P.C and upon finding sufficient materials against the accused persons, charge under Sections 420, 468 of IPC was framed and was explained to the accused persons to which they pleaded not guilty and claimed to be tried.

**4.** The prosecution examined 5 (five) numbers of witnesses including the informant. The statement of the accused persons under Section 313 of Cr.P.C were recorded, which was total denial. Defence declined to

adduce evidence. During the course of trial accused Raju Das was expired and the case was abated against the deceased Raju Das. Therefore, I deem it fit to appreciate the evidence against the accused Smti Bakul Das. I have heard the arguments for both sides.

**5.** Upon hearing and on perusal of the case record I have framed the following points for determination-

**(I)** Whether the accused person Smti Bakul Das had cheated the informant by entering into an agreement and thereby committed an offence punishable under Section 420 of Indian Penal Code?

**(II)** Whether accused person Smti Bakul Das had entered into an agreement with the informant, by way of forging the signature of the informant in order to cheat the informant and thereby committed an offence punishable under Section 468 of Indian Penal Code?

**DISCUSSION, REASONS AND DECISION THEREOF:**

**6.** Andrew Daimary had been examined as PW-1. PW-1 had stated in his chief-examination that the incident was occurred on 2015. The accused persons intend to sell one shop room below Grand City Hotel to him and the accused persons received an amount of Rs.3,80,000/- from him by signing a Money receipt. The accused persons also told him that if he would given Rs.5,00,000/- to them, they would given possession to him. On 22.01.2015 they have signed on stamp paper as money was received. Thereafter the informant came to know that the said shop room was already on lease for 10 yrs. He had intimated with the

accused persons, then they told him that they would return the money. He had not given the possession of the room. PW-1 has proved his F.I.R. as Ext-1 and his signature therein as Ext. 1(i). The seizure list is exhibited as Ext-2 and Ext2(i) is his signature and the money receipt was exhibited as Ext 3.

In his cross-examination he had deposed that he had not done any inquiry in respect of the Shop room in the Mondal Office to verify, whether the accused persons were true owner or not. He had only received the money receipt of the last instalment. He also deposed that there was no witness of the money receipt and he had not put his signature thereon. He also had no knowledge about who had drafted the Money receipt. After 2/3 months later, the informant came to know that the room was on lease.

7. PW-2(Diganta Daimary) deposed in his chief-examination that informant was his relative. The accused persons had received an amount of Rs.3,80,000/- from the informant for a shop. Thereafter, they came to know that the shop was already in lease. The money was paid in three instalments. They did not return the money.

In his cross-examination he deposed that he had heard about the agreement of sale of the shop. He was present at the first time of payment of money but did not remember the date at that time and no documents were prepared. He had no knowledge what type of currency was given to the accused persons and he also had not counted the amount of money. The money receipt draft was also

not prepared on the second instalment. He had not stated to the police that he was present at the time of given money and not stated about the lease.

**8.** PW-3(Jesse Nag) had deposed in his chief examination that the informant had given an amount of Rs.3,80,000/- to accused Raju Das. He had knowledge about that the informant given money to the accused person in two instalments i.e. Rs.80,000/- and Rs. 1,00,000/-. And the accused already lease the shop and had not returned the money. Ext2(iii) is her signature.

In his cross-examination he had deposed that he had not remembered the date at that time of payment of money, no documents was made. He had not put his signature. At the second time of instalment he was in car. He had not stated to the police that he was present at the time of payment of money and not stated about the lease. Ext-2 was prepared in police station and put his signature and recorded his 161 statement. He had no knowledge from whom the Ext-3 was seize.

**9.** PW-4 (Dr. Tilaka Das i.e. Deputy Director of Handwriting Expert) had deposed in her chief examination that she had received an envelope where 3 sets of specimens were there. After that she had examination of those documents and compared the disputed signature with the supplied specimen signature with the help of scientific instrument Ext2(iii) is her signature. In her opinion that the person who wrote on the stamp paper also wrote the specimen signatures. Ext-4 is the Forwarding

Letter and Ext--4(i) is the signature of Upen Borah, Ext-5 is her opinion and Ext-5(1) her signature Ext-6 Specimen signatures of Raju Das, Ext-7 Specimen Signature of Bakul Das

In his cross-examination she had deposed that she had received only one stamp paper of Rs.100/- which was exhibited as Ext-3

**10.** PW-5 (Biplab Sankar i.e. S.I.) deposed in his examination that he had investigated the place and prepared the sketch Map. Ext-5 is the Sketch Map and Ext-5(i) is his signature. He seized the Non-Judicial Stamp paper and documents etc. He also recorded the statements of witnesses. Ext-2 is the Seizure List and Ext—2(iii) is his signature. Ext-3 was sent to FSL for examination of alleged signature of accused persons. As per FSL report, the alleged signature was found to be genuine. Ext-6 is the charge-sheet and Ext-6(i) is his signature.

In his cross-examination he deposed that in Ext-3, there was no signature of informant and not mentioned about the witnesses. He had not conducted any investigation regarding the Notary Sanjay Das. The disputed room is not shown in Ext-5. The disputed room was earlier agreed to rent in the name of Ravi Singh and Ravi Singh had not raised any objection. There was no receipt for collection of money. Diganta Daimary had not stated him that money was paid in instalments and the room was given on lease. PW-3 also did not state that at

the time of transaction money she was present and the room was given on lease.

**11.** Now, the stage has been set to appreciate the evidence on record in the light of the essential ingredients of the offences alleged to have been committed by the accused Smti Bakul Das.

**12.** Now, let us decide the issues in the light of evidence adduced by the above witnesses. Careful perusal of the testimonies of the prosecution witnesses reveals that all of them have supported the prosecution story. PW-2 and PW-3 were present at the place of occurrence when the incident had taken place and they deposed that payment was made to deceased accused Raju Das. But PW-2 and PW-3 had not stated the above thing in front of Police.

**13.** In the instant case out of the five witnesses examined, the evidence of the informant PW-1 is vital and as such the evidence of the PW-1 is minutely perused. Perusal of the evidence of PW-1 discloses that in his evidence though he stated about the deception being practiced upon by the imposter in the execution of the sale agreement by receiving an advance amount of Rs.3,80,000/-. The informant PW-1's evidence only discloses that he later came to know that the accused persons had already lease the room to other person. But, prosecution has failed to bring the evidence of the lessee Sri Ravi Singh, who was the material witness of this instant case.

**14.** In this case, there are ample corroborating evidences to show that the informant had an agreement with the accused persons and the I.O. had also seized the original copy of the agreement and sent to FSL to examine the authentication of Signatures. Now, let us decide how far this ocular evidence is corroborated by the Signature Expert evidence. PW-4 Dr. Tilaka Das of FSL, during her evidence stated that she had examined the signatures upon the agreement copy and the specimen signatures sent by the Police. PW-4 deposed that in her opinion that the person who wrote on the stamp paper also wrote the specimen signatures. From the evidence of the Signature Expert, I hold that the accused person had put her signature.

Even than the main point to be determined in the instant case is that whether the accused person had cheated the informant by dishonestly inducing him to deliver an amount of Rs. 3,80,000/- to her on the pretext of sale of the shop room and thereby committed offence under Section 420 IPC. The main ingredient of the offence under Section 420 IPC is cheating thereby inducing the person to deliver the money. The mens rea i.e. the dishonest intention has to be at the time of making the inducement and the delivery of property has to be due to such inducement.

It is a settled law that mere breach of contract cannot attract criminal liability under Section 420 IPC if the ingredients of the offence are not fulfilled. In the instant

case the main ingredient to be proved by the prosecution is that the accused with an intention to cheat the complainant entered into the agreement and thereby induced him to deliver the money.

**15.** Now, for a person to be convicted under Sec. 420 IPC, it has to be established that she not only cheated the informant but also done so by dishonestly inducing the informant to make an agreement. To understand what is "dishonestly" we may refer to Section 24 of the IPC which defines "acting dishonestly" as when the doing of any act or not doing of any act causes wrongful gain of property to one person or a wrongful loss of property to a person, the said act is done dishonestly. Thus, the prosecution must prove that there was an intention to cheat at the time of making the agreement and that this fact must be proved on the basis of all subsequent acts and omissions of the accused person, which must be clearly and legibly set up right from the date of making cheat and till the filing of the complaint.

**16.** In a case where the preparation of certain document for the purpose of forgery and cheating is claimed by the prosecution and where the documents are claim to be prepared forgedly, the entire prosecution case and burden of prosecution to prove the entire accusations rest upon the prove of forgery of document and in that circumstances the oral evidence shall not be competent to establish the accusation against the accused person Smti

Bakul Das. The prosecution also not examine the Notary public.

**17.** In this case even if we consider that the plea of prosecution that the accused took money by executing an agreement from the informant and did not return it and it will not prima facie attract the ingredients of Section 420, 468 IPC in absence of proof of dishonest intention of the accused person at the time of making the inducement to deliver the money. Had the informant succeeded in showing that the accused by misrepresenting that anything had induced him to deliver the money than it would have attracted the charge under Section 420, 468 IPC. In view of the above I find that prosecution failed to show that the accused had the intention to cheat at the time of entering into the agreement.

**18.** In view of the above I find that prosecution has failed to prove the main ingredient of offence under Section 420, 468 IPC. Mere breach of contract between parties is not sufficient to attract offence under Section 420, 468 IPC. Breach of contract has remedy in civil law and cannot inculcate a person with criminal liability in absence of the essential ingredients of cheating.

Therefore, this court finds that prosecution side miserably failed to prove the guilty of the accused person beyond reasonable doubt. As such accused person is entitled to get the benefit of doubts in this case. Hence, the point for determination is decided in the negative.

**ORDER**

**19.** Accordingly, accused person is acquitted from the charge under Sec. 420,468 of IPC and sets at liberty.

**20.** The bail bond of the accused persons will remain in force for 6 (six) months from today by virtue of Sec. 437(A) Cr.P.C.

Given under my hand and seal of this court on this 04<sup>th</sup> day of January, 2022 at Sonitpur, Assam.

Priyanka Saikia, AJS  
Judicial Magistrate 1<sup>st</sup> Class  
Sonitpur, Tezpur

**APPENDIX**

**1. Witnesses for Prosecution**

PW-1: Anowara Begum

**2. Prosecution Exhibit**

Exhibit 1- Ejahar

Priyanka Saikia, AJS  
Judicial Magistrate 1<sup>st</sup> Class  
Sonitpur, Tezpur