

**APPENDIX-12**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPURTEZPUR

Present:- Sri Nabajit Bhatta. AJS. MA, LL.B.  
Chief Judicial Magistrate,  
Sonitpur, Tezpur

[Date of the Judgment]  
**02.11.2022**

**[GR Case No-1136 of 2017]**

(FIR NO-573/2017 DATED-28.03.2017/THEFT CASE AND TEZPUR POLICE STATION)

COMPLAINANT :	STATE OF ASSAM OR Sri Girindra Pegu, Bank Manager of Vijaya Bank, Tezpur Branch Main Road S/O:- Late Chandra Kt. Pegu, P/S:- Tezpur, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Nalini Kanta Mishra, Ld. Addl. P.P Smt. Karabi Das, Asst. P.P.
ACCUSED PERSONS	1. Md. Injamamul Haque, S/O:- Late Nur Mohammad, R/O- Bhojkhowa, P/S:- Tezpur, Dist:- Sonitpur, Assam  2. Md. Kuddush Ali @ Md. K. Ali, S/O:- Late Asmat Ali, R/O- No-1 Dolabari, P/S:- Tezpur, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Rajiv Gohain, Ld. Counsel Mr. Paban Kumar Sharma, Ld. Counsel

**APPENDIX-13**

Date of Offence	28.03.2017
Date of FIR	28.03.2017
Date of Charge Sheet	30.07.2017
Date of Framing of Charge	16.08.2018
Date of commencement of evidence	22.10.2018
Date on which judgment is reserved	21.09.2022 & 02-11-2022
Date of Judgment	02.11.2022
Date of the Sentencing Order, if any	NIL

**ACCUSED DETAILS :**

Rank of the Accused	Name of the accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentenced Imposed	Period of Detention undergone during Trial for purpose of Sec. 428 Cr.P.C.
A-1	Md. Injamamul Haque	23.06.2017	24.08.2017	Sec-379 of IPC	Acquitted	NIL	63 Days
A-2	Md. Kuddush Ali @ Md. K. Ali	23.06.2017	24.08.2017	Sec-379 of IPC	Acquitted	NIL	63 Days

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

**G. R. Case No-1136 of 2017**

State of Assam

-Vs-

1. Md. Injamamul Haque,  
2. Md. Kuddush Ali @ Md. K. Ali

.....Accused Persons

Under section-379 of I.P.C

*Present:*

*Sri Nabajit Bhatta AJS. MA, LL.B.*  
*Chief Judicial Magistrate, Sonitpur at Tezpur*

02<sup>nd</sup> day of November, 2022

Mr. N. K. Mishra, Ld. Addl. P.P ..... Advocate for the State  
Mr. R. Gohain & Ors, Ld. Counsels ..... Advocate for the Accused

Date of Hearing : 20.06.2019, 16.08.2019, 10.02.2022  
08.07.2022,

Date of Argument : 21.09.2022 & 02-11-2022

Date of Judgment : 02.11.2022

**J U D G M E N T**

1. Prosecution story in brief is as follows that on 28.03.2017 the informant Sri Girindra Pegu, Senior Branch Manager of Vijaya Bank, Tezpur Branch lodged an Ejahar before the O/C of Tezpur Police Station to the effect that some clearing cheques deposited by their customers for clearance around 30-40 cheques was stolen from the bank counter around 02:00 PM on 28.03.2017. It is also stated that a person was spotted stealing the cheques from the counter in one of the CCTV footage inside bank premises and a backup of CCTV footage taken in Pen drive. Hence, the prosecution case.

2. The instant case was registered under section-379 of Indian Penal Code and police investigated the same. After completion of the investigation, police submitted the charge-sheet against the accused persons, namely, Md. Injamamul Haque and Md. Kuddush Ali @ Md. K. Ali under section-379 of Indian Penal Code.
3. That my Ld. Predecessor in office took cognizance of the offence against the accused persons. On appearance of the accused persons, copies of relevant documents were furnished to the accused persons and the charge under section-379 of I.P.C. was framed against the accused persons by my Ld. Predecessor and said charge was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
4. Prosecution in order to prove the case has examined as many as 06 (Six) numbers of witnesses including informant and the investigating officer in support of this case. Defence plea was total denial. Defence has adduced no evidence. Statements of the accused persons have been recorded under section-313 of Cr. P.C.

5. **POINTS FOR DETERMINATION:-**

- (i.) Whether the accused persons on 28.03.2017 around 02:00 PM intending to take dishonestly 30-40 clearing cheques from the Bank Counter of Vijaya Bank, Tezpur Branch without consent of the Manager, moved that property in order to such taking and thereby committed an offence punishable under section-379 of I.P.C.?

6. Heard argument from the Ld. Advocate of the both sides. On perusal of the evidence on record and case diary the very findings are as follows.

**DISCUSSION, DECISION AND REASONS THEREOF**

7. The prosecution opening the account of examining the witnesses first brought the informant, namely, Sri Girindra Pegu as PW-1. The PW-1 has stated in his evidence-in-chief that he knows the accused persons of this

case. He also stated that the incident took place on 28.03.2017 at about 2 PM and at the time of the incident he was posted as Senior Branch Manager at Vijaya Bank, Tezpur. He further stated that on that day, one Ananta Kakoty of their branch was at the counter of Cheque Clearance and made an entry of clearance cheque. Suddenly, the link of internet of has been stopped and thereafter, said Ananta Kakoty went to another counter to check the system link and after returning to his counter, he found around 40 nos. of cheques were missing. Thereafter, said Ananta Kakoty informed him about the matter and then, he checked the CCTV footage of their bank and found one person had kept the said cheque inside his pocket and leave from there. He also stated that thereafter, he informed the matter to their head office and also informed the same to their customers that the cheques were missing. Thereafter, he lodged the ejahar. He identified the ejahar as Ext-1 wherein he put his signature as Ext-1(1).

8. In cross-examination, PW-1 has stated that his counter is just adjacent to the counter of said Ananta Kakoty. He further stated that he had seen the accused persons first time when they came before this court. He also stated that he could not say the names of the customers whose cheques had been stolen. He stated that he had mentioned in his ejahar that some unknown person had stolen the cheques.
9. PW-2, Sri Raja Rajak in his evidence-in-chief has stated that he knows the informant and he was the senior branch manager at Vijaya Bank, Tezpur Branch at the time of occurrence. He also stated that at the time of incident he was posted as Asst. Manager at Vijaya Bank, Tezpur Branch. He stated that the date of occurrence was 28.03.2017 and on the date on incident at about 2 PM around 40 nos. of clearance cheque were stolen from the desk of their bank clerk Ananta Kakoty. He also stated that Ananta Kakoty informed the matter to them and they then checked through the C.C.TV footage and they came to know that an

unknown person present at their bank branch at that time took away the cheque from the desk of Ananta Kakoty. He further stated that informant informed the matter to the higher authorities and later lodged the ejahar. Later, police came and seized the C.C. TV footage. He also stated that before that the C.C. TV footage transferred was in pen drive in his presence and the same was then seized. He stated that police also seized one list of stolen cheque slips of various banks produced by them. He also stated that a photograph generated from the C.C. TV footage was also seized by the police along with the pen drive. He identified the seizure list of pen drive, photograph as Ext-2. He also identified the seizure list of stolen cheque slips of various banks as Ext-3. M. Ext-1 is the pen drive.

10. In cross-examination, PW-2 has stated that he has transferred the C.C. TV footage into a pen drive in presence of bank authorities and later handed over the pen drive to the police authorities. He also stated that the transfer of C.C. TV footage to the pen drive was made on the same day of incident.
11. PW-3, Sri Ananta Kakoty in his evidence-in-chief has stated that the informant was the Branch Manager of Vijaya Bank, Tezpur Branch and the incident took place on 28.03.2017 at about 2 PM. He stated that at the time of incident he was working at Tezpur Vijaya Bank and was engaged to enter clearance cheques. He further stated that at the time of the incident he was going towards another table of their bank and after returning back to his table, he found some of the cheques were missing from his table. Thereafter, he immediately informed the matter to his Manager and further checked the CCTV footage wherein he found that one person sitting inside the bank had stolen the cheques and kept the same inside his pocket. Thereafter, the ejahar was lodged and after that police came there and took the video footage and pen drive and accordingly, seized the same from their bank. He identified the seizure

lists as Ext-2 and Ext-3 wherein he put his signatures as Ext-2(1) and Ext-3(1).

12. In cross-examination, PW-3 has stated that the person whose photo was seen on C.C. TV was not clear. He further stated that manager took the photo of said thief and handed over the same to police. He also stated that around 40 nos. of cheques were missing but he could not say the name of said cheque holders.
13. PW-4, Smt. Pronoya Bhuyan has stated in her evidence that informant was the bank Manager of Vijaya Bank, Tezpur Branch. She further stated that she was working at the said bank as Asst. Manager. She also stated that on 28.03.2017 at about 2 PM, around 40 nos. of cheques had been stolen from the desk of one Ananta Kakoty and thereafter, they have informed the matter to their Manager and checked the CCTV footage and found one person had stolen the said cheques. Thereafter, the ejahar was lodged in this regard. She further stated that they heard that police caught the said person. She stated that police seized photograph and some other article wherein she put her signature as seizure witness. She identified seizure lists as Ext-2 and Ext-3 wherein she put her signatures as Ext-2(2) and Ext-3(2).
14. In cross-examination, PW-4 has stated that she had not seen the seized articles before the court. She further stated that she could not say which cheques belonged to which bank. She also stated that she herself had not seen the said cheques. She stated that the photograph of the said person was not clear on the C.C. TV footage.
15. PW-5, Sri Peter Diengdol has stated in his evidence-in-chief that he does not know the informant of this case. He stated that he saw the accused persons only after their arrest in this case. He further stated that the incident took place in the month on June, 2017 and at that time he was working as a Bank Manager at IDBI Bank, Tezpur Branch. He also stated that accused Md. Kuddush Ali wanted to open an account in their bank in

the name of G.S. Drug Distributor and in this regard the said accused submitted documents, trade licence and 04 nos. of cheques and the said cheques were in the name of GS Distributor. He further stated that out of said 04 nos. of cheques one cheque belongs to one customer of their bank who issued the said cheque in the name of G.S. Drug Distributor and thereafter, said documents along with cheque put up before him for verification. He found the said four cheques were back dated cheques and he on suspicion called the said customer to enquire about the same and then he came to know that the said cheque which was issued in the name of G.S. Drug Distributor had actually stolen from the Vijaya Bank. Thereafter he called the owner of G.S. Drug Distributor named Agarwal and said Agarwal had informed him that the cheques which were issued in the name of GS Drug Distributor had actually stolen from Vijaya Bank. He also stated that they came to know that the accused Md. Kuddush Ali attempted to commit fraud in their bank. Thereafter, he immediately reported the matter to their Regional Office. He further stated that police already started their investigation as the Branch Manager of Vijaya Bank had lodged an ejarah in this regard. He also stated that as per the investigation conducted by the investigating officer he called the accused Md. Kuddush Ali to their bank by way of stating that due to some official formalities in connection with the opening of account. However, accused namely, Md. Kuddush Ali did not go to their bank but his friend namely, Md. Injamamul Haque visited their bank. Thereafter, he called the police and later police came to their bank and took the accused namely, Md. Injamamul Haque along with them. He further stated that the police also apprehended accused namely, Md. Kuddush Ali. He had seen both the accused persons before the court who were standing on the dock. He stated that he also lodged a case in connection with this case.

16. In cross-examination, PW-5 has stated that police interrogated him in connection with this case. Vijaya Bank also lodged an ejarah in this case.



He further stated that police interrogated him on the very day of lodging the ejahar by him. He stated that he stated before the court whatever he had stated before the police. He had not seen the ejahar before the court which was lodged by him. He further stated that Md. Kuddush Ali at the time of depositing cheque he had filled up the form and submitted the same before their bank. He also stated that said Md. Kuddush Ali also submitted photo, PAN Card etc. before their bank and police seized the same. But he had seen the same before the court. He stated that he could not say the numbers of said cheques. He stated that Md. Kuddush Ali did not submit any documents along with cheques before their bank and he also did not go to their bank to open an account. He also stated that he had seen Md. Kuddush Ali after his arrest by police personnel. He further stated that police seized the documents which were taken by Md. Kuddush Ali at the time of opening the account.

17. PW-6, ASI Ranjit Borah being the Investigating Officer of this case has stated in his evidence that on 28.03.2017, he was posted as ASI at Tezpur PS and on that day O.C. of Tezpur PS received an ejahar lodged by one Girindra Pegu. Accordingly, on received of the same, the O/C of Tezpur PS registered as Tezpur PS Case No-573/2017 u/s-379 of IPC and subsequently, he was endorsed for investigation. He further stated that he recorded the statement of informant and other witnesses at the police station. He stated that he also visited the place of occurrence and drew up the sketch map. He identified the sketch map as P. Ext-4 wherein he put his signature as P. Ext-4(1). He also stated that he seized one pen drive, one copy of photograph (indistinct) through P. Ext-2 and P. Ext-2(3) is his signature. He also seized one list of stolen cheque slips of various bank produced by Vijaya Bank Authority. He identified the seizure list as P. Ext-3 wherein he put his signature as P. Ext-3(3). He stated that he also seized an original seizure list of Tezpur PS Case No-1211/17, u/s-380/420 of IPC from SI Ramen Borah. He further identified the seizure

list as P. Ext-5 and P. Ext-5(1) is his signature thereon. He further stated that the accused persons went to deposit the above mentioned four cheques at IDBI Bank and at that time, they were arrested on that case. Later on, the accused persons were shown arrest by him and forwarded them before the Hon'ble Court. He identified the pen drive which was seized by him as M. Ext-1; list of cheques of IDBI bank as M. Ext-2 and original seizure list of Tezpur PS Case no. 1211/17, u/s 380/420 of IPC as M. Ext-3. He also stated that on conclusion of his investigation, he submitted charge sheet against the accused persons, namely, Md. Injamul Haque and Md. Kuddush Ali u/s-379 of IPC. He identified the charge sheet as P. Ext-6 wherein he put his signature as P. Ext-6(1).

18. In cross-examination, PW-6 has stated that in the ejahar, there was no mentioned of stolen cheques and numbers. He further stated that there was no mentioned, the cheques were belongs to which Bank. There were no mentioned of actual of numbers of stolen cheques. He stated that generally pen drive of the C.C.T.V. footage seized in presence of expert. He further stated that he could not say whether C.C.T.V. footage was taken in presence of expert. He stated that he did not send the pen drive before expert to verify the footage. He also stated that he did not submit the contents of the C.C.T.V. footage along with the case. He stated that the C.C.T.V. footage was not clear. He also stated that the surroundings of the photographs (MR 275/17) are not clear. He stated that over the pen drive it was written as "Vijaya Bank" and it was furnished to him by Vijaya Bank Authority. He stated that he did not seize any materials from the accused persons. He also stated that in P. Ext-5, he did not furnish the contents of the said seizure list of Tezpur PS Case No-1211/2017. He stated that he did not mention the identification mark of the pen drive. He also stated that in P. Ext-3, the list of stolen cheques was seized from Raja Rajak of Vijaya Bank. He further stated that he visited the place of occurrence two times on 29.03.2017 and 22.06.2017 and on 22.06.2017

he received the seizure list of Tezpur PS Case No-1211/2017 from SI Ramen Borah. He admitted the fact that PW-5 did not state before him that when he became doubt he called the customer who deposited the cheque on their bank. He also admitted the fact that the same witness did not state before him that when Kuddush Ali was called then Injamul Haque also came to their bank and police took them after arresting them.

19. I have minutely perused the evidence on record including the cross-examination of witnesses. In this case, prosecution side has examined as many as six numbers of witnesses including informant, Bank officials and the I.O.
20. The PW-1 has deposed that on 28.03.2017 at about 2 PM and at the time of the incident, he was posted as Senior Branch Manager at Vijaya Bank, Tezpur, then 40 nos. of cheques were missing from the Bank Counter and when Ananta Kakoty informed him about the matter and then, he checked the CCTV footage of their bank and found one person had kept the said cheque inside his pocket and leave from there and thereafter, he lodged the ejahar. In cross-examination the PW-1 has stated that he could not say the names of the customers whose cheques had been stolen and in his ejahar he mentioned that some unknown person had stolen the cheques. So, from the evidence of the PW-1 sufficient incriminating materials has been not found against the accused persons.
21. PW-2, who was Branch Manager of Bijaya Bank, Tezpur has also deposed that 28.03.2017 at about 2 PM around 40 nos. of clearance cheque were stolen from the desk of their bank clerk Ananta Kakoty. He also stated that Ananta Kakoty informed the matter to them and they then checked through the C.C.TV footage and they came to know that an unknown person present at their bank branch at that time took away the cheque from the desk of Ananta Kakoty. PW-3 who was the Clerk of

Vijaya Bank has deposed that 28.03.2017 at about 2 PM, he was working at Vijaya Bank, Tezpur and was engaged to enter clearance cheques he found some of the cheques were missing from his table. Thereafter, he immediately informed the matter to his Manager and further checked the CCTV footage wherein he found that one person sitting inside the bank had stolen the cheques and kept the same inside his pocket. In cross-examination, PW-3 has stated that the person whose photo was seen on C.C. TV was not clear. PW-4 who was then Asstt. Manager of Bijaya Bnak has stated that on 28.03.2017 at about 2 PM, around 40 nos. of cheques had been stolen from the desk of one Ananta Kakoty and thereafter, they have informed the matter to their Manager and checked the CCTV footage and found one person had stolen the said cheques. In cross-examination she had not seen the seized articles before the court. She stated that the photograph of the said person was not clear on the C.C. TV footage. So, from the evidence of the PW-2, PW-3 & PW-4 sufficient incriminating materials have been not found against the accused persons.

22. PW-5 who was then Manager of IDBI Bank, Tezpur has deposed that one Kuddus Ali came to his bank to open an account in the name of G.S. Drug Distributor and deposited four no.s of cheques then he found the said four cheques were back dated cheques and he on suspicion called the said customer to enquire about the same. Thereafter he called the owner of G.S. Drug Distributor named one Agarwal and said Agarwal had informed him that the cheques which were issued in the name of GS Drug Distributor had actually stolen from Vijaya Bank. But the prosecution has failed to examine the said Agarwal as witness. Furthermore the above four cheques along with other document were not seized by the I.O.
23. The I.O. of this case seized CCTV footage with one pen drive and one copy of photograph vide P.Ext-2. But the I.O. has stated that generally

pen drive of the C.C.T.V. footage seized in presence of expert. He further stated that he could not say whether C.C.T.V. footage was taken in presence of expert. He stated that he did not send the pen drive before expert to verify the footage. He also stated that he did not submit the contents of the C.C.T.V. footage along with the case. He stated that the C.C.T.V. footage was not clear. He also stated that the surroundings of the photographs (MR 275/17) are not clear.

24. From the evidence of the prosecution witness it appears that none had seen that the accused persons committed theft of the 40 nos. of cheques from the Bijaya Bank. The complainant has stated that around 40 nos. of cheques were missing but he could not say the name of said cheque holders.
25. In this case the I.O. seized the CCTV footage wherein one person had alleged to commit theft of the the above cheques. But the said CCTV footage was verified by technical expert. No certificate regarding seized of CCTV footage was issued by the technical expert. Moreover the CCTV footage was not clear. Further the I.O. has stated that the seized articles are not seen by him at court on the day of adducing his evidence. That the four stolen cheques which were alleged to deposit by accused Kuddus Ali at IDBI Bank, Tezpur were not seized by the I.O. of this case. The remaining cheques were also not recovered or seized by the I.O. Moreover the I.O. did not seize any articles from the possession of the I.O.
26. Hence, considering all above discussions it appears that the prosecution has not proved the case against the accused persons beyond reasonable doubt. Thus keeping view of what has been discussed above this court has no least hesitation that the prosecution has failed miserably to establish the guilt of the accused persons U/S: 379 of I.P.C. So, the accused persons, namely, Md. Injamamul Haque and Md. Kuddush Ali @ Md. K. Ali are not found guilty.

**ORDER.**

Accused persons, namely, Md. Injamamul Haque and Md. Kuddush Ali @ Md. K. Ali are acquitted from the Charge under section-379 of I.P.C. and set at liberty forthwith.

Bail-bonds of the accused persons are extended for six months in view of section-437A of Cr PC.

Judgment is prepared and pronounced in open court. Given under my hand & seal of this court on this 02<sup>nd</sup> day of November, 2022 at Tezpur.

**(Sri Nabajit Bhatta)**  
**Chief Judicial Magistrate,**  
**Sonitpur: Tezpur**

Dictated and Corrected by me

Chief Judicial Magistrate,  
Sonitpur: Tezpur

**APPENDIX -14**  
**LIST OF PROSECUTION/DEFENCE/COURT WITNESSES**

**A. Prosecution:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Sri Girindra Pegu	INFORMANT
PW-2	Sri Raju Rajak	OTHER WITNESS
PW-3	Sri Ananta Kakoty	OTHER WITNESS
PW-4	Smt. Pranaya Bhuyan	OTHER WITNESS
PW-5	Sri Peter Diengdol	OTHER WITNESS
PW-6	ASI Ranjit Borah	POLICE WITNESS

**B. Defence Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

**C. Court Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

**LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS****A. Prosecution:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1	Ext-1/PW-1	FIR
2	Ext-1(1)	Signature of PW-1
3	Ext-2/PW-2, PW-3, PW-4, PW-6	Seizure List
4	Ext-2(1)	Signature of PW-3
5	Ext-2(2)	Signature of PW-4
6	Ext-2(3)	Signature of PW-6
7	Ext-3/PW-2, PW-3, PW-4, PW-6	Seizure List
8	Ext-3(1)	Signature of PW-3
9	Ext-3(2)	Signature of PW-4
10	Ext-3(3)	Signature of PW-6
11	Ext-4/PW-6	Sketch Map
12	Ext-4(1)	Signature of PW-6
13	Ext-5/PW-6	Seizure List
14	Ext-5(1)	Signature of PW-6

15	Ext-6/PW-6	Charge Sheet
16	Ext-6(1)	Signature of PW-6

**B. Defence:**

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

**C. Court Exhibits:**

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

**D. Material Objects:**

Sr. No.	Exhibit Number	Description
1	M. Ext-1/PW-2, PW-6	Pen Drive
2	M. Ext-2/PW-6	List of cheques of IDBI Bank
3	M. Ext-3/PW-6	The original seizure list of Tezpur PS Case No-1211 of 2017, u/s-380/420 of IPC

Chief Judicial Magistrate,  
Sonitpur: Tezpur