

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

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

[Date of the Judgment]

04.11.2022**[GR Case No-1179 of 2010]**

(FIR NO-594/2010 DATED-25.06.2010/DISHONEST MISAPPROPRIATION OF
PROPERTY CASE AND TEZPUR POLICE STATION)

COMPLAINANT :	STATE OF ASSAM OR Sri Dulal Mir, Proprietor MIR Enterprises S/O:- Late Afiruddin, R/O:- No-1, Dolabari P/S:- Tezpur, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Nalini Kanta Mishra, Ld. Addl. P.P Smt. Karabi Das, Asst. P.P.
ACCUSED PERSON	Md. Nur Hussain, S/O:- Munur Ali, R/O- Barika Chuburi, P/S:- Tezpur, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Biraj Nath, Ld. Counsel

APPENDIX-13

Date of Offence	2008 to 2010
Date of FIR	25.06.2010
Date of Charge Sheet	24.08.2017
Date of Offence Explanation	02.09.2029
Date of commencement of evidence	19.12.2019
Date on which judgment is reserved	29.10.2022
Date of Judgment	04.11.2022
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. Nur Hussain	09.02.2011	14.03.2011	Sec-403 of IPC	Acquitted	NIL	33 Days

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

G. R. Case No-1179 of 2010

State of Assam
-Vs-
Md. Nur Hussain,

.....Accused Person

Under section-403 of I.P.C

Present:

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

04th day of November, 2022

Mr. N. K. Mishra, Ld. Addl. P.P Advocate for the State
Mr. B. Nath, Ld. Counsels Advocate for the Accused

Date of Hearing : 19.12.2019 & 17.01.2022
Date of Argument : 29.10.2022
Date of Judgment : 04.11.2022

J U D G M E N T

1. Prosecution story in brief is as follows that on 25.06.2010 the informant Dulal Mir, Proprietor of MIR Enterprises lodged an Ejahar before the O/C of Tezpur PS to the effect that a contract work was allotted to his said firm (M/S MIR Enterprises) by the authorities of the M/S Vodafone Essar Spacetel Ltd. for construction of a Ground Base Tower at a site at Goroimari vide PO No-120801518 dated-02nd October, 2008. It is also stated that the value of the said contract was Rs.12,28,716/- only and after completion of the construction work of the said mobile Telephone Tower he submitted bill to the said company on 18.10.2009 for paying the bill of Rs.11,72,154/- only against the said construction work. It is

also stated that thereafter despite his queries there was no information about the bill from the side of the company but from his Bank Statement of SBI, Tezpur he came to know that the security deposit amount was credited in his account from the side of the company. On further enquiry he came to know from the officials of the company on 24.06.2010 that an amount of Rs.10,44,390.09/- only was paid against the said Contract work and the said huge amount was paid to one Mr. Nur Hussain by cheque vide No-250068 dated-04.12.2009 in the name of firm M/S MIR Enterprises on 09.12.2009. It is further stated that said Nur Hussain was temporarily engaged by him to look after and supervise the said contract work as his employee but he was not at all authorized or empowered by him to draw any amount by cash or by cheque in the name of his firm. Moreover, said amount has not yet been deposited by Nur Hussain so far in the account of his firm. Therefore, it is clear that the said Nur Hussain has fraudulently withdrawn the said huge amount of money and has misappropriated it by committing breach of trust as temporary employee of his firm and has cheated him. Some officials or employees of said Vodafone Company of Bhangaghar Guwahati office also may be in collusion with him in this matter. Hence, the prosecution case.

2. The instant case was registered under section-406/420 of I.P.C. and the police investigated the same. After completion of the investigation police submitted the charge-sheet against the accused person, namely, Md. Nur Hussain under section-420/406 of I.P.C.
3. That my Ld. Predecessor in office took cognizance of the offence against the accused person. On appearance of accused person copies of relevant documents were furnished to the accused person. Although, the charge sheet was submitted by the Investigating Officer against the accused person u/s-420/406 of IPC but on perusal of the case record and the materials available in the case diary, it appears that the accused might committed the offence punishable u/s-403 of Indian Penal Code.

Accordingly, particulars of offences under section-403 of I.P.C. was read over and explained to the accused person by my Ld. Predecessor in Office to which he pleaded not guilty and claimed to be tried. However, the accused is discharged from the offence u/s-420/406 of IPC.

4. Prosecution in order to prove the case has examined only 02 (Two) numbers of witnesses including the informant in support of this case. Defence plea was total denial. Defence has adduced no evidence. Statement of the accused person has been recorded under section-313 of Cr. P.C.
5. **POINTS FOR DETERMINATION:-**

- (i.) Whether the accused person had misappropriated amount of Rs.10,44,390.09/- of M/S MIR Enterprises and converted the same to the use of accused person and thereby accused committed an offence punishable under section-403 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, Md. Dulal Mir as PW-1. The PW-1 has stated in his evidence-in-chief that he knows the accused person of this case. He stated that he is a Contractor. He also stated that the accused person since from the year 2008 was working as a supervisor under him. He further stated that he has a firm named M/S MIR Enterprises and on 02.10.2008 a contract work was allotted to his firm by the authorities of Vodafone Essar Space Tel. Ltd. for construction of a Tower and the value of the said contract was Rs.12,28716/- only. Thereafter, he was engaged the accused person to look after or supervise the construction work. He also stated that after completion of construction work, he submitted bill

to Vodafone Company on 18.10.2009 for Rs.11,72,154/-. Thereafter, he enquired about the same from the bank and sometime the accused also visited to bank to get the information regarding the bill. He further stated that on 24.06.2010 he learnt that the security amount of Rs.116071/- was not paid in the name of his firm M/S MIR Enterprises on 09.12.2009. He stated that he enquired about the position of his final bill then he came to know that the security amount was already credited in the account of his firm on 09.12.2009 but he did not find the said amount to the account of his firm. He further stated that thereafter, he lodged the ejahar before the police station. During the course of investigation he came to know that the accused has opened an account at Indusland Bank in the name of MIR Enterprises and thereafter, the accused after receiving the amount of Rs.10,46,390/- from the authority of Vodafone and deposited the said amount at Indusland Bank wherein the accused opened an account in the name of his firm. The accused fraudulently opened the said account in the name of MIR Enterprises. 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 the name of his firm is M/C MIR Enterprises. He stated that he has not maintained any document regarding the working as Supervisor in his firm by accused. He also stated that he did not issue any tender to receive the contract from Vodafone. He further stated that as his firm was registered firm so the said contract was allotted to the name of his firm. He stated that his firm along with other firms were also registered in Vodafone. He also stated that Vodafone has issued allotment order of said contract to the name of his firm and he showed the same to police. He has not seen the same before the court. He further stated that he has not given any security amount to Vodafone to get the said contract. He stated that Vodafone Company has deposited the security deposit money in his account and the same was the part of his final bill as the company has hold security

money for six months. He further stated that police took his current account statement for the purpose of examination/interrogation as to whether the security deposit money has actually deposited in his account or not. He also stated that PAN number has also submitted at the time of submitting the bill and earlier he has already submitted his PAN number in connection with the same. He stated that company has issued TDS at the time of payment of bill. He further stated that he has not submitted any proof whether Vodafone Company has issued TDS against his PAN number at the time of issuing final bill in the name of his firm. Earlier he was working under the contract given by Vodafone prior to this contract and said contract was around 6 months to 1 year back from the contract of this case. He is the proprietor of M/S MIR Enterprises. He further stated that he was allowed Power of Attorney in the name of his firm if anyone has done his official work. He also stated that the accused is not the attorney holder of his firm. He stated that the materials required for tower installation supplied by other vendor except the civil works. He further stated that his final bill was submitted by Vodafone Site in Change and the said Site in Change has not taken his signature. He also stated that he has not submitted any vouchers regarding civil work of his contract before the police. He further stated that he has not given any particulars of the skilled labour who engaged in the tower installation. He stated that he also not submitted any documents to the I/O regarding the salary of accused who being the employee of his firm.

9. PW-2, Md. Abdul Hussain in his evidence-in-chief has stated that he knows the informant and the accused person of this case. He also stated that he does not know anything about the alleged incident. He further stated that in the year 2010 police took his signature at the time of seizure of certain documents and vehicle. He identified the seizure list as Ext-2 wherein he put his signature as Ext-2(1). In cross-examination,

PW-2 has stated that he does not know why police obtained his signature at the time of seizure of certain documents and the vehicle.

10. I have minutely perused the evidence on record including the cross-examination of witnesses. In this case, prosecution side has examined as many only two numbers of witnesses including informant. However, prosecution side failed to bring other witnesses along with the Investigation Officer in this case.
11. In this case the PW-1 in his evidence has deposed that he came to know that the accused has opened an account at Indusland Bank in the name of MIR Enterprises and thereafter, the accused after receiving the amount of Rs.10,46,390/- from the authority of Vodafone and deposited the said amount on his account in the name of his firm. The accused fraudulently opened the said account in the name of MIR Enterprises. That on perusal of the case record it appears that some documents relating to the registration of MIR Enterprises and opening its bank account by the accused also seized by the I.O. But in this case prosecution has failed to examine the I.O. and seizure witnesses of these documents, so these documents were not exhibited before the court.
12. Moreover the PW-2 has stated that he does not know anything about the alleged incident, and in the year 2010 police took his signature at the time of seizure of certain documents and vehicle. That the statement given by the PW-1 has been not supported by the evidence of other witnesses and documents. So, I have not found any reason from the evidence of the PW-1 & PW-2 to believe the story of the prosecution.
13. Hence, considering all above discussions it appears that the prosecution has not proved the case against the accused person 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: 403 of I.P.C. Hence, the accused person, namely, Md. Nur Hussain is not found guilty.

ORDER.

Accused person, namely, Md. Nur Hussain is acquitted from the Charge under section-403 of I.P.C. and set at liberty forthwith.

Bail-bond of the accused person is 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 04th 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:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Md. Dulal Mir	INFORMANT
PW-2	Md. Abdul Hussain	OTHER WITNESS

B. Defence Witnesses, if any:

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

C. Court Witnesses, if any:

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

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Ext-1/PW-1	FIR
2	Ext-1(1)	Signature of PW-1
3	Ext-2/PW-2	Seizure List
4	Ext-2(1)	Signature of PW-2

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
NIL	NIL	NIL

Chief Judicial Magistrate,
Sonitpur: Tezpur