

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]

16.09.2022**[GR Case No-2978 of 2016]**

(FIR NO-1597/2016 DATED-11.09.2016/CHEATING AND DISHONESTLY
INDUCING DELIVERY OF PROPERTY CASE AND TEZPUR POLICE STATION)

COMPLAINANT :	STATE OF ASSAM OR Md. Anowar Hussain Choudhury S/O:- Md. Ataur Rahman, 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. Aslam Hussain, S/O:- Late Abdul Ali, R/O- Barika Chuburi Goriya Gaon, P/S:- Tezpur, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Pramod Ch. Sarmah, Ld. Counsel Mr. Ramen Borah, Ld. Counsel

APPENDIX-13

Date of Offence	07.01.2016
Date of FIR	08.09.2016
Date of Charge Sheet	30.06.2017
Date of Framing of Charge	24.01.2019
Date of commencement of evidence	21.05.2019
Date on which judgment is reserved	05.09.2022
Date of Judgment	16.09.2022
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. Aslam Hussain	15.03.2017	19.04.2017	Sec-420 of IPC	Acquitted	NIL	35 Days

submitted the charge-sheet against the accused person, namely, Md. Aslam Hussain under section-420 of Indian Penal Code.

3. That my Ld. Predecessor in office took cognizance of the offence against the accused person. On appearance of the accused person copies of relevant documents were furnished to the accused person and the charge under section-420 of I.P.C. was framed against the accused person and the said charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
4. Prosecution in order to prove the case has examined as many as 05 (Five) numbers of witnesses including informant and the investigating officer 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 on 07.01.2016 cheated the informant, namely, Md. Anowar Hussain Choudhury by dishonestly inducing him to deliver Rs.40,000/- and thereby committed an offence punishable under section-420 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. Anowar Hussain Choudhury as PW-1. The PW-1 has stated in his evidence-in-chief that he knows the accused person standing on the dock. He further stated that on 07.01.2016 accused took Rs.40,000/- him as loan and promised him to return the said loan

amount to him within 03 months. Thereafter, he gave the said Rs.40,000/- to him at about 11 AM after executing an agreement in presence of witnesses. He also stated that after 03 months accused did not return the said loan amount to him inspite of several request. He further stated that in the month of September, 2016 he again asked the accused person about his money but he did not give the said money. Thereafter, he lodged the ejahar. Thereafter, he lodged the ejahar. He identified his ejahar as Ext-1 wherein he put his signature as Ext-1(1).

8. In cross-examination, PW-1 has stated that the ejahar was written by one Mohori. He further stated that in the ejahar there was no specifically written that the accused took money after executing an agreement. He also stated that police did not seize the said agreement in connection with the case. He further stated that he has not filed any case before the civil court in connection with the instant case.
9. PW-2, Md. Aaur Rahman Choudhury has stated in his evidence-in-chief that he knows the informant and the accused persons of this case. He further stated that he does not know anything about the alleged incident. The cross-examination of PW-2 was declined by defence side.
10. PW-3, Md. Nasim Akhtar has stated in his evidence-in-chief that he knows the informant and accused of this case. He also stated that informant is the Manager of his factory in the year 2017. He further stated that 5/6 years back, occurrence took place at his factory situated at Dulabari and he was present at the place of occurrence. He also stated that accused took a loan amounting to Rs.40,000/- from the informant. There was a written agreement executed between informant and accused. He further stated that he was one of the witness in whose presence accused had received the aforesaid amount. Thereafter informant asked the accused to return his

money but the accused did not paid a single penny to informant. He stated that informant lodge ejahar accordingly against the accused.

11. In cross-examination, PW-3 has stated that he forgot whether his statement recorded by police. He denied the fact that he did not state before the police that he was present at the time of receiving loan of Rs.40.000/- from the informant by accused and there was a written agreement executed between informant and accused.
12. PW-4, Md. Nekib Seikh has stated in his evidence-in-chief that he knows the informant and the accused person of this case. He also stated that in the year 2016, accused Aslam Hussain received an amount of Rs.40.000/- from the informant Anowar Hussain. Thereafter, the accused failed to return the money to the informant and due to that informant lodge ejahar against the accused.
13. In cross-examination, PW-4 has stated that accused received the money in his presence from the informant. He denied the fact that he had stated before the police that he came to know from the informant that accused had received Rs.40.000/- from him.
14. PW-5, SI Dijen Ch. Borah being the Investigating Officer of this case has stated that on 08.09.2016 he was posted at Tezpur PS as SI and on that day O/C of Tezpur PS received an ejahar lodge by one Anowar Hussain Choudhary. He identified the ejahar as P.Ext-1. Accordingly, on received of the same, the O/C of Tezpur PS registered as Tezpur PS Case No-1597/16, U/S-420 of IPC. Thereafter, O/C of Tezpur PS endorsed him to investigate the case and accordingly he started his investigation by visiting the place of occurrence and prepared sketch map. He identified the sketch map as P.Ext-2 wherein he put his signature as P.Ext-2(1). He also stated that he recorded the statement of the informant and other witness and thereafter,

he apprehended the accused person and forwarded him before the Hon'ble Court. He further stated that at the time of investigation the informant furnished a photocopy of an agreement and as per agreement accused took Rs.40.000/- from the informant. However, he did not seize this document in connection with this case. He stated that on conclusion of his investigation he submitted charge sheet against the accused person U/S-420 of IPC. He also identified the charge sheet as P.Ext-3 wherein he put his signature as P. Ext-3 (1).

15. In cross-examination, PW-5 has stated that as per FIR, the date of occurrence was on 07.01.2016 and the FIR was lodge on 08.09.2016 and it was register on 11.09.2016. He also stated that the original agreement had not furnished to him by the accused and he also did not find it during investigation. He stated that he recorded the statement of informant Anowar Hussain Choudhary and witness namely Ataur Rahman Chodhary, Nasim Akhtar, and Nekib Sheikh. He also stated that PW-1, Anowar Hussain Chodhary did not state before him that after execution of the agreement he paid the amount on the place. He further stated that the same witness did not state before him that at the present of witness he gave money to the accused. He further stated that PW-3 Nasim Akhtar did not state before him that when the accused took Rs.40.000/- from the informant he was present. He also stated that the same witness did not state before him that when accused took the amount from the informant, he was also present as one of witness.

16. I have minutely perused the evidence on record including the cross-examination of witnesses. In this case, the prosecution side has examined as many as five numbers of witnesses out of which PW-1 is the Informant, PW-2, PW-3 and PW-4 are the independent witnesses and PW-5 is the

investigating officer. In this case the PW-1 has deposed that on 07.01.2016 accused took Rs.40,000/- from him as loan after executing an agreement in presence of witnesses and promised him to return the said loan amount to him within three months. However, after expiry of three months accused did not return the loan amount to him. The PW-3 who was present at the time of transaction, has also deposed that the accused took a loan an amount of Rs.40,000/- from PW-1 and an written agreement was executed by them and at the time of taking loan, he was present. Similarly, the PW-4 has also stated that the accused took Rs.40,000/- from the PW-1 but failed to return the amount to him.

17. Now, let us see whether the act of the accused falls under the provision of Sec.420 of I.P.C. Section-420 of I.P.C. provides "Whenever cheats and thereby dishonestly induces the person deceived to deliver any property to any person , or to make, alter or destroy the whole or any part of valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extended to seven years and shall also liable to fine."

18. In **an offence punishable u/s-420 of IPC**, the prosecution side has got the burden to prove that:-

- (i) cheating
- (ii) dishonest inducement to deliver a property;
- (iii) "*mens rea*" of the accused at the time of making inducement.

19. The term "Cheating" has been defined in Sec.415 of I.P.C. as " Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to delivery of any property to any person, or to consent that any

person or intentionally induces any person so deceived to do or to omit to do anything which he would not do or omit if he were not to be deceived, and which act or omission causes or is likely to cause damage or to harm that person in body, mind, reputation or property, is said to cheat." So, when the accused induces a person to deliver a property and cheats him and such act of the accused shall be treated as cheating under Sec.420 of I.P.C.

20. In this case the complainant nowhere in the F.I.R. or in his evidence has stated that the accused cheated him by fraudulently or dishonestly inducing him to pay the amount of Rs.40,000/- as loan and after that the accused avoided to repay the loan amount of Rs.40,000/- to him. From the evidence it appears that none of the PW-1 and remaining witnesses had deposed that the accused fraudulently induced the PW-1 to give the amount of Rs.40,000/- to him. So, I have not found any fraudulent or dishonest inducement from the part of the accused in respect of taking loan from the complainant.
21. In this case the I.O. did not seize the original agreement of loan from the complainant. The same was also not called by prosecution. The complainant had only furnished the copy of agreement with the case which was alleged to be executed by him and the accused. So, the copy of the said agreement was not exhibited at the time of prosecution evidence. So, the copy of the written agreement was not considered by the court at the time of appreciation of evidence.
22. From the above discussion, it is proved that the accused person was not involved with the offence of cheating and fraudulently inducing the complainant to deliver money as loan to him.
23. Hence, considering all the 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 U/S: 420 of I.P.C. Hence, the accused person, namely, Md. Aslam Hussain is not found guilty.

ORDER.

Accused person, namely Md. Aslam Hussain is acquitted from the Charge under section-420 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 16th day of September, 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. Anowar Hussain Choudhury	INFORMANT
PW-2	Md. Ataur Rahman Choudhury	OTHER WITNESS
PW-3	Md. Nasim Akhtar	OTHER WITNESS
PW-4	Md. Nekib Seikh	OTHER WITNESS
PW-5	SI Dijen Ch. Borah	POLICE 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	Ejhar
2	Ext-1(1)	Signature of PW-1
3	Ext-2/PW-5	Sketch Map
4	Ext-2(1)	Signature of PW-5

5	Ext-3/PW-5	Charge Sheet
16	Ext-5(1)	Signature of PW-5

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