

APPENDIX-12

<p><u>IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR</u></p> <p><u>TEZPUR</u></p> <p>Present:- Sri Nabajit Bhatta. AJS. MA, LL.B. Chief Judicial Magistrate, Sonitpur, Tezpur</p> <p>[Date of the Judgment] 19.09.2022</p> <p>[GR Case No-558 of 2009]</p> <p>(FIR NO-289/2009 DATED-03.04.2009/CHEATING CASE AND TEZPUR POLICE STATION)</p>	
COMPLAINANT :	<p>STATE OF ASSAM</p> <p>OR</p> <p>Sri Chukhu Bablu S/O:- Chukhu Lama, R/O:- Gumto, P/S:- Doimukh, Dist:- Papumparek, Arunachal Pradesh</p>
REPRESENTED BY	<p>Mr. Nalini Kanta Mishra, Ld. Addl. P.P Smt. Karabi Das, Asst. P.P.</p>
ACCUSED PERSONS	<p>1. Md. Abu Sahid, S/O:- Late Abdul Rashid, R/O:- Gogamukh Mazgaon, P/S:- Gogamukh, Dist:- Dhemaji, Assam</p> <p>2. Md. Mainur Islam S/O:- Late Mojibur Rahman, R/O:- Laluk No-3 Islampur, P/S:- Laluk, Dist:- Lakhimpur, Assam</p> <p>3. Md. Rafiqul Islam S/O:- Late Yunush Ali, R/O:- Laluk No-3 Islampur,</p>

	<p>P/S:- Laluk, Dist:- Lakhimpur, Assam</p> <p>4. Sri Dipjyoti Borah S/O:- Late Kamal Borah, R/O:- Beseria Konaibora Chuburi, Presently residing at Balipukhuri Tiniali, P/S:- Tezpur, Dist:- Sonitpur, Assam</p>
REPRESENTED BY	Mr. Babul Borthakur, Ld. Counsel

APPENDIX-13

Date of Offence	16.11.2008
Date of FIR	03.04.2009
Date of Charge Sheet	31.07.2010
Date of Framing of Charge	29.11.2019
Date of commencement of evidence	24.12.2021
Date on which judgment is reserved	12.09.2022
Date of Judgment	19.09.2022
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. Abu Sahid	NIL	NIL	Sec-420/34 of IPC	Acquitted	NIL	NIL
A-2	Md. Mainur Islam	27.02.2010	30.04.2010	Sec-420/34 of IPC	Acquitted	NIL	62 Days
A-3	Md. Rafiqul Islam	27.02.2010	30.04.2010	Sec-420/34 of IPC	Acquitted	NIL	62 Days
A-4	Sri Dipjyoti Borah	04.04.2009	05.06.2009	Sec-420/34 of IPC	Acquitted	NIL	62 Days

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

G. R. Case No-558 of 2009

State of Assam

-Vs-

1. Md. Abu Sahid
2. Md. Mainur Islam
3. Md. Rafiqul Islam
4. Sri Dipjyoti Borah

.....Accused Persons

Under section-420/34 of I.P.C

Present:

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

19th day of September, 2022

Mr. N. K. Mishra, Addl. P.P

..... Advocate for the State

Mr. B. Borthakur, Ld. Counsel

..... Advocate for the Accused

Date of Hearing : 24.12.2021,

Date of Argument : 02.09.2022

Date of Judgment : 19.09.2022

J U D G M E N T

1. Prosecution story in brief is as follows that the informant Sri Chukhu Bablu lodged an FIR before the O/C of Tezpur Police Station through In-charge of Bebejia Police Outpost to the effect that on 16.11.2008 he had come to B. P. Tiniali, Tezpur along with A.R. Rahman to meet Minur Islam for a business purpose and when he met Minur Islam at B.P. Tiniali with two other person who were accompanied with him and he had

given Rs.3,50,000/- to them on good faith as they told him that very soon they will be delivered him some goods i.e. Alkatra, Cement, rod etc. But till today they neither give him any goods nor return the aforesaid money to him. It is also stated that lastly, it will come to his notice that they had cheated him and dishonestly and misappropriated the sum of Rs.3,50,000/-. Since long he was searching them but he had not traced them. Hence, the prosecution case.

2. The instant case was registered under section-420/406/34 of I.P.C. and police investigated the same. After completion of the investigation police submitted the charge-sheet against the accused persons, namely, Sri Dipjyoti Borah, Md. Rafique Ali, Md. Mainur Islam, Md. Atabur Rahman and Md. Abu Sahid under section-420/406/34 of the I.P.C.
3. That my Ld. Predecessor in office took cognizance of the offence against the accused persons. It is pertinent to mention herein that during the stage of appearance accused Md. Atabur Rahman did not turn up before the court and accordingly, this court has issued NBWA against him and later, P&A was issued against him. Thereafter, the EO has submitted P&A report after execution of the same stating that the said accused resided in the village of Dharampur Block and accordingly, vide order dated-30.08.2019 the instant case was filed against the accused Md. Atabur Rahman till the execution of pending NBWA issued against him and consequent to that the instant case proceeded against the remaining accused persons as per law. On appearance of the remaining accused persons, namely, Sri Dipjyoti Borah, Md. Rafique Ali, Md. Mainur Islam and Md. Abu Sahid copies of relevant documents were furnished to the accused persons and the charge under section-420/34 of I.P.C. was framed against the accused and the 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 only one witness i.e. informant in support of the case. Defence plea was total denial. Statement of the accused persons has been recorded U/S-313 of Cr. P.C. Defence has adduced no evidence.

5. **POINTS FOR DETERMINATION:-**

(i.) Whether the accused persons on 16.11.2008 in furtherance of their common intention cheated the informant namely, Sri Chukhu Bablu by dishonestly inducing him to part with a sum of Rs.3,50,000/- in the name of delivering some goods i.e. Alkotras, cement, Rod etc to him and thereby the accused persons have committed an offence punishable under section-420/34 of I.P.C?

6. Heard argument from the Ld. Advocate of the both parties. 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, Sri Chukhu Bablu as PW-1. The PW-1 in his evidence-in-chief has stated that he recognized accused Rahman but he does not recognize other accused persons. He does not remember the names of other three accused persons. The other three accused persons accompanied Rahman at the time of occurrence. He further stated that the incident took place about 12 years ago one day at about 9-12 AM. He also stated that on the date of occurrence he met Md. Rahman when he asked him that he was a businessman and he does construction work so he may give him orders for materials like steel, cement and bitumen to him for his construction work. He further stated that as he is a businessman and as he needs such materials so he ordered him to supply materials like rod, cement, steel etc and he will deliver it. He stated that he paid him Rs.3,50,000/- for bitumen only. He also stated

that he would load the materials and after loading he will deliver the materials to him. But the accused person did not deliver the bitumen as he paid for saying that the materials are loading. But afterward also they did not deliver the materials and cheated him for Rs.3,50,000/-. Thereafter, they did not deliver his materials and also did not return his paid money. He stated that the accused Rahman used to stay at their house since his childhood so he had a good faith on him. He lodged the FIR before police station of Bebejia Out Post. 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 he did not execute any agreement for transaction with the accused persons. He also stated that he did not prepare any money receipt of the transaction with the accused persons.
9. I have minutely perused the evidence on record including the cross examination of the witnesses. In this case, the prosecution side has examined only witness as PW-1 who is the informant of this case. The prosecution has failed to examine remaining witnesses, hence, evidence was closed. The informant as PW-1 has deposed that on the date of occurrence he met accused Md. Rahman who were accompanied with three accused persons and on being known that the PW-1 was a businessman and he does construction work, Md Rahman offered him to supply the materials like cement, steel and bitumen etc and accordingly the PW-1 ordered MD. Rahman to supply of bitumen only and paid Rs.3,50,000/-to him. But Md. Rahaman did not deliver the bitumen to him and cheated him for Rs.3,50,000/- and also did not return his paid money.
10. 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."

11. 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.

12. 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 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.

13. From the evidence of the PW-1 it appears on being known that the PW-1 was a businessman and he does construction work, accused Md Rahman offered him to supply the materials like cement, steel and bitumen etc and accordingly the PW-1 ordered Md. Rahman to supply of bitumen only and paid Rs.3,50,000/-to him. But Md. Rahaman did not deliver the bitumen to him and cheated him for Rs.3,50,000/- and also did not return his paid money. No witness of this case supports the case of the complainant as prosecution has failed to examine remaining witnesses.

Moreover, from the statement of the PW-1, I have not found any fraudulent or dishonest inducement from the part of the accused Md. Rahaman and three other accused persons for delivery of Rs.3,50,000/- of the complainant for false promise of supplying construction materials i.e. bitumen. Further the complainant as PW-1 in his cross-examination clearly admitted that he did not execute any agreement of transaction with the accused persons and also did not prepare any money receipt of the transaction with the accused persons in respect of paying the amount Rs.3,50,000/-. In this case prosecution side failed to examine the Investigating Officer in support of this case.

14. From the above discussion, it is proved that the accused persons were not involved with the offence of cheating and fraudulently inducing the complainant to deliver money in respect of delivering construction material to him.
15. 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, namely, Sri Dipjyoti Borah, Md. Rafique Ali, Md. Mainur Islam and Md. Abu Sahid U/S: 420/34 of I.P.C. Hence, the accused persons, namely, Sri Dipjyoti Borah, Md. Rafique Ali, Md. Mainur Islam and Md. Abu Sahid are not found guilty.

ORDER

Accused persons, namely, Sri Dipjyoti Borah , Md. Rafique Ali, Md. Mainur Islam and Md. Abu Sahid are acquitted from the Charges under section-420/34 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.P.C.

Judgment is prepared and pronounced in open court. Given under my hand & seal of this court on this 19th day of September, 2022 at Tezpur.

Dictated and Corrected by me

(Sri Nabajit Bhatta)
Chief Judicial Magistrate
Sonitpur: Tezpur

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	Sri Chukhu Bablu	INFORMANT

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

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