

<p>IN THE COURT OF SUB-DIVISIONAL MAGISTRATE(S) Present : Smti Nazrana P. Rehman, S.D.J.M. (S), Sonitpur, Tezpur. 07.09.2022</p> <p>(PR Case No. 683/2018)</p> <p>FIR No. 109 Dated 17.05.2017 U/S 420/406 IPC Chariduar P.S.</p>	
COMPLAINANT:	STATE OF ASSAM
REPRESENTED BY:	NAME OF ADVOCATE Sri R.K. Goswami, Learned A.P.P.
ACCUSED:	Sri Moni Bhattacharjee S/O. Sri Uma Bhattacharjee R/O Vill. Biswanath Ghat PS:- Biswanath Chariali Dist:-Biswanath (Assam).
REPRESENTED BY:	NAME OF THE ADVOCATE Smti. Dulumoni Singha, Learned Counsel

Date of Offence	N/A
Date of FIR	17.05.2017
Date of Charge Sheet	31.12.2017
Date of framing Charges	01.11.2019
Date of commencement of evidence	07.09.2022
Date on which judgment is reserved	07.09.2022
Date of Judgment	07.09.2022
Date of the Sentencing Order, if any	NA

Rank of the accused	Name of Accused	Date Of Arrest	Date Release on Bail	Offences Charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.P.C.
-	Sri Moni Bhattarjee	NA	NA	420/406 IPC	Acquitted	NA	NA

J U D G M E N T

1. The brief facts of the prosecution story as unfurled from the ejahar which was lodged by Sri Harbat Sangma is that the accused person collected an amount of Rs. 2,25,000/- from the informant and local people of forest gate area in the name of "Sarathi Security Service Agency" to provide them job in "Patanjali Company" as Security Guard and cheated them. Thereafter, the accused person fled away from his residence. ***Hence, the ejahar was lodged to that effect.***

INVESTIGATION

2. Based on the ejahar, police registered **Chariduar P.S. Case No. 109/2017** under section **420/406 IPC** against the accused person and started investigation. During the course of investigation, police visited the place of occurrence, prepared the sketch map and recorded the statement of the witnesses U/S 161 Cr.P.C. After completion of investigation, police laid charge sheet **U/S 420/406 IPC** against the accused person **Sri Moni Bhattacharjee.**

APPEARANCE

3. In due course, the accused person appeared on receipt of summons before the court to face trial of the case. The copies of the relevant documents were furnished to the accused person in compliance of section 207 Cr.P.C. The formal charge **U/S 420/406 IPC** was framed against the accused by my learned Predecessor and the content of the said charge was read over and explained to the accused person **Sri Moni Bhattacharjee** to which he pleaded not guilty and claimed to be tried.

TRIAL

4. At the trial, the prosecution examined **1 (One) witness** who is the informant of the case. The learned A.P.P. after examination of the informant prayed to close the evidence of the prosecution as on his examination nothing incriminating appeared against the accused person and as such submitted that continuing with the prosecution shall be only a mere formality. Thereafter, as per submission of the learned A.P.P., the evidence of the prosecution was closed. The examination of the accused person under section 313 Cr.P.C was dispensed with. The

arguments of the learned counsels of both sides were heard.

POINT FOR DETERMINATION:

- i. Whether the accused person in the year 2016, cheated the informant, Sri Harbat Sangma by dishonestly inducing him to deliver Rs. 2,25,000/- to the accused person and thereby committed an offence u/s 420 of IPC?
- ii. Whether the accused person on the same place, being entrusted with Rs. 2,25,000/- by the informant for taking out the documents for opening a new private security service agency and thereby committed an offence u/s 406 of IPC?

DISCUSSION, DECISION AND REASON

THEREOF:

5. I have carefully perused the evidence available in the record. I have also carefully scrutinized the case record and the other documents available in the case record. I have also duly considered the arguments advanced by the learned counsels of both sides.

6. The **PW-1, Sri Harbat Sangma**, the informant of the case, in his **examination-in-chief**

deposed that he is the informant of this case. He knows the accused person. About 4 years back, as he was unable to trace the whereabouts of the accused, out of misunderstanding, he thought that the accused has fled away by misappropriating his money. But subsequently the matter has been amicably settled between him and the accused. Hence he does not want to proceed with the case. **Exhibit P-1/PW1 is the ejahar and Exhibit P-1(1) is his signature.** During **cross examination** he submitted that he has no objection if the accused person is acquitted from the charges against him.

7. On careful perusal of the evidence on record, nothing incriminating appeared against the accused person. Rather, from the evidence on record, it becomes crystal clear that the PW-1 who is the informant of the case and prime witness in the case have deflected from the allegations set forth in the ejahar. Informant has not implicated the accused person of any offence. Rather, he deposed that out of misunderstanding as he thought that the accused has fled away by misappropriating his money, the instant case has been lodged. But, subsequently the matter has been amicably

settled with the accused person. Hence, he does not want to proceed with the case. Moreover, he clearly stated that he has no objection if the accused person is acquitted.

8. Now, only on a case lodged on the basis of mere misunderstanding an accused person cannot be convicted of any offence. There must be clear, unequivocal and unambiguous evidence on record to establish the complicity of the accused person with the alleged occurrence. But, on careful scrutiny of the evidence on record, it appears that no such evidence is forthcoming in this instant case in hand. As such, the prosecution rightly stated that continuation of the case shall only be a bare formality in absence of any incriminating materials against the accused person. Thus, on consideration of the facts and circumstances of the case as discussed herein above, the accused person is not found guilty of the alleged offence.

9. In view of the discussions made herein above, this court is of the considered opinion, that the prosecution has failed to prove the charges under section U/S 420/406 IPC against the accused person beyond all reasonable doubt and

hence the accused person is not found guilty of the offences under section 420/406 IPC.

ORDER

10. I found the accused person **Sri Moni Bhattacharjee** not guilty **U/S 420/406 IPC** and accordingly, the said accused person is acquitted of the charge of the said offence and set at liberty forthwith.

11. The bail bonds shall remain in force for a further period of six months as per section 437-A Cr.P.C.

Signed, sealed and delivered in the open court on this 07th day of September, 2022 at Tezpur.

Nazrana P. Rehman
Sub-Divisional Judicial Magistrate (S),
Sonitpur, Tezpur, Assam

LIST OF PROSECUTION / DEFENCE / COURT WITNESSES:

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE
PW-1	Sri Harbat Sangma	Informant

B. DEFENCE:

RANK	NAME	NATURE OF EVIDENCE
	NIL	

C. COURT:

RANK	NAME	NATURE OF EVIDENCE
	NIL	

LIST OF PROSECUTION/ DEFENCE / COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Exhibit -1	Ejahaar

B. DEFENCE

RANK	NAME	NATURE OF EVIDENCE
	NIL	

C. COURT

RANK	NAME	NATURE OF EVIDENCE
	NIL	

A. MATERIAL OBJECTS:

RANK	NAME	NATURE OF EVIDENCE
	NIL	

Nazrana P. Rehman
Sub-Divisional Judicial Magistrate (S),
Sonitpur, Tezpur, Assam