

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]
09.09.2022

[PR Case No-779 of 2019]

(FIR NO-1895/2018 DATED-12.09.2018/ ATTEMPTED TO COMMIT CHEATING AND DISHONESTLY INDUCING DELIVERY OF PROPERTY AND TEZPUR POLICE STATION)

COMPLAINANT :	STATE OF ASSAM OR Sri Bedanta Chakraborty, General Secretary of CCO S/O:- Sri Dhiren Chakraborty, R/O:- Pathory Chariali, P/S:- Nagaon, Dist:- Nagaon, Assam
REPRESENTED BY	Mr. Nalini Kanta Mishra, Ld. Addl. P.P Smt. Karabi Das, Asst. P.P.
ACCUSED PERSONS	1. Md. Fazar Ali, S/O:- Md. Amir Ali, R/O- No-1 Kurakoni, P/S:- Tezpur, Dist:- Sonitpur, Assam 2. Md. Sirajul Islam, S/O:- Md. Abdul Khalek, R/O- Dikaraijan,

	P/S:- Tezpur, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Bijay Kumar Basumatary, Ld. Counsel

APPENDIX-13

Date of Offence	11.09.2018
Date of FIR	11.09.2018
Date of Charge Sheet	31.12.2018
Date of Framing of Charge	03.01.2020
Date of commencement of evidence	04.03.2020
Date on which judgment is reserved	31.08.2022
Date of Judgment	09.09.2022
Date of the Sentencing Order, if any	09-09-2022

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. Fazar Ali	12.09.2018	12.10.2018	Sec-420/511 of IPC	Convicted	Sentenced to go S.I. for one month and to pay fine of Rs.1000/- I/D S.I. for 07 days U/S: 420/511 of I.P.C.	30 Days

A-2	Md. Sirajul Islam	12.09.2018	12.10.2018	Sec-420/511 of IPC	Convicted	Sentenced to go S.I. for one month and to pay fine of Rs.1000/- I/D S.I. for 07 days U/S:420/511 of I.P.C.	30 Days
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both the above-named accused persons will sell the gold pieces to him for Rs.2,00,000/- and thereafter, the informant told the accused persons to wait near Mission Chariali Cinema Hall and thereafter, he came to Kacharigaon Police Outpost and informed the matter to the police. Accordingly, police party came to that place and apprehended the accused persons along with a tempo vehicle bearing Regd. No-AS-12/AC-6121. Hence, the case.

2. The instant case was registered under section-420 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. Fazar Ali and Md. Sirajul Islam under section-420 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-420/511 of I.P.C. was framed against the accused persons 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 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. 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 11.09.2018 attempted to cheat the informant, namely, Sri Bedanta Chakraborty by trying to sale fake gold and thereby committed an offence under section-420/511 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 Bedanta Chakraborty as PW-1. The PW-1 has stated in his evidence-in-chief that he knows the accused persons standing on the dock. He further stated that on 07.09.2018 accused persons, namely, Md. Fazar Ali and Md. Sirajul Islam called him over phone and informed him that the accused persons found gold after digging the earth inside the Tezpur University Campus and proposed him to sell the said Gold. Accordingly, on 11.09.2018 he along with Lakhyajyoti Borah, Rupah Kalita and Bidyut Kalita went to meet the accused persons at Mission Chariali and on that day at about 11 AM they met the accused persons and they showed them the pieces of gold. He also stated that it was agreed that the accused persons will sell the gold pieces to him for Rs.2,00,000/- and on being came to know that the said gold pieces are fake, he told the accused persons that he went to withdraw the cash amount. Thereafter, he went to Kacharigaon Police Outpost and informed the police. Thereafter, police came there in a civil dress and then the accused persons on seeing him and police party tried to flee away from there. However, police managed to apprehend the accused persons. Thereafter, police seized two pieces of fake gold along with tempo vehicle and thereafter, brought the same to police station. Thereafter, he lodged the ejahar. He further stated that he is the general security of Corruption Control Organisation. 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 office of their said organisation situated at Nagaon. He further stated that the office of said organisation situated at Nagaon for about 8 years and the said NGO was registered NGO and the same was registered All India basis. He also stated that the accused persons have communicated with him since from 07.09.2018 in connection with the proposal of selling of gold and the

accused communicated with them till 11th September. He further stated that during that period they have not met face to face with each others. He also stated that he came along with three numbers of NGO members. He stated that he has intimated the verbal communication with accused before Nagaon PS. He further stated that he has not intimated before Tezpur PS regarding the said verbal communication. He stated that he is not a gold specialist. He stated that he got to know that the gold which was proposed to sale to him by the accused persons were fake. He also stated that he has not examined the pieces of gold showed by accused persons through any goldsmith. He stated that the ejahar was written at the police station by him and in the said ejahar he has not mentioned the names of three other NGO members who had accompanied him on the date of incident. He further stated that he has not stated before the police about the said three members of their NGO. He also stated that he has not seen the said gold showed by the accused before the court.

9. PW-2, Sri Rupah kalita has stated in his evidence-in-chief that he knows the informant and the accused persons of this case. He further stated that in the year 2018, informant received a phone call from a mason with an offer of selling a gold statue and said mason agreed to sell the said statue at Rs.2,00,000/-. Thereafter, he informed the matter to Nagaon Police. He also stated that thereafter, on intervention of Tezpur police, the said mason was apprehended. He further stated that he heard that the police seized the statue and he came to know that said statue was made by fake gold. He identified the seizure list as Ext-2 wherein he put his signature as Ext-2(1). He stated that police also seized one tempo vehicle which was used by the accused. He further identified the seizure list as Ext-3 wherein he put his signature as Ext-3(1).
10. In cross-examination, PW-2 has stated that police told them that the gold was fake. He further stated that he does not know whether police examined

the gold by expert. He also stated that he forget the exact description of the statue.

11. PW-3, Sri Bidyut Kalita stated in his evidence-in-chief that he knows the informant and the accused persons of this case. He further stated that in the year 2018, informant received a phone call from an unknown person informing that said person finds gold at the time of digging the earth and he wants to sell the gold to the informant. He stated that accordingly, he along with the informant came to Tezpur from Nagaon and contacted the said unknown person over telephone. He also stated that thereafter, the said unknown person displayed gold to the informant and at that time, he was sitting inside the car. Thereafter, informant having suspicion over the gold shown to him came to them and they went to Kacharigaon police outpost. Consequent to that they along with police went to the place where the unknown person was waiting for them and the police apprehended them along with gold. Thereafter, informant lodged ejahar. He further stated that police seized fake gold and one siprunga from the possession of those persons. He identified his signatures as P. Ext-2(2) and P. Ext-3(2).
12. In cross-examination, PW-3 has stated that he is a member of Corruption Control Organization and he does not know whether their organization is affiliated from any Govt. Organization. He further stated that informant is the secretary of their organization. He stated that accused persons contacted the informant. He also stated that he does not know whether the gold was fake or genuine. He further stated that they have not come to Tezpur to purchase gold and the gold was not tested from any goldsmith or expert in their presence. He also stated that he has not seen the seized articles before the court. He further stated that he forgot the contents of seizure list.
13. PW-4, Sri Lakhyajyoti Borah stated in his evidence-in-chief that he knows the informant and the accused of this case. He also stated that in the year

2018, informant received a phone call from an unknown person informing that said person finds gold at the time of digging the earth and he wants to sell the gold to informant. Accordingly, he along with informant came to Tezpur from Nagaon and informed the incident to Kacharigaon Police outpost. He further stated that thereafter, he along with the informant and Rupak Kalita went to meet the accused persons in front of Tezpur Army Camp and police also went there in civil dress with intent to catch the miscreants. Accordingly, police apprehended the accused persons and bring them to Kacharigaon Police outpost and seized fake gold, siprunga and auto rickshaw from the possession of accused persons. He stated that he put his signatures on the seizure list marked as P. Ext-2(3) and P. Ext-3(3).

14. In cross-examination, PW-4 has stated that he is a member of Corruption Control Organization and he does not know whether their organization is affiliated from any Govt. Organization. He stated that informant is the secretary of their organization and accused persons contacted the informant. He further stated that he doesn't know whether the gold was fake or genuine. He also stated that they have not come to Tezpur to purchase gold. He further stated that the gold was not tested from any goldsmith or expert in their presence. He further stated that he has not seen the seized articles. He also stated that before they arrive at Tezpur, they informed the matter to Nagaon Sadar Police Station. He stated that they informed the incident to Kacharigaon Out post before they met the accused persons. He also stated that no other people gathered at the place where they met the accused persons except the police personnel. He further stated that at the police station no other persons were called by the police at the time of seizure of seized articles. He further stated that he did not peruse the contents of seizure list before he put his signature.
15. PW-5, Sri Jugal Kalita being the Investigating Officer of this case has stated that on 11.09.2018, he was posted at Tezpur Kacharigaon Outpost under

Tezpur PS as ASI and on that day as a I/C of Kacharigaon OP received an ejahar lodged by one Bedanta Chakrabourty and thereafter made an GDE vide no. 214/18, dated 11.09.2018 and forwarded the same before Tezpur P.S. Accordingly, on received of the same, the O/C of Tezpur PS registered as Tezpur PS Case No-1895/18, U/S-420 of IPC. Thereafter, O/C of Tezpur P.S. 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-4 wherein he put his signature as P. Ext-4(1). He further stated that he recorded the statement of the informant and other witnesses. He also stated that he seized one auto-rickshaw (Tempo) bearing registration no. AS-12AC-6121 vide MR No. 369/18 from the possession of the accused. He identified the seizure list as P. Ext-3 wherein he put his signature as P. Ext-3(4). He also seized one piece of fake gold (approx 494 grams) and one piece of iron (like Cheni) about 4 inch vide MR No-368/18 from the possession of the accused. He further identified the seizure list as P. Ext-2 wherein he put his signature as P. Ext-2(4). Thereafter, he apprehended the accused persons namely Fazar Ali and Sirajul Islam and forwarded them before the Hon'ble Court for judicial custody. He also stated that on conclusion of his investigation, he submitted charge sheet against the accused persons u/s-420 of IPC. He also identified that charge sheet as P. Ext-5 wherein he put his signature as P. Ext-5(1).

16. In cross-examination, PW-5 has stated that he received the ejahar from the complainant at about 5:40 pm and after that he went to the place of occurrence immediately and he started his investigation. He further stated that after visiting the place of occurrence he recorded the statement of the persons whom he met near the place of occurrence. He also stated that he did not record the statements of any local persons as witnesses. He further stated that he seized the both articles from the hand of complainant. He further stated that he did not send the seized the fake gold for FSL to verify

whether it was genuine or not. Further he cannot say whether it was genuine or not as he is not expert. He stated that he did not see the both seize articles in the court.

17. 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 the instant case the PW-1 has stated that on 07.09.2018 accused persons, namely, Md. Fazar Ali and Md. Sirajul Islam called him over phone and informed him that the accused persons found gold after digging the earth inside the Tezpur University Campus and proposed him to sell the said Gold. Accordingly, on 11.09.2018 he along with Lakhyajyoti Borah, Rupah Kalita and Bidyut Kalita went to meet the accused persons at Mission Chariali and the accused persons showed them the pieces of gold. That the accused persons agreed to sell the gold pieces to him for Rs.2,00,000/- and on being came to know that the said gold pieces are fake, he informed the police at Kacharigaon Out Post. Thereafter, police came there in a civil dress and then the accused persons on seeing police party tried to flee away from there but police managed to apprehend the accused persons. Thereafter, police seized two pieces of fake gold along with tempo vehicle. The PW-2 who was the eye witness of the incident has deposed that he along with the informant came to Tezpur from Nagaon and contacted the said unknown person over telephone. He also stated that thereafter, the said unknown person displayed gold to the informant and at that time, he was sitting inside the car. Thereafter, informant having suspicion over the gold shown to him came to them and they went to Kacharigaon police outpost. Consequent to that they along with police went to the place where the unknown person was waiting for them and the police apprehended them along with gold. Police seized the fake gold through Ext-

2. The PW-3 who was also eye witness has also deposed that the year 2018, informant received a phone call from an unknown person informing that said person finds gold at the time of digging the earth and he wants to sell the gold to the informant. Accordingly, he along with the informant came to Tezpur from Nagaon and contacted the said unknown person over telephone. He also stated that thereafter, the said unknown person displayed gold to the informant and at that time, he was sitting inside the car. Thereafter, informant having suspicion over the gold shown to him came to them and they went to Kacharigaon police outpost. Consequent to that they along with police went to the place where the unknown person was waiting for them and the police apprehended them along with gold. Similarly the PW-4 who was also eye witness of the incident has deposed that in the year 2018, informant received a phone call from an unknown person informing that said person finds gold at the time of digging the earth and he wants to sell the gold to him. Accordingly, he along with informant came to Tezpur from Nagaon and informed the incident to Kacharigaon Police outpost. He further stated that thereafter, he along with the informant and Rupak Kalita went to meet the accused persons in front of Tezpur Army Camp and after getting information the police apprehended the accused persons and bring them to Kacharigaon Police outpost and seized fake gold and auto rickshaw from the possession of accused persons. That the statement given by the PW-2 & PW-3 and PW-4 are corroborated by the statement of the PW-1. The I.O. has deposed that they apprehended the accused persons and seized one piece of fake gold (approx 494 grams) and one piece of iron (about 4 inch) vide MR No-368/18 from the possession of the accused persons through seizure list as P. Ext-2. Although the I.O. did not send the seized fake gold for FSL to verify whether it was genuine or not. But from the evidence of the prosecution witnesses, it appears that the accused persons called the PW-1 to Tezpur and after that

tried to sell the alleged piece of gold to him for money. I have not found any reason to disbelieve the statement of the PW-2, PW-3 & PW-4 who were the eye witnesses of the alleged incident. So, from the evidence of these witnesses it appears that on the day of incident the accused persons wanted to sell the alleged fake gold to the PW-1.

18. Now, let us see whether the act of the accused falls under the provision of Sec.420 of I.P.C. Section-420 of IPC 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." So, this section provides punishment for cheating and dishonestly inducing for delivery of a property.

19. 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.

20. 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.

21. In this case the accused persons namely, Md. Fazar Ali and Md. Sirajul Islam on 07-09-2018 called the PW-1 (complainant) over phone and informed him that they found gold after digging the earth inside the Tezpur University Campus and proposed him to sell the said Gold. Accordingly, on 11.09.2018 the PW-1 along with PW-2, PW-3 and PW-4 went to meet the accused persons at Tezpur and the accused persons showed them the pieces of gold. After that the accused persons agreed to sell the gold pieces to him for Rs.2,00,000/- and on being came to know that the said gold pieces are fake, the PW-1 informed the police at Kacharigaon Out Post and accordingly police apprehended them and seized the pieces of fake gold.
22. From the above discussion, it is proved that the accused persons were involved with the incident attempted to induce the complainant to deliver money by selling the pieces of fake gold and cheats him and such act of the accused shall be treated as an attempt of cheating under Sec.420/511 of I.P.C.
23. Hence, the Prosecution has proved the case against the accused persons namely Md. Fazar Ali and Md. Sirajul Islam for the attempt of cheating u/s: 420/511 I.P.C. beyond reasonable doubt. Accordingly, the accused persons namely, Md. Fazar Ali and Md. Sirajul Islam are found guilty U/S: 420/511 I.P.C.
24. I have considered extending the beneficial provisions of the Probation of Offenders Act to the accused persons who are found guilty, but I refrained myself from doing so as the same would send a wrong signal to the society.
25. Heard, the guilty accused persons on question of sentenced. The accused persons have submitted that they are poor persons and they have families to support and sentencing them to imprisonment will cause immense hardship to his families. So, the submissions so made was considered vis a vis the fact and the circumstances of the case and considering all aspects I am declined to inflict a harsh punishment on the guilty accused persons.

ORDER.

Accused persons, namely Md. Fazar Ali and Md. Sirajul Islam are held guilty U/S: 420/511 I.P.C. and are convicted and accordingly sentenced to go S.I. for one month and to pay fine of Rs.1000/- each I/D S.I. for 07 days U/S.420/511 I.P.C.

The period of detention already undergone by the accused Md. Fazar Ali and Md. Sirajul Islam shall be set off.

Bail bond of the accused persons stand cancelled.

Furnish copy of Judgment to accused Md. Fazar Ali and Md. Sirajul Islam at free of cost.

Judgment is prepared and pronounced in open court. Given under my hand & seal of this court on this 09th 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	Sri Bedanta Chakraborty	INFORMANT
PW-2	Sri Rupah kalita	EYE WITNESS
PW-3	Sri Bidyut Kalita	OTHER WITNESS
PW-4	Sri Lakhyajyoti Borah	EYE WITNESS
PW-5	Sri Jugal Kalita	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-3	Seizure List
4	Ext-2(1)	Signature of PW-2
5	Ext-2(2)	Signature of PW-3
6	Ext-2(3)	Signature of PW-4
7	Ext-2(4)	Signature of PW-5

8	Ext-3/PW-5	Seizure List
9	Ext-3(1)	Signature of PW-2
10	Ext-3(2)	Signature of PW-3
11	Ext-3(3)	Signature of PW-4
12	Ext-3(4)	Signature of PW-5
13	Ext-4/PW-5	Sketch Map
14	Ext-4(1)	Signature of PW-5
15	Ext-5/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