

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]

13.12.2022**[PR Case No-745 of 2018]**

(FIR NO-175/2018 DATED-25.01.2018/THEFT BY CLERK OR SERVANT OF PROPERTY
IN POSSESSION OF MASTER/OBSCENE ACTS AND SONGS/ ASSAULT OR CRIMINAL
FORCE OTHERWISE THAN ON GRAVE PROVOCATION/ CRIMINAL INTIMIDATION
CASE AND TEZPUR POLICE STATION)

COMPLAINANT :	STATE OF ASSAM OR Sri Abinash Borah, S/O:- Bhaben Borah, R/O:- NEC Colony Rubber Bagan, P/S:- Tezpur, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Nalini Kanta Mishra, Ld. Addl. P.P Smt. Karabi Das, Asst. P.P.
ACCUSED PERSON	Sri Hemendra Bania, S/O:- Sri Jodu Bania, R/O:- Mazgaon Padmanav Path, P/S:- Tezpur, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Paban Kumar Sarmah, Ld. Counsel

APPENDIX-13

Date of Offence	24.01.2018
Date of FIR	24.01.2018
Date of Charge Sheet	31.03.2018
Date of Framing of Charge	28.02.2019
Date of commencement of evidence	20.09.2022
Date on which judgment is reserved	29.11.2022
Date of Judgment	13.12.2022
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	Sri Hemendra Bania	NIL	NIL	Sec-381/294/352/506 of IPC	Acquitted	NIL	NIL

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

P. R. Case No-745 of 2018

State of Assam

–Vs–

Sri Hemendra Bania

.....Accused Person

Under section-381/294/352/506 of I.P.C

Present:

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

10th day of August, 2022

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

..... Advocate for the State

Mr. P. K. Sarmah, Ld. Advocate

..... Advocate for the Accused

Date of Hearing : 20.09.2022,

Date of Argument : 29.11.2022

Date of Judgment : 13.12.2022

J U D G M E N T

1. Prosecution story in brief is as follows that on 24.01.2018 informant Sri Abinash Borah lodged an FIR before the O/C of Tezpur Police Station through In-charge of Kacharigaon Police Outpost to the effect that he is running a shop cum parlour at Suvarna Rekha Path, Kamarchuburi, Tezpur from last 2 years and he had appointed the accused namely, Sri Hemendra Bania through a written agreement on revenue agreement on revenue stamps on dated-12.07.2017 with a monthly minimum salary of Rs.12,000/- at his parlour as a senior artist. It is also stated that he had suddenly found that some of his parlour goods are missing as he was busy from last two months in his other construction business. After calculating the total goods missing from his parlour is of Rs.6,37,000/-. It is also stated that

the missing goods as given (i) Machine (Pen Hawk): Rs.1,00,000/-; (ii) Ink bottle: Rs. 20,000/- (5 bottles)=10,000/-; (iii) AC Compressor Rs.25,000/-; (iv) Computer Hard Disc Rs.12,000/-; (v) Ink Other Colours Rs.20,000/- (20 bottles x Rs.20,000/-)=Rs.40,000/- total of Rs. 6,37,000/. That he suspected the artist i.e. Sri Hemendra Bania as he is fully responsible for losing his parlour goods as mentioned in the agreement attached with this complaint. It is also stated that after doing this he denied the guilt by saying that he did not know anything about the loss and abuse him with slang words and hit him on his chest by saying that he did not care him and said Sri Hemendra Bania resigned his job at that moment. Hence, the prosecution case.

2. The instant case was registered under section-381/294/352/323/506 of Indian Penal Code and the police investigated the same. After completion of the investigation police submitted the charge-sheet against the accused person, namely, Sri Hemendra Bania under section-381/294/352/506 of I.P.C.
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 charges under section-381/294/352/506 of I.P.C. was framed against the accused and the said charge was read over and explained to the accused person by my Ld. Predecessor to which he pleaded not guilty and claimed to be tried.
4. Prosecution in order to prove the case has examined only one number of witnesses in support of this case. Defence plea was total denial. Defence has adduced no evidence. Statement of the accused person has been recorded U/S-313 of Cr. P.C.
5. **POINTS FOR DETERMINATION:-**
 - (i.) Whether the accused person on or before 24.01.2018 at Jaguar Parlour Tezpur, Suvarna Rekha Path, Kamarchuburi under Tezpur PS committed theft of certain property, to with Machine (Pen Hawk), Ink bottle, AC Compressor,

Computer Hard Disc and Ink Other Colours from the possession of the informant Sri Abinash Borah by whom the accused was being employed in the capacity of a senior artist and thereby committed an offence punishable under section-381 of I.P.C.?

(ii.) Whether the accused person on the same date, time and place used obscene words and language towards the informant, namely, Sri Abinash Borah to the annoyance of others and thereby committed an offence punishable under section-294 of I.P.C.?

(iii.) Whether on the same date, time and place the accused person used criminal force upon the informant with intend to assault him and thereby committed an offence punishable under section-352 of I.P.C.?

(iv.) Whether the accused person on the same date, time and place criminal intimidation by threatening the informant with injury to his life and thereby committed an offence punishable under section-506 of I.P.C.?

6. Heard argument from both sides. On perusal of the evidences 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 witness first brought the witness, namely, Sri Dipjyoti Phukan as PW-1. The PW-1 in his evidence-in-chief stated that he knows the informant and he had a parlour. He also knows the accused person of this case. He further stated that the incident took place five years ago. He heard from the informant that some articles had been stolen from his parlour. The accused worked at the parlour of the informant. He also joined at the parlour of the informant at that time. The parlour was situated

near Tribeni, Tezpur. He has no further knowledge regarding this case. At this stage, he was declared hostile by prosecution.

8. In cross-examination by the prosecution, the PW-1 stated that police did not record his statement. He further stated that at that time he was the employee at parlour of the informant. He stated that he could not say whether the informant was not present at his parlour for two months. He denied the fact that he has stated before the police that "the complainant could not look after of his parlour as he was absent for two months, after that when he returned back after two months to his parlour he came to know that some articles of his parlour about Rs. 6,37,000/- was missing. When he asked senior artist Hemendra Bania then he replied that he has no knowledge and used obscene language and pushed the complainant and left the parlour."
9. While cross-examined by defence, the PW-1 admitted that the complainant had already died. He admitted that he has no knowledge which articles were stolen from the parlour. He also admitted the fact that he did not state before the police that "the complainant could not look after of his parlour as he was absent for two months, after that when he returned back after two months to his parlour he came to know that some articles of his parlour about Rs. 6,37,000/- was missing. When he asked senior artist Hemendra Bania then he replied that he has no knowledge and used obscene language and pushed the complainant and left the parlour."
10. I have minutely perused the evidence on record including the cross examination of the witness. In this case prosecution side has examined only one witness who has no knowledge about the alleged commission of theft of articles from the shop of informant. Moreover, he admitted in his cross-examination that he has no knowledge which articles were stolen from the parlour of informant. Further the hostile part of his evidence was not proved by

the I.O. From the evidence of PW-1 nothing implicating found against the accused person regarding the involvement of his alleged commission of theft. It is pertinent to mention herein that on perusal of the case record, it appears that this court on several occasions issued summons upon the informant Sri Abinash Borah and accordingly, the E/O submitted a report stating that the informant Sri Abinash Borah had expired on 21.08.2021 and the same is supported by a death certificate issued by Department of Health Services, Assam and the address of other witnesses could not be traced out. Accordingly, the witnesses could not be examined and on the submission of prosecution side the evidence was closed on 14.11.2022.

11. 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 person U/S: 381/294/352/506 of the Indian Penal Code. Hence, the accused person, namely, Sri Hemendra Bania is not found guilty.

ORDER

Accused person, namely, Sri Hemendra Bania is acquitted from the charges u/s-381/294/352/506 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.P.C.

Judgment is prepared and pronounced in open court. Given under my hand & seal of this court on this 13th day of December, 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 Dipjyoti Phukan	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
NIL	NIL	NIL

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