

**IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, NALBARI**

G.R. Case No. 676/2010

u/s 420/408 I.P.C.

State of Assam

-Vs-

Anjan Kr. Lahkar.....Accused

**PRESENT:** Mr. D.M. Hussain, A.J.S.

**ADVOCATES APPEARED:**

For the state : Mr. A. Barman, A.P.P.

For the accused : Mr. M. Bhattacharyya, Advocate.

Dates of evidence : 22-04-16, 13-06-16, 14-06-16, 10-11-16, 07-04-17,  
01-11-17, 15-12-17, 13-03-18, 18-08-18, 24-04-18,  
11-01-19, 22-02-19 & 31-05-19.

Date of argument : 10-06-19 & 25-06-19

Date of judgment : 03-07-19.

**J U D G M E N T**

**PROSECUTION CASE:**

1. The prosecution case in brief as unfolded from the 'ejahar' dated 23-07-2010 filed by Sazzad Alam, Circle Officer, Barbhag Revenue Circle, Kamarkuchi, Nalbari is that Anjan Kr. Lahkar (Secretary of Pub-Upper Barbhag B.S.S Ltd) misappropriated the society's fund in the tune of Rs. 6,80,699/- as reflected in the balance sheet for the year 2008-2009 of the society and as per the report submitted by the D.R.C.S Nalbari to Addl. D.C Nalbari on 22.07.10 vide letter no. CNDG(A) 147/09/61 dated 22.07.2010.

2. The said 'ejahar' was received at Nalbari P.S, where it was registered as Nalbari P.S case no 327/10 u/s 409/420 I.P.C dated 23-07-2010. After completion of investigation charge-sheet no. 235/2015 dated 30-06-2015 was submitted against accused person namely Anjan Kr. Lahkar for offence u/s 408/420 I.P.C. Copy was furnished to the

accused person and charges for offence u/s 408/420 I.P.C were framed, read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

3. **POINTS FOR DETERMINATION:**

i) Whether the accused being the Secretary of Pub Upper Barbhag B.S.S Ltd being entrusted with the fund of the society dishonestly misappropriated an amount of Rs. 6,80,699/- for the year 2008-09 of the society and thereby committed an offence punishable u/s 408 I.P.C.?

ii) Whether the accused being the Secretary of Pub Upper Barbhag B.S.S Ltd deceived and thereby dishonestly induced the beneficiaries of the society to deliver any property and thereby committed an offence punishable u/s 420 I.P.C.?

4. **DISCUSSION, DECISION AND REASONS THEREOF:**

The prosecution examined nine (9) witnesses, while the defence examined two witnesses. The statement in defence of the accused person u/s 313 Cr.P.C. was recorded wherein he denied his involvement with the alleged offences. I have heard the arguments advanced by learned counsel of both the sides and also perused the evidence available on record, my findings with reasons are as follows:-

5. PW 1- Ratneswar Kalita ,Secretary of Pub Upper Barbhag BSS Ltd deposed in his evidence that he knows the informant Sazzad Alam. The incident took place in the year 2010 and at that time Anjan Kr. Lahkar was the Secretary of Pub Upper Barbhag BSS ltd. He was an employee of the aforesaid co-operative. The informant had lodged case against Anjan Kr. Lahkar regarding misappropriation of Rs. 6 lakhs of cooperative fund.

6. PW 1 during his cross examination deposed that he had only heard about misappropriation of fund and also heard that Circle Officer had lodged a case in that regard. He does not know if the accused had misappropriated fund or not.

7. PW 2-Jayanta Kherkatary, Deputy Registrar, Baksa Cooperative Society deposed that he know the informant who was the Circle Officer of Pub Upper Barbhag Revenue Circle. The accused

person was the 'sampadak' of Pub Upper Barbhag Samabay Samiti and that on 21.07.10, A.D.C Sri. G.K Sarma had sent a letter with report to the Pub Upper Barbhag Samabay Samiti. At that time he was working as 'upa-panjiyak'/Deputy Registrar at Nalbari Samabay Samiti and after receiving the letter he filed a report on 22.07.10 stating misappropriation by Anjan Kr. Lahkar, 'Sampadak' Pub Upper Barbhag Bahumukhi Samabay Samiti to the tune of Rs. 6,80,699/- as per the balance sheet of 2008-2009 audited by Sasadhar Deka Senior Inspector and Auditor of Co-operative Society Nalbari. After receiving the report, A.D.C. Nalbari directed the Circle Officer to lodge FIR and accordingly on 31.07.10, I/c Kamarkuchi O.P had seized the copy of report dated 22.07.10, audit report and balance sheet pertaining to year 2008-2009.

8. PW 2 during his cross examination deposed that police had recorded his statement on 31.07.10. Police had made seizure and the seizure list was written when police took his signature and he had put signature after reading the contents. Apart from him, I.O had taken signatures of Phanindra Goswami and Binoy Malakar in the seizure list. The annual audit report submitted by him to I.O was for the year 2008-09. The annual audit report and audit observation report are same. He had not prepared the balance sheet. In the Balance sheet in annexure point no 9 it is written Excess temporary loan realizable from Secretary for the year 2008 i.e Rs. 6,80,699/-. In Annexure point no 9 there are many corrections made with regard to figures and that till point no 8 of annexure point no 9 there are corrections made in the total amount without any initial. The balance sheet is prepared by the Secretary and their Officer had audited the same. The balance sheet was prepared by Secretary Anjan Lahkar wherein he put his signature and seal in all the pages. He do not know from whom Anjan Lahkar had taken loan and he also does not know how much Anjan Lahkar had refunded back. He do not know how much profit and loss was incurred in the balance sheet and he do not know about the assets and liabilities mentioned in the balance sheet. Samabay Samiti has Board of Directors. He do not know if accused had refunded loan amount on the direction of President

Kaliram Talukdar. The Secretary is an employee of Board of Directors and not a Govt employee. He do not know if there was any misunderstanding between the Secretary and Board of Directors.

9. PW 3 - Phanindra Goswami, Retd Assistant Registrar of Cooperative Societies deposed that the informant was the Circle Officer and he knows the accused person. At the time of incident he was the Sub-Registrar of Nalbari Co-operative Society. On 31.07.10 while he was the Sub Registrar of Pub Upper Barbhag Samabay Samiti, one officer came to his office seeking the report of misappropriation of fund in Pub Upper Barbhag Bahumukhi Samabay Samiti and on that day, the District Deputy Registrar of Co-operative Society was not present at office. He attested and handed over the photocopy of the report to police who seized the same and took his signature on it. Ext 1 is the seizure list and Ext 1(2) is his signature.

10. PW 3 during cross examination deposed that police did not recorded his statement. He put signature after going through the seizure list. He heard that there was misappropriation with regard to sale proceeds of sugar. The Samabay Samiti used to sell sugar, rice and also used to do business of monetary transaction. He do not know if the President of the said Samiti had misused the fund and he does not know who was the President at that time.

11. PW 4 - Damodar Sarmah senior Assistant DRCS Nalbari deposed in his evidence that he does not know the informant, but knows the accused person. On 23.07.10, he was working as Junior Asstt in the office of Deputy Registrar Cooperative Society, Nalbari. He does not know anything about the incident. Police had seized balance sheet, audit report and the report on the allegation against Pub Upper Barbhag BSS Ltd in his presence and he had signed on it.

12. PW 5 Binoy Malakar, Assiatant registrar of Coopeartive Societies deposed that he knows both the informant and the accused person. The incident took place in the year 2010 and at that time he was working as L.D.A in the office of District Registrar Co-operative Society at Nalbari. Police seized balance sheet, annual report and other relevant documents of Pub Upper Barbhag Bahumukhi Samabay Samiti

ltd's from the D.R.C.S office in his presence and took his signature.

13. PW 5 in his cross examination deposed that police took his signature in seizure list. He did not go through the contents of the seizure list in detail. Police did not show him the seized documents before taking signature. He has not gone through the balance sheet regarding misappropriation of funds. The balance sheet was examined by the auditor.

14. PW 6 - Sazzad Alam (A.C.S) Secretary GMDA who is the informant deposed in his evidence that he know the accused person. On 23.07.10 he was the Circle Officer of Barbhag Revenue Circle and during that period a complaint was lodged with regard to misappropriation of fund in Upper Barbhag Bahumukhi Samabay Samiti and the then Deputy Registrar of Co-operative Society, Jayanta Kherkatary along with audit report and balance sheet of 2008-09 before the A.D.C Nalbari. In the report it was stated that a sum of Rs. 6,80,699/- was misappropriated. He studied the report and lodged the ejahar. The accused was given sufficient opportunity for explaining misappropriation of Rs. 6,80,699/.

15. PW 6 during his cross deposed that police had recorded his statement. He does not know if the accused is still returning the said money. He has not investigated himself. He had lodged ejahar based on the complaint and other documents . D.R.C.S had not submitted any complaint before him. He is not directly related to Barbhag Bahumukhi Samabay Samiti, but he had observational power over it . In the report of D.R.C.S, misappropriation is reflected.

16. PW 7 - Sirajul Haque (I.O) deposed in his evidence that on 23.07.10 while he was the I/c of Daulashal O.P, informant Sazzad Alam (Circle Officer, Barbhag Revenue Circle ) had filed an F.I.R before O/c Nalbari P.S and thereafter he was endorsed to investigate the case and accordingly he visited P.O and recorded statement of witnesses. He also recorded the statement of informant. He seized one report on the allegation against Pub Upper Barbhag BSS vide letter no. NCN 46/2008/21 Nalbari dated 21.07.10 from the office of Sub Registrar Co-operative Society Nalbari in the presence of witnesses. He also seized

one annual audit report and balance sheet dated 31-03-2009 of Upper Barbhag BSS Ltd for the year 2008-09 from D.R.C.S Nalbari. He also seized the report on the allegation against Pub upper Barbhag BSS Ltd submitted by Jayanta Kherkatary dated 21-07-2010. He was transferred and on 31.01.14 he handed over the Case diary to O/c Jatindra Nath Saikia.

17. PW 7 in his cross examination deposed that he was endorsed to investigate the case on 27.07.10. He visited Upper Barbhag BSS Ltd. He did not find accused Anjan Lahkar at office. He did not recorded the statement of the employees of the office of Upper Barbhag BSS. He did not knew the name of the then President of that 'Samiti' and did not record his statement. He did not inspect the documents as per the seizure list.

18. PW 8 - Jagadish Kalita(I.O) and on 27.09.14 while he was the I/c of Kamarkuchi O.P, O/c Nalbari P.S endorsed him to investigate Nalbari P.S case no. 327/10 u/s 409/420 I.P.C. After going through the C.D he came to know that the earlier I.O had completed investigation and was left to file charge-sheet only and as such on 30.01.15, he filed charge-sheet against the accused person for offence u/s 409/420 I.P.C.

19. PW 9 - Sashadhar Deka deposed in his evidence that he does not know the informant. He know Jayanta Kherkatary. He know the accused person. On 22-12-2009, he started conducting audit in the office of Pub-Upper Barbhag, GP BSS Ltd. for the year 2008-09 and completed the same on 29-03-2010. He inspected the cash book, stock book, loan ledger, purchase book, documents of the mini bank, vouchers etc. He verified the balance sheet. The cash balance was Rs.39,282.96/- and the total amount in bank was Rs.3,52,170.34/- (Rs. 92,931.50/- in SBI and the amount in Mini Co-operative Bank was Rs.1,18,677.82/- & Rs.2,33,492.52/-) After conducting the audit he found that Anjan Kr. Lahkar, Secretary of Pub Upper Borbhag BSS Ltd. made excess payment of Rs.6,80,697/- (Rs.99,000/- to Kashi Talukdar, Ex-Chairman and Rs.5,81,697/- to Krishna Sanchay). He recommended the committee to take action against Anjan Kumar Lahkar to the then Secretary of Pub Upper Borbhag BSS Ltd. Material Exhibit E is the

balance sheet of liabilities dated 31-03-2009 of Pub Upper Borbhag BSS Ltd. and Material Exhibit E(1), E(2) & E(3) are his signatures. Material Exhibit F is the Annexure of liabilities of the balance sheet. Exhibit F(1) is his signature. Material Exhibit C is the Audit Observation report and Exhibit C(1) is his signature. Police did not record his statement.

20. PW 9 during his cross examination deposed that during the audit period Kashi Talukdar and Jainur Ali were the Chairman of Pub Upper Borbhag BSS Ltd. The BSS Ltd. runs on loan. The BSS Ltd. took loan from Kashi Talukdar and also the loan was recovered from BSS Ltd. Kashi Talukdar should have repaid the excess recovery amount to the BSS Ltd but he did not repaid the excess amount during the period. BSS Ltd. took loan from Krishna Sanchay and repaid the same in excess but Krishna Sanchay did not return the excess amount during the period. Material Exhibit B was written by him as per instruction of Anjan Kr. Talukdar. Material Exhibit E balance sheet was written by him as prepared by Anjan Kr. Talukdar. He denied the fact that he himself prepared the Material Exhibit B & E documents. As the excess amount could not be recovered from Kashi Talukdar and Krishna Sanchay and the society is recovering the said amount from Anjan Kr. Talukdar who is still working as a worker in the BSS Ltd.

21. DW 1 accused Anjan Kr. Lahkar deposed in his evidence that he had not misappropriated any amount of Pub-Uper Borbhag BSS Ltd. The allegations levelled against him are false. During the period 2008-09 he was the Secretary of the said society. Kashiram Talukdar was the President at that time. As per instruction of Kashiram Rs.6,80,000/- (approx) was given on loan to members of the society. Later the members of society did not return the loan amount and allegations were levelled against him. The accounts of the society was inspected by Auditor. The accounts of the society was prepared by the Auditor. He only put his signature. As per Audit report, case was filed against him. He was suspended. On 01-01-2011, he was reinstated to his job and till date he have refunded an amount of Rs.1,55,000/- (approx). At present he is refunding the amount on monthly basis.

22. DW 1 in his cross examination deposed that he worked for

ten years at Pub-Upper Borbhag BSS Ltd. He was the secretary in the year 2008-2009. Kashiram Talukdar was the president at that time of Pub-Upper Borbhag BSS Ltd. There was managing committee of Pub-Upper Borbhag BSS Ltd. There was no approval of the managing committee for disbursing the loan amount of Rs.6,80,000/- to the members. The approval of the managing committee is required to be taken before disbursing loan to the members but no approval was taken and it was a fault on his part. The secretary cannot disburse loan without the instruction of the president.

23. DW 2 - Ratneswar Kalita deposed in his evidence that he have come to court after receiving summon. He know accused Anjan Lahkar who was the Secretary of Pub Upper Borbhag BSS Ltd. He heard that Anjan Lahkar misappropriated money of Pub Upper Borbhag BSS Ltd. He do not know whether Anjan Lahkar misappropriated the money. He heard that case was filed against Anjan Lahkar by the Circle Officer. At present the society is recovering money from the accused. At present he is the Secretary and he is receiving the recovery money from the accused. Exhibit A is the certificate of recovery and Exhibit A(1) is his signature. The President Kashiram Talukdar has put his signature in the Exhibit A certificate.

24. DW 2 in his cross deposed that he is the present secretary of Pub-Upper Borbhag BSS Ltd. Earlier he was a sales man. He have come to know that there was misappropriation of Rs.6,80,000/- by Anjan Lahkar, the then Secretary of Pub-Upper Borbhag BSS Ltd. The fact regarding misappropriation was discovered during audit from the balance sheet. He also know that a monthly amount of Rs.1250/- is recovered from the salary of Anjan Lahkar.

25. CW 1 Kashiram Talukdar deposed that he is working as Chairman of Pub-Upper Barbhag B.S.S Ltd since 1998 till date. One Joinur Ali, Senior Inspector of Cooperative Society under Asst. Registrar of Cooperative Society was the Chairman of Pub-Upper Barbhag B.S.S Ltd during the period of 31/03/2008 to 31.03.2009. He does not know whether in the audit report it is stated that an excess payment of Rs. 99,000/- was made to him by the Secretary of Pub-Upper Barbhag B.S.S

Ltd and he was not informed about any audit objection regarding the payment of Rs. 99,000/- The signature of the Chairman is not required while making payment. He does not have any knowledge regarding payment of Rs. 5,81,697/- to Krishna Sanchay. The Secretary did not took his signature while disbursing loan, but informed him verbally. During the tenure of Anjan Kr. Lahkar, Secretary of Pub-Upper Barbhag B.S.S Ltd, there was misappropriation of Rs. 6,80,697/- An amount of Rs. 1,88,000/- is being recovered from Anjan Kr. Lahkar.

26. CW 1 in his cross-examination deposed that the Pub-Upper Barbhag B.S.S Ltd is involved in credit based business. The Society used to take loan and repay the loan amount. The Society took loan from him and from Krishna Sanchay. The Society also refund the loan amount to him and Krishna Sanchay. He had knowledge about the taking and repayment of loan by the Society. He does not know whether as per the audit report it was found that Anjan Kr. Lahkar, Secretary of Pub-Upper Borbhag B.S.S Ltd made excess payment of Rs. 6,80,697/- (Rs.99,000/- to him and Rs.5,81,697/- to Krishna Sanchay).

27. Section 405 IPC provides that- whoever being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

28. Section 408 IPC provides that- whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

29. The essential ingredients of section 408 IPC are i) the accused was a clerk or servant, ii) in such capacity the accused was entrusted with certain property or had dominion over that property

which was not his own & iii) the accused committed criminal breach of trust.

30. In order to constitute an offence of criminal breach of trust it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do.

31. An offence u/s 420 IPC has the following essentials; i) there must be deception i.e accused must have deceived someone ii) that by the said deception the accused must induce a person,(a) to deliver any property; or (b) to make, alter or destroy the whole part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable property iii) that the accused did so dishonestly.

32. Cheating is defined in Section 415 of the IPC as, "Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation - A dishonest concealment of facts is a deception within the meaning of this section.

The section requires - (1) Deception of any person. (2) (a) Fraudulently or dishonestly inducing that person (i) to deliver any property to any person; or (ii) to consent that any person shall retain any property; or (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body mind, reputation or property.

33. The Hon'ble Supreme Court in Ram Narayan v CBI reported in (2003)3 SCC 641 and Jaikishandas v State of Bombay reported in AIR 1960 SC 889 held that - To establish the charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted if proved, may, in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion.

34. The Hon'ble Supreme Court in State v Karnavir reported in (2006)5 SCC 381 held that - Initial burden on prosecution is to prove entrustment of the property to the accused; and actual manner of misappropriation of the property by the accused need not be proved by the prosecution. Once the initial burden is discharged by the prosecution, the onus would be on the accused to prove how the property entrusted to him was dealt with by him.

35. It appears that PW 9 - Sashadhar Deka (Sr Inspector /Auditor) deposed in his evidence that on 22-12-2009, he started conducting audit in the office of Pub-Upper Barbhag, GP BSS Ltd. for the year 2008-09 and completed the same on 29-03-2010. He inspected the cash book, stock book, loan ledger, purchase book, documents of the mini bank, vouchers etc. He verified the balance sheet. After conducting the audit he found that Anjan Kr. Lahkar, Secretary of Pub Upper Borbhag BSS Ltd. made excess payment of Rs.6,80,697/- (Rs.99,000/- to Kashi Talukdar, Ex-Chairman and Rs.5,81,697/- to Krishna Sanchay).

36. The Audit Observation note/Annual Audit report for the year 2008-09 of Pub Upper Borbhag BSS Ltd. has been exhibited as (Material Exhibit C). it appears that as per the report a loan of amount Rs 35,500/- was received from Chairman (Kashi Talukdar) however repayment of Rs 1,34,500/- was made and there was excess payment

of Rs 99,000/- . Further an amount of Rs 28,32,551/- was received as loan from Krishan Sanchay and repayment of Rs 34,14,250/- was made and there was excess payment of Rs 5,81,699/-.As per the report Secretary had made the excess payment of Temporary loan amounting to Rs 6,80,699/. The Annexure 9 of the Material exhibit B (Balance sheet) goes to show that an amount of Rs 6,80,699 /- was realizable from Secretary Anjan Kr Lahkar.

37. It appears that CW 1 Kashiram Talukdar Chairman of Pub Upper Borbhag BSS Ltdof deposed that the signature of the Chairman is not required while making payment and the Secretary Anjan Kumar Lahkar did not took his signature while disbursing loan, but informed him verbally. DW 2 deposed that Anjan Lahkar was the Secretary of Pub Upper Borbhag BSS Ltd. and at present the society is recovering money from the accused. The certificate of recovery has been exhibited as Exhibit A. The accused Anjan Kr Lahkar who examined himself as DW 1 admitted that during the period 2008-09 he was the Secretary of the society, he worked for ten years at Pub-Upper Borbhag BSS Ltd. Kashiram Talukdar(CW 1) was the president at that time of Pub-Upper Borbhag BSS Ltd. There was managing committee of Pub-Upper Borbhag BSS Ltd but there was no approval of the managing committee for disbursing the loan amount of Rs.6,80,000/- to the members. He admitted that the approval of the managing committee was required to be taken before disbursing loan to the members but no approval was taken and it was a fault on his part. He admitted that the secretary cannot disburse loan without the instruction of the president. He deposed that at present he is refunding the amount on monthly basis and had refunded an amount of Rs.1,55,000/- (approx).

38. From the evidence on record I find that prosecution has failed to prove charge u/s 420 IPC against the accused person.

39. The prosecution has has been able to prove charge u/s 408 IPC against the accused beyond all reasonable doubt and I hold the accused guilty under the aforesaid section and convict him there under.

40. Considering the facts and circumstances of the case, I am of the opinion that this is not a fit case to invoke the provision under

section-360 of Cr.P.C. or Probation of Offenders Act, 1958 and the offender needs to be dealt severely to have deterrent effect in the society. Heard the convict on the quantum of sentence. He pleaded to be dealt leniently as he is a first offender and sole bread earner of the family.

41. Considering the nature and gravity of offence, I sentence the convict, Anjan Kumar Lahkar to undergo Simple Imprisonment for 1(one) year and to pay a fine of Rs.10,000/- (Rupees ten thousand) for offence u/s 408 of Indian Penal Code and i/d of payment of fine to undergo Simple Imprisonment for 1 (one) month. The period of detention if any undergone be set-off against the sentence of imprisonment.

42. A copy of the judgment be furnished to the convict free of cost.

Given under my hand and seal of this court on this 3rd day of July, 2019.

Addl. Chief Judicial Magistrate,  
Nalbari

**APPENDIX**

**Prosecution witness:**

- PW 1 - Ratneswar Kalita,
- PW 2 - Jayanta Kherkatary,
- PW 3 - Phanindra Goswami,
- PW 4 - Damodar Sarma,
- PW 5 - Binoy Malakar,
- PW 6 - Sazzad Alam (Informant),
- PW 7 - Sirajul Haque (Retired Inspector),
- PW 8 - Jagadish Kalita (I/c Kamarkuchi O.P),
- PW 9 - Sashadhar Deka.

**Prosecution Exhibits:**

- Exhibit 1 - Seizure list,
- Exhibit 1(1) - Signature of seizure witness Jayanta Kherkatary,
- Exhibit 1(2) - Signature of seizure witness Phanindra Goswami,
- Exhibit 1(3) - Signature of seizure witness Binoy Malakar,
- Exhibit 1(4) - Signature of I.O Sirajul Haque.
- Exhibit 2 - Seizure list,
- Exhibit 2(1) - Signature of seizure witness Damodar Sarmah,
- Exhibit 2(2) - Signature of I.O Jagadish Kalita.
- Exhibit 3 - F.I.R,
- Exhibit 3(1) - Signature of informant.
- Exhibit 4 - Charge sheet
- Exhibit 4(1) - Signature of I.O.
- Material Exhibit A - Report on allegation against Pub Upper Borbhag BSS Ltd dated 22-07-2010 of J. Kherkatary (District Deputy Registrar of Cooperative Societies), Nalbari.
- Material Exhibit A(1) - Signature of Jayanta Kherkatary,
- Material Exhibit B - Trial Balance sheet of Pub Upper Borbhag BSS Ltd as on 31-03-2009,
- Material Exhibit C - Audit Observation note/Annual Audit report for the year 2008-09.
- Material Exhibit C(1) - Signature of Sashadhar Deka,
- Material Exhibit D - Report on allegation against Pub Upper Borbhag

G.R no. 676/2010

BSS Ltd dated 22-07-2010,

Material Exhibit D(1) & D(2) - Signatures of Phanindra Goswami(Attested) dated 31-07-2010,

Material Exhibit E - Balance sheet of liabilities dated 31-03-2009,

Material Exhibit E(1),E(2),E(3) - Signatures of Sashadhar Dekha (Sr.Inspector/Auditor),

Material Exhibit F - Annexure of liabilities of the Balance sheet,

Material Exhibit F(1) - Signature of Sashadhar Dekha.

**Defence witnesses :**

DW 1 - Anjan Kr. Lahkar (accused),

DW 2 - Ratneswar Kalita.

**Defence Exhibits :**

Exhibit A- Certificate of Recovery.

Exhibit A(1)- Signature of Ratneswar Kalita.

Addl. Chief Judicial Magistrate,  
Nalbari.

**03-07-2019:**

Accuseds Anjan Kumar Lahkar is present.

Judgment is pronounced and delivered in open court which is written in separate sheets and tagged with the C/R.

From the evidence on record I find that prosecution has failed to prove charge u/s 420 IPC against the accused person. The prosecution has been able to prove charge u/s 408 IPC against the accused beyond all reasonable doubt and I hold the accused guilty under the aforesaid section and convict him there under.

Considering the facts and circumstances of the case, I am of the opinion that this is not a fit case to invoke the provision under section-360 of Cr.P.C. or Probation of Offenders Act, 1958 and the offender needs to be dealt severely to have deterrent effect in the society. Heard the convict on the quantum of sentence. He pleaded to be dealt leniently as he is a first offender and sole bread earner of the family.

Considering the nature and gravity of offence, I sentence the convict, Anjan Kumar Lahkar to undergo Simple Imprisonment for 1(one) year and to pay a fine of Rs.10,000/- (Rupees ten thousand) for offence u/s 408 of Indian Penal Code and i/d of payment of fine to undergo Simple Imprisonment for 1 (one) month. The period of detention if any undergone be set-off against the sentence of imprisonment. A copy of the judgment be furnished to the convict free of cost. This case stands disposed of.

Addl. Chief Judicial Magistrate,  
Nalbari.

**03-07-2019:**

Later on,

Seen petition no 1864/19 filed by the accused for allowing him to remain on previous bail as he intends to file appeal against the order of conviction which is allowed till next date.

**Fix:- 02-08-2019 for N/O.**

Addl. Chief Judicial Magistrate,  
Nalbari.