

::IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, NALBARI::

PRESENT: = Sri K. C. Boro, A.J.S.

Ref: GR Case No.1116/2017

State

-VS-

Tapan Deka

S/o- Lt. Haricharan Deka

Village- Belsor (Patowary Supa)

PS- Belsor

Dist. Nalbari, Assam.

..... Accused person.

u/s-420 IPC.

EVIDENCE RECORDED ON : 30.10.2018, 17.12.2018, 30.01.2019,
25.04.2019, 27.08.2019 & 23.12.2019.

ARGUMENT HEARD ON : 17.02.2020.

JUDGMENT DELIVERED ON : 25.02.2020.

ADVOCATES APPEARED :

For the State : Mr. D. Talukdar, Ld. A.P.P.

For the Accused : Mr. P. Das, Ld. Advocate.

J U D G M E N T

1. The case of the prosecution, in a brief, is that an FIR was filed on 19.07.2017 before the Officer-in-Charge of Belsor PS by informant Md. Safar Ali against the accused person namely Sri Tapan Deka, alleging, *inter-alia* that about three years ago, the accused person took Rs.68,000/- in cash from the informant by giving promise to give him contract works, but the accused person neither gave him contract

works nor returned his money. Thereafter, the informant asked the accused to return his money and at last, the accused person gave him two cheques from his account. The informant presented the cheques at Belsor Central Bank, but the bank authority returned the cheques on the ground of “insufficient fund” and “forged cheque”. Hence the case.

2. On receiving the case, the Officer-in-Charge of Belsor P.S. registered Belsor P.S. Case No.158/2017 u/s-420 IPC and started investigation. On completion of investigation the I.O laid charge-sheet against the accused person namely Sri Tapan Deka u/s-420 IPC vide CS No.121 dated 31.08.2017.

3. In pursuance of the process issued, the accused appeared before the court and on his appearance the copies of the case as per the mandate of law u/s-207 Cr.P.C. were furnished to the accused. Thereupon prima facie case was found against the accused person u/s-420 IPC and the content of charges u/s-420 IPC was framed, read over and explained to the accused and he was asked whether he would plead guilty of the offences charged or claimed to be tried. He pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution side examined six (6) witnesses. 313 Cr.P.C statements of accused person was of complete denial. The defence side declined to adduce any evidence.

5. I have heard the argument of both the sides. Ld. APP submitted that the prosecution has been successful in proving this case against the accused beyond all reasonable doubt. Refuting the argument of Ld. APP, Ld. Defence counsel strenuously argued that there is no iota of proof that accused has committed any offence. Hence, he submitted that accused should be acquitted.

POINT FOR DETERMINATION

- Whether the accused person about three years prior to 19.07.2017 at village Belsor under Belsor P.S., cheated and dishonestly induced informant Safar Ali to deliver Rs.68,000/- to him and thereafter

the accused person issued two cheques to the informant having knowledge that he has no amount in his account at that time and thereby committed an offence punishable u/s 420 IPC ?

DECISION AND REASONS THEREOF

6. PW.1 is Safar Ali, informant. He deposed that he lodged the case against accused Sri Tapan Deka. In the year 2014, the accused took Rs.68,000/- in cash from him stating that he would give him contract works of Belsor PHE, but even after expiry of two/three years, he did not get any contract works. Thereafter, he asked the accused to return his amount and then on 10.01.2017, the accused person gave him a cheque amounting to Rs.30,000/- of Belsor Central Bank and another cheque amounting to Rs.30,000/- dated 10.03.2017. Both the cheques were given to him on 10.01.2017. Then he presented one cheque on 19.07.2017 before Belsor Central Bank, but the cheque was returned to him unpaid on the ground of "insufficient fund" and "signature not matching". Thereafter he filed the case. Ext.1 is the FIR and Ext.1(1) is his signature. During the course of investigation the police seized both the cheques from him vide Ext.2 i.e., seizure list.

7. During cross-examination, this witness deposed that in the FIR i.e. Exhibit-1, he did not mention the date on which the accused person took money from him. He further deposed that he knew that the accused was not an employee of the office. The accused person was doing contract works at Public Health Office. He denied the suggestion that the accused is an unemployed person. He also deposed that at the time of giving money to the accused person, he did not execute any hand note or agreement. He admitted the suggestion that he did not mention in the FIR that both the cheques were given to him on 10.01.2017 by the accused person and he did not mention the cheque numbers of both the cheques in the FIR. At the time of occurrence, he was doing contract work. The accused person gave him both the cheques at Belsor Chowk. He also denied the suggestion that he called the accused person to police station by police and took his signatures in both the cheques. The cheque was issued on 10.01.2017 and he

lodged the ejahar on 19.07.2017, but he did not mention the reason as to why he lodged the ejahar after seven months. He further deposed that accused gave him the cheques after three years of taking the money. During the three years, he did not furnish any notice to the accused. He has not filed any NI case. He has not submitted any cheque with the FIR. Furthermore, Ld. Defence counsel put many suggestive questions to this witness which he denied.

8. PW.2 is Gautam Bezbaruah. He deposed that he knew the informant as well as the accused person. The occurrence took place on 05.01.2015. The accused person took Rs.68,000/- from the informant, but he does not know for what reason the accused person took money from the informant. Anowar Hussain, Kumud and Nukul were present as witnesses there. As accused has not returned the amount, hence, the case has been filed. Police recorded his statements.

9. During cross-examination, the witness admitted that before police he stated that accused has not lent any money from Safar Ali. He put his signature as witness when monetary transaction take place.

10. PW.3 is Kumud Thakuria. He deposed that he knows the informant and the accused person. The occurrence took place about six/seven months ago. He deposed that the informant as well as the accused person do contract works. Police obtained his signature as he knew both the sides. Ext.2 is the seizure list and Ext.2(2) is his signature. Police has not recorded his statements.

11. During cross-examination, he deposed that as he acquainted to both the parties, police took his signature, but he did not know anything about the issuance of cheque. He heard that accused has been taken to police station by Safar Ali.

12. PW.4 is Anowar Hussain. He deposed that he knew the informant and the accused person. The occurrence took place on 05.01.2015. At that time, he was working at Belsor PHC Office. Informant told him that accused took Rs.68,000/- from the informant on the pretext of giving him contract works, but later on, the accused did not give any contract work to the informant. Kumud Thakuria, Nakul and some other persons

knew the fact of taking money. He tried to compromise the matter, but failed. Police recorded his statements.

13. During the cross-examination, this witness deposed that Safar Ali is his nephew. The FIR has been filed after about 1½ years. He does contract works in Engineer office. Accused also does contract works. He does not know anything regarding transaction of both the sides. He also stated that Pramod Thakuria and Gautam Bezbaruah were present at the PO.

14. PW.5 is Debajit Talukdar. He deposed that he know both the parties. There was some differences between both the sides regarding issuance of cheque.

15. During cross-examination, he deposed that he knew that Tapan was taken to police station by informant and Tapan's signature was obtained in a cheque.

16. PW.6 is ASI Dilip Deka. He deposed that on 19.07.2017, he was working as Sheristadar at Belsor PS. On that day, one Md. Safar Ali filed a written FIR in the Belsor PS. On receipt of the same, the Officer-in-Charge of Belsor PS registered Belsor PS Case No.158/2017 u/s-420 IPC and he was endorsed with the task of investigation. He recorded the statement of the complainant in the police station. He visited the place of occurrence, drew a sketch map, recorded the statement of the witnesses at the place of occurrence. He searched for the accused and found him at Belsor. Thereafter, he brought him to the police station and his statements were recorded and thereafter, he was arrested. Later on, he was forwarded to Hon'ble court. During the course of investigation, he seized two numbers of cheque from the complainant. M-Ext.A and M-Ext.B are the two seized cheques. Later on, he gave the same in zimma of the complainant. He also recorded the statements of Bank official. Upon completion of investigation, he filed charge-sheet against accused Tapan Deka u/s-420 IPC. Ext.2 is the seizure list and Ext.2(3) is his signature. Ext.4 is the sketch map and Ext.4(1) is his signature. Ext.5 is the charge-sheet and Ext.5(1) is his signature.

17. During cross-examination, this witness deposed that in the FIR,

the complainant did not state that the accused did not give him contract works. Though there are two places of occurrence, he has not drawn both the places of occurrences, he only drew sketch map of one place of occurrence. He indicated the PO as A, but he has not mentioned what A means. The complainant did not state before him where accused gave him the cheque. During investigation, he has not detected where the accused gave the cheque to the complainant. The complainant did not furnish both the cheques along with his FIR as well as during recording his statements. He seized both the cheques after eight days of recording the statement of the complainant. At the time of seizing the cheques from the complainant, he did not record any statement of the complainant. He has seized the statement of account of the accused relating to both the cheques annexed with it from the concerned bank. He has not seized the balance of account of the accused and also did not personally verify the account of the accused. He has not produced both the cheques and the seizure list before Hon'ble court. Both the cheques have not been presented before the concerned bank for encashment. He also did not present the same before the concerned bank for encashment. He has arrested the accused on 19.08.2017 and produced him before Hon'ble court with arrest memo and forwarding report, but Hon'ble court released the accused on that very day on the ground that the ground of arrest is baseless. He seized the cheques on 27.07.2017 and gave the same in zimma of the complainant on 27.08.2017. During the said period, he has not called for any report from bank in connection with the cheques. No prayer for zimma of the cheques has been furnished before him by the complainant. Without any court order, he gave the cheques in zimma of the complainant. He recorded the statement of complainant Safar Ali and he did not state before him that accused gave him two cheques amounting to Rs.30,000/- on 10.01.2017; he presented one cheque on 19.07.2017 before Belsor Central Bank and Bank authority stated that there is no sufficient balance in the account of the accused. Safar Ali did not state before him regarding cheque number and cheque amount. It is not a fact that Kumud Kalita is not a seizure witness and that he obtained his signature as he knew both the informant and the accused. It is not a fact that this case is a concocted

one. It is not a fact that accused was dragged to the police station forcibly by him and threatened him to issue cheque. He has not advised the complainant to present the cheques before bank for encashment. It is not a fact that he has falsely filed charge-sheet.

18. These are the materials on record.

19. The essential elements of section 420 of IPC are as follows----

a. Cheating

b. Dishonest inducement to deliver property or to make alter or destroy any valuable security or anything which is sealed or is capable of being converted to a valuable security and

c. Mens rea of the accused at the time of making the inducement.

20. Again, the offence of cheating is described in section 415 of the IPC, which are as follows:-

a. Deception of a person either by making a false or misleading representation or by other action or omission;

b. Fraudulently or dishonestly inducing any person to deliver any property; or

c. To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

21. Now, let us see whether the prosecution has been able to bring home the guilt of the accused person beyond all reasonable doubt. Let me first scrutinize the evidence on record. PW.1 is Safar Ali (informant) deposed that in the year 2014, the accused took Rs.68,000/- in cash from him stating that he would give him contract work of Belsor PHE, but even after expiry of two/ three years, he did not get any contract work. Thereafter, he asked the accused to return his amount and then on 10.01.17, the accused person gave him a cheque amounting to Rs.30,000/- of Belsor Central Bank and another cheque amounting to Rs.30,000/- dated 10.03.2017 of the same bank was given to him. Both

the cheques were given to him on 10.01.2017. Then he presented one cheque on 19.07.2017 before Belsor Central Bank but the cheque was returned to him unpaid on the ground of "insufficient fund" and "signature not matching". During cross-examination, this witness deposed that in the FIR i.e. Exhibit-1, he did not mention the date on which the accused person took money from him. He further deposed that at the time of giving money to the accused person, he did not execute any hand note or agreement. Next witness PW.2 Gautm Bezbaruah stated in his evidence that the accused person took Rs.68,000/- from the informant, but he does not know for what reason the accused person took money from the informant. Anowar Hussain, Kumud and Nukul were present as witnesses there. As accused has not returned the amount, hence, the case has been filed. During cross-examination, the witness admitted that before police he stated that accused has not lent any money from Safar Ali. Next witness PW.3 Kumud Thakuria deposed that both the informant and accused used to do contract works. Police obtained his signature as he knew both the sides. During cross-examination he deposed that he does not know anything about the issuance of cheque. Next witness PW.4 Anowar Hussain deposed that informant told him that accused took Rs.68,000/- from the informant on the pretext of giving him contract works, but later on, the accused did not give any contract work to the informant. During cross-examination, this witness deposed that Safar Ali is his nephew. From the evidence of PW.4, it appears that he is a hearsay witness. He has no personal knowledge regarding the incident. Hence, prosecution could not derive anything from his evidence. Next witness is PW.5 Debajit Talukdar. From his evidence, it appears that there was some difference between both the sides regarding issuance of cheque. During cross-examination, he deposed that he knew that Tapan was taken to police station by informant and Tapan's signature was obtained in a cheque.

22. The complainant alleged that accused has given him two nos of cheque in spite of knowing that he has no balance in his account. But, the evidence of PW.2, PW.3, PW.4 and PW.5 are totally silent regarding accused giving two nos of cheque to the informant for his liabilities.

Besides, PW.5 goes to state that he knew that accused was taken to police station by informant Safar Ali and obtained his signature in cheque. The prosecution has not raised any objection regarding this vital point.

23. Furthermore, from the evidence of the I.O (PW.6), it appears that PW.1 (informant) did not state before him that accused gave him two cheques amounting to Rs.30,000/- on 10.01.2017; he presented one cheque on 19.07.2017 before Belsor Central Bank and Bank authority stated that there is no sufficient balance in the account of the accused. The I.O has confirmed about the same in his evidence as PW.6. **In the case of Shamal Ghosh vs State of West Bengal reported in 2012 All. SCR 1921**, *the Hon'ble court held that "Omission to state a fact whether it is material contradiction or not is a question of fact. The discretion is left with the court to determine whether it is a contradiction or material contradiction which renders the entire evidence of the witness untrustworthy and affects the case of the prosecution materially.*

24. Furthermore, the informant stated that the cheque was issued on 10.01.2017 and he lodged the ejahar on 19.07.2017, but he did not mention the reason as to why he lodged the ejahar after seven months. He further deposed that accused gave him the cheques after three years of taking the money. During the three years, he did not furnish any notice to the accused. He has not filed any NI case. Nothing has come on record as to why the informant awaited for about 7 months and then presented the cheque before his banker. No explanation worth the name for delay in filing the complaint has come on record. I am of the opinion that the circumstances raises considerable doubt regarding the genuineness of the complaint. It is hence held that no explanation was given to show the inordinate delay in lodging this case. Also the danger of introduction of a concocted, colored version as a result of deliberation and consultation, cannot be ruled out.

25. There is none who could corroborate the evidence of the informant regarding accused taking Rs.68,000/- from him in cash on the pretext of giving him contract works and that for his liabilities,

accused gave the informant two numbers of cheque. In absence of any corroborating evidence, I find it hard to base conviction against the accused on the basis of uncorroborated evidence of the informant. Marshalling the entire evidence on record, I find that the prosecution has failed to bring home the guilt of the accused person beyond all reasonable doubt.

26. In the backdrop of the entire evidence on record and taking into account the facts and circumstances of the case, accused person namely Tapan Deka is acquitted of the offences u/s-420 IPC and set at liberty forthwith.

27. Seized article to be disposed of as per law.

28. Bail bond would remain in force till expiry of the appellate period.

29. Judgment is written in separate sheets and delivered in open court.

Given under my hand and seal of this court on this the 25th day of February, 2020.

(Sri. K. C. Boro)
Chief Judicial Magistrate
Nalbari.

Dictated and corrected by me

(Sri. K. C. Boro)
Chief Judicial Magistrate
Nalbari

Jitul

APPENDIX:

Witnesses for the prosecution

- PW.1 - Md. Safar Ali, informant.
PW.2 - Gautam Bezbaruah.
PW.3 - Kumud Thakuria.
PW.4 - Anowar Hussain.
PW.5 - Debajit Talukdar.
PW.6 - I.O ASI Dilip Deka.

Witnesses for the defence

None

Prosecution Exhibits

- Ext.1 - FIR.
Ext.2 - Seizure list.
Ext.3 - Zimma nama.
Ext.4 - Sketch map.
Ext.5 - Charge-sheet.
M.Ext.A - Cheque bearing No.009752.
M.Ext.B - Cheque bearing No.009753.

Defence Exhibits

None

(Sri. K. C. Boro)
Chief Judicial Magistrate
Nalbari