

PRC 619/18
State
vs
Manik Ali

IN THE COURT OF JUDICIAL MAGISTRATE 1st CLASS, NALBARI

Case No. PRC 619/2018 u/s 420/406 IPC

STATE

-Vs-

Manik Ali

..... Accused

Present: RUBINA YASMIN, A. J. S.

Advocates appeared:

Mr. Hem Sarmafor the State.

Mr. Anowar Hussainfor the accused.

Date of prosecution evidence - 4.7.19, 26.9.19, 8.11.19, 7.3.20

Date of argument - 7.11.20

Date of judgment - 19.11.20

Judgment

1. Lokman Ali initiated the instant case by filing written 'ejahar' before the O/C, Bhangnamari PS on 8.2.17. Prosecution case in brief is that, as per order given in paragraph no. 10 of letter no. DRD/NAL/MGNREGA/12/2015-2016/PT-II dated 20.02.2016, No. 64 Bhangnamari Gaon Panchayat was entrusted for construction to raise platform in Chhaprapara Char. It is stated that Rs. 4,73,000/- was allotted in the said scheme. The

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Secretary and President of the Panchayat formed construction committee and informant was entrusted for the said construction work. The informant completed the work through job card holders of Bhangnamari Gaon Panchayat. The informant received total Rs. 66,248/- as first installment from UCO Bank, Bhangnamari Branch vide MRS no. 81 dtd. 14.6.16 and MRS no. 96 dtd. 26.6.16 and though he received Rs. 40,960/- but it is shown as Rs. 2,27,136/- by giving wrong statement. It is also stated that the accused persons prepared list of unknown labours under Narayanpur Gaon Panchayat and shown to have done the work in the wrong job card holder and accused Manik Ali has withdrawn Rs. 94,276/- without the knowledge of informant from State Bank, Mukalmua Branch vide MRS no. 177 dtd. 15.11.2016 and he has also withdrawn Rs. 56,420/- from Assam Gramin Vikash Bank, Rampur Branch vide MRS no. 61 dtd 14.6.2016 and also received Rs. 22,568/- from Assam Gramin Vikash Bank. Further accused Nasir Uddin has withdrawn money of 67 nos. labours from State Bank, Mukalmua Branch giving wrong name of labours and said amount was grabbed by both the accused persons. It is to be mentioned that labours of Narayanpur village have not done this construction work. Accused Manik Ali has withdrawn this money by doing forge. Hence the ejahar.

2. On receipt of the 'ejahar', Bhangnamari P.S. registered the same as Bhangnamari P.S. case No. 07/17 u/s 420/406/34 IPC and investigated the matter. On completion of investigation, police filed charge sheet against the accused Manik Ali u/s 420/406 IPC.
3. During trial, accused person was allowed to go on bail. Relevant documents of the accused were furnished to him u/s 207 Cr.P.C. Upon perusal of materials on record and after hearing both sides, my learned Predecessor finding sufficient materials

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against the accused person framed charges against him u/s 420/406 IPC.

4. Prosecution in support of the case examined 6(six) witnesses. Defence side did not examine any witness in support of their claim. Statement of the accused person was dispensed with as no incriminating materials were found against him on record.
5. I have heard argument of both sides.

POINTS FOR DETERMINATION

6. Upon hearing and perusal of the record, I have framed the following points for determination:
 1. Whether the accused person on 15.11.16 and 14.06.16 cheated the informant by dishonestly inducing informant to deliver the property belonging to him and thereby committed an offence punishable u/s 420 IPC?
 2. Whether accused person on same date was entrusted with Rs. 473000/- and he converted the same to his own use and committed criminal breach of trust and thereby committed an offence punishable u/s 406 IPC?

DISCUSSION, DECISION AND REASONS THEREOF:

7. I have carefully gone through the entire evidence on record and materials placed before me. Before appreciating the evidence let me first elaborate here the deposition made by the prosecution witnesses.
8. Pw 1 Lokman Ali, the informant of this case deposed in his examination-in-chief that he has lodged this case for transaction of money with relate to MGNREGA. He stated that he has lodged this case due to misunderstanding. The accused has not grabbed any money. They have already received the

- money. During cross examination, he has stated that he has no objection, if accused is acquitted.
9. Pw 2 Farman Ali deposed in his examination in chief that occurrence took place two years ago. He stated that Government has allotted money to raise platform in Bhangnamari Char. He has seen the construction. He further stated that he has heard that the accused and informant are not at loggerheads anymore. During cross examination, he has stated that he does not know about the occurrence.
 10. Pw 3 F.M. Rabiullah deposed in his examination in chief that the occurrence took place on the occasion of construction of platform in Bhangnamari Char. He stated that heated argument took place between the parties. Police seized the original master role register book. Ext. 2 is seizure list. Ext. 2 is his signature.
 11. During his cross examination, he has stated that police took his signature in blank paper. He has not seen the seized articles before the court that day. He stated that 60% of the wages were allotted for labour and 40% were for materials. Labours' wages were deposited to the labourers' account. He also stated that no labourer has complained before them with regard to non payment of wages. He further stated that materials are supplied from office and sometimes party buy themselves.
 12. Pw 4 Amerandra Goswami deposed in his examination in chief that occurrence took place about 3-4 years ago. He stated that police came to BDO office and told him that one ejahar is lodged on MNREGA Scheme. Police sought some BILL regarding the scheme. He asked them to talk to BDO. Later, BDO directed him to hand over the bill. Accordingly on direction of BDO, he gave bill payment to police. Ext. 2 is the seizure list and Ext. 2(2) is his signature.

13. During his cross examination, he stated that he has not seen the seized bill today in court. When he signed on paper it was blank. He further stated that beneficiary get payment in their own account under MGNREGA Scheme. No middle man can take away bill amount.
14. Pw 5 Jakir Hussain deposed in his examination in chief that the occurrence took place two years ago. A Scheme named Construction of Raise platform at Saprpara Char near Abu Sama Ali's house under MGNREGA came. Panchayat then formed the committee for the said scheme from among the village people. He stated that he was entrusted for supervision of the same if construction is done or not. He found 4-5 foot less as per the scheme. Lokman Ali was the Mohri. As per his knowledge all the job card holders were given the payment. If any middle man has done anything, he does not know.
15. During cross examination, he has stated that all the job card holders were entrusted with the construction work. All the job card holders have their own account. They received all the payment against their account. No one can withdraw the money without the signature of the job card holder. Material expense were spent officially and the wage money were given to the labourers.
16. Pw 6 Faridur Rahman deposed in his examination in chief that the occurrence took place three years ago. He was as in-charge Secretary of Gaon Panchayat at the time of occurrence. A scheme namely construction of raise platform at Saprparachar near Abu Sama Ali's house under MGNREGA came. Manik Ali was the President of the Gaon Panchayat. Panchayat then formed the committee for the said scheme from the village people. Lokman Ali was the president of the committee. Their Junior Engineer after measurement submitted the report. He saw the report. After the report all the job card holders

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- demanded the bill and the bill was prepared. They received the money in their account.
17. During cross examination, he stated that no job card holder complained about the non receipt of money. All the job card holders have their own account. They received all the payment against their account. No one else can withdraw the money.
18. On perusal of the entire evidence it transpires that none of the witnesses have stated anything incriminating against the accused person. Rather all the witnesses have stated that the construction work under the scheme was done by the job card holders and the latter had received their payment in their account. None of the job card holders had any complain with regard to non payment of their wages. Moreover Pw 1 who is the informant himself stated that he has filed this case due to some misunderstanding and that he has received all the payments.
19. From the evidence it seems that a misunderstanding raised between the informant and the accused person and the former filed the ejahar against the latter. Later informant received all the payment and their matter got resolved and that they are not at loggerheads anymore. In result, there is no incriminating materials found against the accused person.
20. Therefore, the vital witnesses examined by prosecution side, have not supported the prosecution case. I, therefore, find that the prosecution has failed to establish the guilt of the accused persons beyond reasonable doubt. Accordingly, accused person Manik Ali is held not guilty of the offence punishable u/s 420/406 IPC and accordingly, he is acquitted and set at liberty forthwith.
21. The bail bond furnished on behalf of the accused person shall remain in force for a further period of six months.

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Given under my hand and seal of this court on this 19th day of
November, 2020.

Rubina Yasmin
J.M.F.C. Nalbari

APPENDIX

Prosecution witness:

Pw 1 - Lokman Ali
PW 2 - Farman Ali
Pw 3 - F.M. Rabiullah
Pw 4 - Amarendra Goswami
Pw 5 - Jakir Hussain
Pw 6 - Faridur Rahman

Prosecution Exhibits:

Ex 1 - ejahar
Ex 2 - Seizure list

Defence witness & Exhibits:

Nil

Rubina Yasmin
J.M.F.C. Nalbari