

**IN THE COURT OF SESSIONS JUDGE ::: NALBARI**

Present: Smti S. Bhuyan.  
Sessions Judge,  
Nalbari.

**Criminal Appeal Case No. 19/16**

**(Appeal against the Judgment & order dated 30-07-2016 passed by learned CJM, Nalbari in connection with GR Case No. 245/11 u/s- 420 IPC.)**

**Sri Bapkan Barman**

S/o- Late Mohan Barman

R/o- village Mularkuchi, PS- Belsor

Dist- Nalbari (Assam)

..... Appellant/ accused

-Versus-

**State of Assam**

Represented by Learned P.P.

..... Respondent/ complainant

**Advocates appeared:-**

For the Appellant : Mr. N. K. Dutta, Advocate

For the state : Mr. D. Barman, P.P., Nalbari

Date of argument : 28-07-2021

Date of judgment : 11-08-2021

## **JUDGMENT**

1. The instant appeal has been preferred u/s- 374(3) CrPC by appellant/ accused Sri Bapkan Barman against the judgment and order dated 30-07-2016 passed by learned CJM, Nalbari in connection with GR Case No. 245/11 u/s- 420 IPC whereby learned CJM, Nalbari convicted the appellant accused and sentenced him to undergo rigorous imprisonment for 2(two) years and to pay fine of Rs. 10,000/-, in default to undergo simple imprisonment for another 3(three) months for committing offense u/s- 420 IPC.

2. The prosecution case in brief is that informant filed a complaint petition before the learned CJM, Nalbari citing that accused Bapkan Barman is the owner of Brahmaputra Finance Agency at Palla road Nalbari and informant and his father visited the said office for purchase of a "Winger" vehicle. On their visit, accused Bapkan Barman informed them that value of the Winger vehicle is above five lakhs and asked them to deposit Rs. 2,32,887/- in his office as down payment. Accordingly, on 02-11-2010 informant paid the said amount to accused against which accused Bapkan Barman issued a money receipt and asked him to contact Partha Pratim Saikia of Himmat Singka Auto-agency for delivery of the vehicle. After one month when informant, his father and one Naren Bharali went to the office of

company to bring the vehicle, company informed them that accused has not deposited any money on his behalf and he has to pay Rs. 2,32,887/-. thereafter informant returned and went to the office of accused and met co-accused Mrinal Barman and Mrinal Barman informed that Bapkan Barman is in the house of co-accused Sudhir Barman and informant went to the house of Sudhir Barman, where accused Sudhir Barman assured them that within one week the matter will be settled but the matter was not solved and accused Sudhir Barman kept accused Bapkan Barman hidden. On receipt of the complaint petition learned CJM, Nalbari forwarded the petition to the O/C, Nalbari PS for investigation. Accordingly, O/C, Nalbari PS registered Nalbari PS Case No. 124/11 u/s- 406/420 IPC, launched investigation and on completion of investigation submitted charge sheet u/s- 406/420 IPC against the accused persons.

3. On receipt of the charge sheet learned CJM, Nalbari took cognizance, registered GR Case No. 245/11 u/s- 406/420 IPC, issued process to the accused persons, furnished necessary copies to accused on his appearance to face trial and after hearing both sides framed charge u/s- 420 IPC against the accused persons, same was read over and explained to the accused persons to which accused pleaded not guilty and claimed to be tried.

4. Prosecution in order to prove the offences against the accused persons adduced evidences of all together 8(eight) witnesses and exhibited 3(three) nos of documents i.e. Ext-1 seizure list; Ext-2 ejahar and Ext-3 charge sheet. After closure of the prosecution evidence learned trial court recorded the statement of the accused persons u/s-313 CrPC and after hearing learned counsel for both the sides, delivered judgment convicting the accused Bapkan Barman and sentenced him to undergo rigorous imprisonment for 2(two) years and to pay fine of Rs. 10,000/-, in default to undergo simple imprisonment for another 3(three) months for committing offense u/s- 420 IPC. However, learned trial court acquitted co-accused Mrinal Barman and Sudhir Barman from the charge of section 420 IPC.

5. I have heard learned appellant counsel. Learned appellant counsel submitted that accused did not take money from informant and the money receipt is fake one. PW-1, who is the father of PW-3 informant, gave cheque to PW-3 but PW-3 did not gave money to the accused. PW-1 deposed that he delivered Rs. 2,88,700/- to the accused appellant on 02-11-2013 but in the ejahar PW-3 stated that date of occurrence was 02-11-2013. PW-3 in cross examination stated that he withdrawn the money from bank after his father gave money to him which he

deposited in his account and delivered it to accused appellant in the month of February, 2011 and PW-3 in his evidence stated that money receipt which I/O shown to be seized from him is not tendered by him and learned trial court took contradictory view on this subject. Hence the judgment of conviction is liable to set aside and prays for acquittal of the accused. I have also heard learned PP for the state.

6. I have scrutinized the trial court case record, case diary and entire materials available on record. Learned trial court convicted accused Bapkan Barman u/s- 420 IPC relying on the statement of PW-2 and PW-3. Judgment of learned trial court reflect that I/O seized original money receipt given by the accused to PW-3 informant but the said original money receipt was not found in the trial court case record. During investigation money receipt was sent to FSL for forensic examination. Learned trial court hold that money receipt either misplaced or missing from Nalbari police station and PI office and for which FSL expert was not examined.

7. On scrutiny of record it is seen that learned trial court vide order dated 04-07-2016 hold that I/O has not seized original money receipt. PW-3 informant in his evidence before the learned trial court deposed that money receipt shown to him was not seized from his custody. Order

dated 04-07-2016 passed by learned trial court is reproduced herein below:

"04.07.16

Accused Bapukan Barman is present. Accused Mridul @ Mrinal Barman and Sudhir Barman are absent with step vide petition No. 2616/16 and 2611/16 respectively. Seen both the petitions. Considering the ground prayer are allowed.

PI, Nalbari vide a letter reported that on 07.01.14 the PI Office received MR No. 144/11 which is a duplicate cop of money receipt. In the letter it is further stated that the PI Office has not received any original money receipt. Perused the case record and it appears that a seizure list was exhibited as exhibit-1. Exhibit-1 shows that one receipt copy of Brahmaputra Fiance has been seized. So it appears that IO also has not seized the original money receipt. Keep the report of the PI with the CR.

Fixing:-12.07.16 for argument."

8. Order dated 18-09-2012 passed by the then learned CJM, Nalbari pointed I/O along with charge sheet, submitted one seizure list, one FSL report and one bail bond. Trial court recorded evidence of I/O Nikhil Talukdar, who seized the money receipt from the possession of PW-3 informant. When the case of prosecution revoke around the money receipt regarding payment and acceptance of money and cheating thereon, learned trial court has to find out whether original money receipt or photocopy of money receipt seized and sent to FSL for forensic examination to find out and unfold the true fact of the case.

9. Learned trial court convicted the accused u/s- 420 IPC holding that PW-3 informant gave Rs. 2,33,887/- to accused on being induced by the accused to finance him to get one Winger vehicle and for proof of acceptance of money by the accused, prosecution relied upon the money receipt, which PW-3 stated that it was not seized from him. Therefore, the said money receipt is vital evidence of this case. As this fact has not come out from evidence available on record and evidence of forensic expert on the seized money receipt is not recorded, there is need to re-examine the I/O of the case who seized the money receipt and FSL expert who examined the money receipt to unfurl the actual story of the case.

10. In view of the aforesaid discussion, I find that this is a fit case for remand back. Accused is directed to appear before the learned trial court on or before 11-09-2021 and on appearance of the accused, learned trial court will issue summon to PW-6 I/O of the case for re-examination and other I/O, if required, and will give fair chance of cross examination to the defence only on the point of seizure of money receipt. Learned trial court is further directed to record evidence of FSL expert and thereafter disposed of the case in accordance with law. Accordingly, case is remanded back to the learned trial court to proceed the same as discussed.

11. In the light of the above direction, judgment and order dated 30-07-2016 passed by learned CJM, Nalbari in connection with GR Case No. 245/11 u/s- 420 IPC is hereby set aside and case is remanded back to the learned trial court.

12. Remand back the case record along with copy of this court judgment to the learned trial court immediately.

13. This appeal is allowed and disposed of.

Judgment delivered under hand and seal of this court on this 11<sup>th</sup> day of August, 2021 at Nalbari, Dist-Nalbari.

(Smti S. Bhuyan)  
Sessions Judge, Nalbari

Dictated & corrected by me

(Smti S. Bhuyan)  
Sessions Judge, Nalbari.

Typed by  
Jitumani Talukdar, Computer Typist