

							of IPC
A-1	Sri Biswajit Kalita			U/S 417 of IPC	Acquitted	N/A	N/A

APPENDIX-13

Date of offence	Not mentioned
Date of FIR	14/02/2017
Date of charge-sheet	31/03/2018
Date of O.E.	12/12/2018
Date of commencement of evidence	31/03/2022
Date on which judgment is reserved	N/A
Date of judgment	03/09/2022
Date of the Sentencing Order, if any	N/A

(J U D G M E N T)

1. The prosecution case sets into motion by filing a FIR by the informant, Late Parag Jyoti Baruah stating that Sri Biswajit Kalita had applied for the post of Driver under the Fire & Emergency Services, Assam, by submitting a class- VIII passed certificate dated 30.06.2009 issued by the Head Master, Borajol High School as per advertisement dated 18.11.2014 and accordingly he was selected for the said post and has been appointed as Driver on 09.04.2015.

Subsequently upon arising doubt, a Departmental verification was caused by the Divisional Officer & Fire & Emergency Services, Assam. On verification of the school records it is revealed that he had read upto class-VIII and had not passed Class-VIII. Moreover, on being search of the counterfoil of the said certificate could not be traced out in the said school. On verification of the student Admission Register for the year 2005 his name appeared at Sl. No. 22 dated 24.01.2005 as he had taken admission in Class-VIII. As such it is disclosed that Class-VIII passed certificate produced by Sri Biswajit Kalita is false. Hence, informant lodged this case.

- 2.** The Officer-in-charge, Ghograpar Police station, on receipt of the Ejahar registered Ghograpar P.S. Case No. 23/17, under section 468/471 of IPC and endorsed the concerned I/O for investigation. After completion of the investigation, the concerned I/O submitted charge sheet against the accused person, Sri Biswajit Kalita under Section 420 of IPC.
- 3.** In due course, the accused person appeared before the Court and the copies of relevant documents were furnished to him as per section 207 of Cr.P.C. Particulars of offence u/s 417 IPC were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4.** The prosecution side examined four (04) witnesses. As per the submission of Ld. Assistant Public Prosecutor, further evidence of prosecution side was closed. The statement in defence of the accused person u/s 313 is dispensed with as

no incriminating material is found against the accused person. Defence side examined no witnesses. I have heard the arguments advanced by the Ld. Counsels for both sides.

5. POINTS FOR DETERMINATION:-

- (i) *Whether the accused person, cheated the informant Late Parag Jyoti Baruah by producing false Class-VIII passed certificate and thereby committed an offence u/s 417 I.P.C ?*

DISCUSSION, DECISION AND REASONS THEREOF:

- 6.** PW-1, Sri Sri Tarun Hazarika deposed that he knows the informant Late Parag Jyoti Baruah, Superintendent of Police, F&ESA, Assam, Panbazar, Guwahati. He worked under him in his office. He knows and identify his signature. **Exhibit P-1/PW-1** is the FIR lodged by the deceased informant and **Exhibit P-1(1)** is his signature. He heard that the informant expired about one month back. In the year 2016, he was endorsed to conduct a departmental inquiry regarding educational qualification of one candidate namely Sri Biswajit Kalita, who applied for the post of driver in Fire & Emergency Service Department. The educational qualification for the said post was notified as Class VIII passed. One driving and physical test was conducted and Sri Biswajit Kalita was selected and appointed in the post. Thereafter, as per the written direction of the Director of F&ESA, he conducted an inquiry of certificates submitted by the candidates. He

contacted the school authority, Borajol High School for physical verification of the certificate submitted by Sri Biswajit Kalita for inquiring his educational qualification. He visited the school and met school authority along with the certificate submitted by the accused. He also checked the admission register of Borajol High School and he found that the accused Biswajit Kalita took admission in Class VIII of aforesaid school. But he did not complete his studies nor he passed Class VIII. He collected copy of the admission register. He submitted a written inquiry report to his superior officer i.e. Director of F&ESA of his findings. His finding regarding the inquiry was that Sri Biswajit Kalita falsely submitted his educational qualification as Class VIII passed for the post of driver in which he got appointed, though as per his school record, he has not passed Class VIII from that school. Thereafter the complainant Late Parag Jyoti Baruah lodged the FIR on the basis of the findings of the departmental inquiry. He can identify the accused who is present in the dock. His name is Sri Biswajit Kalita.

- 7.** During cross-examination PW-1 says that he could not say whether the written direction of the Director of F&ESA for conducting the departmental inquiry is submitted in this case or not. He further said that he could not remember the educational qualification mentioned by the accused in the Standard Form vide which he applied for the post of driver. The said Standard Form vide which accused applied for the

post of driver is not produced in this court nor he has seen it in the court on the day of his deposition.

8. PW-2, Sri Biren Das and PW-3, Md. Giasuddin Ahmed are the seizure witnesses and are employees of Borajol Higher Secondary School. According to them they does not have any knowledge regarding the seizure list. Moreover, PW-3 clearly stated in his cross-examination that the seized documents are not produced before him on the day of his deposition. Hence, nothing could be gathered from the evidence of PW-2 and PW-3.

9. PW-4, Sri Naba Bhattacharjee who works as fireman, Fire and Emergency Service, Guwahati exhibited exhibit P-3 as seizure list and Exhibit P-3(1) is his signature. According to him he knew Late Paragjyoti Baruah. He was SP, Fire and Emergency Service, Guwahati. He is the informant of this case. He knows the accused person. After getting job in their department as Driver, Superintendent of Police, Fire and Emergency Service, Guwahati issued the appointment letter. He worked for a few days in their office. He does not know what happened thereafter. O/C, Ghograpar visited their office and met Bhagawan Kalita, the then R.I. He seized some documents and he put his signature on the seizure list.

10. It is to be noted that the informant of the case expired and his evidence was dispensed with. So without the evidence of the informant, who was one of the vital witness it is not safe to rely upon the evidences of other witnesses as

none of the witnesses have clearly stated that the accused committed cheating.

- 11.** The essential ingredients of section 417 of IPC are:
- (1). Accused voluntarily or dishonestly induced the complainant;
 - (2). He did so for delivery of some property either to the accused or some other person;
 - (3). He intentionally induced the complainant to do a thing which he would not do or omit to do- a thing which he would have done if not induced;
 - (4). Such act caused was likely to cause some damage or harm to his body, mind, reputation or property.
- 12.** In the present case in hand, the FIR reveals that it was exhibited as Exhibit P-1/PW-1 and the accused applied for the post of Driver under the Fire & Emergency Services, Assam, by submitting a class- VIII passed certificate dated 30.06.2009 issued by the Head Master, Borajol High School as per advertisement dated 18.11.2014 and accordingly he was selected for the said post and has been appointed as Driver on 09.04.2015. But on verification of the school records it is revealed that he had read upto class-VIII and had not passed Class-VIII. Now, from the body of the FIR itself it is clear that the accused applied for the post of driver and he submitted class VIII passed certificate. But according to the allegation of the department, accused took admission in class-VIII and has not passed class-VIII.

- 13.** But coming to the evidence of PW-1 it is found that the educational qualification for the post of driver was notified as Class VIII passed and the certificate submitted by the accused says that he had not passed Class VIII. The certificate issued by Headmaster, Borajol High School clearly says that he was reading in Class VIII and had not passed the examination for promotion to Class IX. As such, there is nothing on record that accused has cheated the department. It is fault in the recruitment process for which the concerned department failed to reject the application form which was accompanied by the certificate of the accused issued by Headmaster, Borajol High School. There is nothing on the part of the accused that he induced the informant. It is not something that accused has delivered the certificate with forgery or by unlawful means. He applied for the post with proper certificate and department was at liberty to reject the same instantly on proper verification. The department selected the accused/candidate and he was appointed as a driver and later on removed him as he had not fulfilled the criteria and lodged this case against the accused person. Whereas no mens rea or criminal intention could be gather from the part of the accused on materials available on record.
- 14.** Hence, nothing incriminating can be found against the accused person u/s 417 of IPC and as such he is acquitted from the offence u/s 417 of IPC.

- 15.** Situated thus, in my considered opinion the prosecution side has failed to bring home the guilt of the accused person Under Section 417 of IPC

CONCLUSION

The prosecution side failed to prove its case that accused person has committed offence u/s 417 of IPC.

ORDER

In the light of aforesaid discussions and reasons, it is seen that the prosecution side failed to prove the guilt of the accused person beyond reasonable doubt.

Accordingly, the accused Sri Biswajit Kalita is acquitted from the offence under section 417 of IPC and he is set at liberty forthwith.

The bail bond of the accused person and his surety shall remain in force for a period of 6 months from today as per amended CrPC.

Given under my hand and seal of this court on this 03rd day of September, 2022.

Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari

APPENDIX-14**LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES****A. Prosecution witness**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Sri Tarun Hazarika	Other witness
PW-2	Sri Biren Das	Other witness
PW-3	Md. Giasuddin Ahmed	Other witness
PW-4	Sri Naba Bhattacharjee	Other witness

B. Defence witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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C. Court witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE
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		(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Exhibit- P-1/PW-1	FIR
2.	Exhibit P-1(1)	Signature of PW-1, Sri Tarun Hazarika
3.	Exhibit P-2/PW-2	Seizure list
4.	Exhibit P-2(1)	Signature of PW-2, Sri Biren Das
5.	Exhibit P-2(2)	Signature of PW-3, Md. Giasuddin Ahmed
6.	Exhibit P-3	Seizure list
7.	Exhibit P-3(1)	Signature of PW-4, Sri Naba Bhattacharjee

B. Defence: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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C. Court Exhibits: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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D. Material Objects: Not applicable

Sr. No.	Exhibit Number	Description
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Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari