

IN THE COURT OF JUDICIAL MAGISTRATE 1<sup>ST</sup> CLASS:::NALBARI

Present: Smti. Nadia Rehman, AJS, JMFC, Nalbari

**Dated:07.09.2022**

**PR Case No.878 of 2019**

**Ghagrapar P.S. Case No.244/18 u/s 66(C) I.T.**

COMPLAINANT :	State of Assam
REPRESENTED BY	Mr. Hem Chandra Sarma, Ld. APP
ACCUSED	1. Debabrat Sarma (A-1),
REPRESENTED BY	Aminul Islam, Ld. Defence Counsel.

Date of Offence	28/08/2018
Date of FIR	01/09/2018
Date of Charge sheet	28/02/2019
Date of charge framed	04/09/2019
Date of commencement of evidence	26/11/2019
Date on which judgment is	N/A

reserved	
Date of Judgment	07/09/2022
Date of the Sentencing Order, if any	Acquitted

### **Accused Details:**

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release On Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.P.C.
A-1	Debabrat Sarma	Not arrested	N/A	U/S 66(C) I.T.	Acquitted	N/A	N/A

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

- In this case the accused person namely Sri Debabrat Sarma, S/O: Sri Dilip Sarma. Village:Kolbari, Barnarddi P.S.: Belsor, Dist:-Nalbari (Assam), stood for trial u/s 66(C) of I.T. Act.

2. Prosecution case as unfolded from the ejahar, dated 01.09.2018, lodged before the O/C, Ghagrapar Police Station is that, the informant is a college student of T.D.C. 1<sup>st</sup> year of Nalbari college. That she has a mobile phone bearing SIM Card No.9365669151 and she had opened a Facebook Account and for last five months she had been operating it. That on 28.08.2018 she came to know that somebody had opened a Facebook account using her name and photo on account's profile. Later on, when she opened the Facebook Account she found email Id [abhijitkalita8720@gmail.com](mailto:abhijitkalita8720@gmail.com) and <https://www.Facebook.com/chayanikasarma.1291>. Hence, this case was arisen.

3. The police has registered the case as Ghagrapar P.S. case No.244/2018 u/s 66(C) of I.T. Act and investigated the matter. On completion of investigation, police filed charge sheet against the accused Debabrat Sarma (A-1) u/s 66(C) of I.T.

4. During trial, the accused Debabrat Sarma (A-1) was allowed to go on bail. Relevant copies of the documents were furnished to him u/s 207 Cr.P.C. Upon perusal of materials on record and after hearing both sides, sufficient materials were found against the accused person u/s 66(C) of I.T. and accordingly charge

was framed. The contents of the charge was read over and explained to the accused person to which, he pleaded not guilty and claimed to be tried.

5. Prosecution in support of the case examined 3 (three) witnesses and declined to adduce further evidence. The examination of the accused Debabrat Sarma (A-1) u/s 313 of Cr.P.C. was dispensed with as no incriminating material was found against him. Defence declined to adduce evidence on his behalf.

This court has heard argument of both sides.

**POINT FOR DETERMINATION:**

Upon hearing and perusal of the record, this court has framed the following point for determination:

(i) Whether the accused person Debabrat Sarma (A-1) before 28.08.18 committed identity theft by fraudently and dishonestly opening a Facebook Account in the name of the informant " Chayanika Sarma" by using E-mail Account as "abhijitkalita8720@gamil.com" and operating the said Account as the informant and thereby committed an offence under section 66(C) of I.T. Act?

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

6. This court has carefully gone through the entire evidence-on-record and materials placed before me.

7. The prosecution has examined 3 (three) witnesses in this case including the informant/ victim of the case.

8. P.W.1 PW1/informant-cum- victim Chayanika Devi in her examination-in-chief has deposed that she is the informant of this case. She knows the accused person, he is her school friend. The incident took place in the year 2018. The accused person was her friend and they used to talk over phone and she shared one picture of herself with the accused in Whatsapp and later she came to know that the accused open a fake facebook account in her name using the picture which she shared to him and he uploaded her picture also in the fake facebook account. Her family members saw the fake account of her and questioned her so she told them that she did not open this account and so her parents asked her to lodged an ejarah. Later, when her family came to know about the fake account she asked the accused whether he opened a facebook account in her name and he admitted that he did open a Facebook account in her name. She asked the accused to delate

her account and he agreed to delete but in the meantime, she lodged the ejarah as her parents wanted her to lodge the ejarah. Ext.1 is the ejarah and Ext.1(1) is her signature.

9. During cross-examination PW1 admitted that she had a Facebook account in the name of Chayanika Sarma and prior to that she had another account in the name of Shradha Sarma but she closed the account in the name of Shradha Sarma. She also admitted that in the account of Shradha Sarma she chatted with accused and asked his phone number and then they chatted in Whatsapp and then she told him that her actual name is Chayanika Sarma and not Shradha Sarma. PW1 further admitted that she and the accused were in a love relationship and they dated each other and visited various places and they thought that they would marry each other. PW1 also admitted that while dating they used to operate each others Facebook account and the accused know her Facebook account password and she also knew his password. PW1 admitted that her family members came to know about their relationship and they forced her to lodge the ejarah against the accused against her will. She also admitted that the accused never tried to defame her or harm her in any way neither before lodging the case or after lodging the case. PW1 also admitted that she has no grievance

against the accused and she does not want to harm him in any way. Again she admitted that she and the accused together operated their Facebook accounts and the accused has no fault in this case. They did it together and also uploaded her picture together. She also admitted that she does not know how many Facebook accounts she opened and this case was lodged against the accused out of misunderstanding, the accused has no fault, he is innocent.

10. PW2 Namita Devi in her chief examination has deposed that she know the informant of this case, she is her daughter. She know the accused person, he is her daughter's friend. The incident took place around one year ago and at that time she came to know that a fake Facebook account has been opened in the name of her daughter and so they got apprehensive and told her to lodged the ejahar. She does not know much about the incident.

11. During cross-examination PW2 admitted that after lodging of the ejahar she came to know that the accused and her daughter were in a love relationship. She also admitted that she does not know how many Facebook accounts her daughter has. She further admitted that she without knowing the full incident out

of misunderstanding asked her daughter to lodge the e-jahar. She further admitted that the accused never harmed her daughter nor defamed her and she does not know whether the fake account was fake or my daughter herself opened the account. She also admitted that she later realised that they should not have lodged this case and she wish well for the accused. She has no grievance against the accused.

12. PW3 Abdul Goni in his chief examination has deposed that he neither know the informant nor the accused. The occurrence took place three years ago. At that time, he was the secretary of local VDP party of his village. In that regard, often he went to the Ghagrapar P.S. Then he got to know that there was an incident relating to information technology matter and accordingly police took his signature on a seizure list. Ext.-2 is the seizure list and Ext.-2(1) is his signature.

13. During cross-examination PW-3 admitted that police took his signature in seizure list relating to various cases.

14. On perusal of the evidence-on-record, it is seen that there is no deposition which could suggest that the accused person had made any kind of harm or defamed



the informant-cum-victim. It also appears that, due to misunderstanding the parents of the informant-cum-victim asked her to lodge an ejahar and accordingly she lodged the FIR against the accused person Debabrat Sarma (A-1) and accused person is innocent.

15. On perusal of the evidence-on-record, it is seen that there is no deposition which could suggest that the accused person had harmed the informant or defamed her. It appears that due to some misunderstanding the informant-cum-victim lodged the FIR against the present accused person and she has no grievance against the accused person.

16. Therefore, the witnesses examined by prosecution side, has not supported the prosecution case. Therefore, in absence of any such circumstances where the prosecution could prove that the accused Debabrat Sarma (A-1) has committed any offence u/s 66(C) of the I.T. Act. In result, there is no incriminating material found against the present accused person.

17. This court therefore, finds that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. As such, accused Debabrat Sarma (A-

1) is not held guilty of the offence punishable u/s 66(C) of the I.T. and accordingly, he is acquitted and set at liberty forthwith.

18. The bail bond furnished on behalf of the accused person shall remain in force for a further period of six months.

19. The seized article/ document mentioned in MR No.129/2018 is to be handed over to the custody of the actual/lawful owner.

20. Given under my hand and seal of this court on this 07<sup>th</sup> day of September, 2022.

SMTI NADIA REHMAN, AJS

J. M. 1<sup>ST</sup> CLASS, NALBARI

Typed & corrected by me

Smti. Nadia Rehman, J.M.F.C., Nalbari.

## **APPENDIX**

### **LIST OF PROSECUTION/DEFENCE/COURT WITNESSES**

#### **A. Prosecution:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	<b>Chayanika Devi</b>	<b>Informant-cum-victim</b>
PW-2	Namita Devi	Relative
PW-3	Abdul Goni	Other witness

#### **B. Defence Witnesses, if any: Nil**

#### **C. Court Witnesses, if any : Nil**

### **LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**

#### **A. Prosecution:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
<b>1</b>	Ext.1	<b>Ejahaar</b>
<b>2</b>	Ext.P-1(1)	<b>Signature of the informant</b>
<b>3</b>	Ext.2	Seizure list
<b>4</b>	Ext.2(1)	<b>Signature of the informant</b>

#### **B. Defence : Nil**

#### **C. Court Exhibits: Nil**

**D. Material Objects: Nil**

SMTI NADIA REHMAN, A.J.S.

J. M. 1ST CLASS,NALBARI