

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, LAKHIMPUR,
NORTH LAKHIMPUR, ASSAM**

Present: Sri Akhtabul Ala, AJS,
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur, Assam

G.R. 135/2012

Under section 406/420 of the Indian Penal Code

State of Assam

-Vs-

Sri Pradip Neog

..... Accused

Date of framing charge : 30.06.2016
Dates of recording evidence : 08.02.2017, 06.03.2017,
10.04.2018, 14.03.2019,
19.06.2019, 16.09.2019,
21.11.2019
Date of examination u/s 313, Cr.P.C. : 26.02.2020
Dates of argument : 16.12.2020, 12.01.2021
Date of judgment : **25.01.2021**

Advocates appeared in the case:-

Sri Prasanta Dutta, Addl. P.P., for the State
Sri Arup Borah, Advocate, for the accused

J U D G M E N T

1. The brief history of the prosecution case is that one Smti. Phulo Borah had lodged an ejarah before the Officer-in-charge of Narayanpur Police Station on 31.01.2012 alleging inter alia that the accused Sri Pradip Neog had misappropriated an amount of Rs. 15,000/- (rupees fifteen thousand) from her and three of her colleagues in the name of providing them B. Ed. degree in CMJ University from GEA but later they could come

to know that the said course arranged by the accused was not having NCTE approval and as such was not accepted by the Assam Government for which it was of no use to them since they are working as teachers and the Assam Government had made it mandatory for the teachers to have B. Ed. degree. Hence, the case.

2. The Officer-in-Charge of Narayanpur Police Station on receiving the ejahar had registered a case under section 406/420 of the Indian Penal Code vide Narayanpur PS Case No. 12/2012. The investigating officer, after completing the investigation, submitted charge-sheet under section 406/420 of the Indian Penal Code against the accused Sri Pradip Neog to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 406/420 of the Indian Penal Code was taken as per section 190(1) (b) of the Code of Criminal Procedure. Necessary copies were furnished to the accused as per section 207 of the Code of Criminal Procedure after his appearance before the Court. After considering the materials on record and hearing both the sides, charge under section 406/420 of the Indian Penal Code was framed in writing against the accused. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution altogether examined 6 (six) witnesses viz. Sri Simanta Hazarika as PW-1, Smti. Nijumoni Boruah as PW-2, Sri Champak Kr. Borah as PW-3, Sri Mohan Bharali as PW-4, Sri Bijay Mudoi as PW-5 and I/O SI Jayanta Deka as PW-6. The prosecution had exhibited the ejahar as Ext-1, the seizure list as Ext-2, the signature of the witness therein as Ext-2(1) and the signature of the seizing officer as Ext-2(2), the rough sketch map of the place of occurrence as Ext-3 and the signature of the I/O therein as Ext-3(1), the charge-sheet as Ext-4 and the signature of the I/O therein as Ext-4(1). After the closure of the

prosecution evidence, the statement of the accused under section 313 of the Code of Criminal Procedure was recorded and kept with the case record. The defence plea is of total denial and the defence side declined to adduce any evidence, but, however, the defence side while cross-examining the PWs had exhibited few documents through the said PWs viz. the document of the signatures of persons attending the general meeting for B. Ed course at Narayanpur Higher Secondary School as Ext-A and the signature of Sri Simanta Hazarika therein as Ext-A(1) and the signature of Smti. Nijumoni Boruah therein as Ext-A(2), the Common Application Form for admission in B. Ed. Course of CMJ University as Ext-B, the money receipt of Rs. 15,000/- (rupees fifteen thousand) issued by CMJ University and GEA National College of paying the admission amount as Ext-C and the signature of Sri Simanta Hazarika as Ext-C(1), another money receipt of Rs. 15,000/- (rupees fifteen thousand) issued by CMJ university and GEA College for B. Ed. admission course as Ext-D, another money receipt of Rs. 15,000/- (rupees fifteen thousand) issued by CMJ University and GEA National College for B. Ed. admission course as Ext-E, the attendance sheet of the counseling center of B. Ed. course as Ext-F, the photograph of the members along with the Director Sri Nabajyoti Bharali as Ext-G.

5. Both the sides advanced their respective arguments in this case.

POINTS FOR DETERMINATION:

6. The points which are required to be determined for a just decision of this case are as follows:

(a) Whether the accused cheated Smti. Phulo Borah, Smti. Nijumoni Boruah, Sri Champak Kr. Borah and Sri Bijay Mudoi, all teachers by profession, by inducing them to get enrollment in the B. Ed. course in GEA National College, Guwahati under CMJ University and received Rs.

15,000/- (rupees fifteen thousand) each as admission fees but the said B. Ed. course was having no approval of NCTE for which it was not accepted by the Government of Assam ?

(b) Whether the accused was entrusted with sum of Rs. 15,000/- (rupees fifteen thousand) each by Smti. Phulo Borah, Smti. Nijumoni Boruah, Sri Champak Kr. Borah and Sri Bijay Mudoj, all teachers by profession, to get enrollment in B. Ed. course in GEA National College, Guwahati under CMJ University but later the accused had misappropriated that amount for his wrongful gain ?

DISCUSSION, DECISION AND REASONS THEREOF:

7. To determine the aforesaid point of determination let us have a scrutiny of the evidence on record.

8. Now PW-1 Sri Simanta Hazarika, PW-2 Smti. Nijumoni Boruah, PW-3 Sri Champak Kr. Borah and PW-5 Sri Bijay Mudoj in their evidence have testified that they are all teachers and in the year 2011 they desired to pursue B. Ed. degree course as the Assam Government had declared the service of teachers without B. Ed. degree course will be cancelled. They all have testified that the accused had approached them and informed them that they can pursue B. Ed. degree from CMJ University, Shillong which had created a center at Narayanpur and he can get all of them admitted in CMJ University and accordingly took an amount of Rs. 15,000/- (rupees fifteen thousand) each from all of them as admission fees in the CMJ University by issuing receipts of the amount of Rs. 15,000/- (rupees fifteen thousand) which he had received from them. Accordingly they were admitted in the CMJ University and their admission was done through an institute of Guwahati named GEA which is a center of the CMJ University and thereafter they attended B. Ed. course in a M.E School at Narayanpur. Thereafter, they attended course for few days and

later they could come to know that the B. Ed. degree given by CMJ University is not valid as it was not approved and recognized by NCTE. Thereafter he (PW-1) along with his fellow teachers demanded their admission fees amount back from the accused but the accused had refused to return back the same.

9. Now a look at the cross-examination of the PWs goes to show that PW-1 Sri Simanta Hazarika in his cross-examination had stated that he had filled up the Common Application Form for admission of the B. Ed. course by putting his signature therein. Now the accused had exhibited the said Common Application Form as Ext-B wherein it was categorically mentioned that the B. Ed. degree awarded from the said CMJ University as per provision under section (3) of the section 22 of the University Grants Commission Act, 1956 was not recognized by NCTE. The PW-2 Smti. Nijumoni Boruah in her cross-examination had admitted that she had filled up the said form herself and had read it properly wherein it was written that the degree is not recognized by NCTE. The accused also exhibited through PW-2 Smti. Nijumoni Boruah, the money receipt of Rs. 15,000/- (rupees fifteen thousand) which he had taken from her for the said course and PW-2 stated that in Ext-D it is mentioned that fees once paid is not refundable under any circumstances. PW-2 has admitted in her cross-examination that the accused had deposited the said amount of Rs. 15,000/- (rupees fifteen thousand) at CMJ University through GEA National College. PW-2 also in her cross-examination admitted that the Director of GEA National College Sri Nabajyoti Bharali came to their center at Narayanpur Higher Secondary School to attend a general meeting held for organizing the said B. Ed. course and they were also present in the said meeting. She further stated that there is no such agreement between her and the other candidates with the CMJ University that if they discontinued the said B. Ed. course in between without completing it then they will take back the amount paid by them. She further stated in her cross-

examination that the B. Ed. center was opened by the GEA National College where the accused was the coordinator and the accused did not personally from his own provided any B. Ed. course and he does not have the power to do so.

10. So from the evidence on record it can be seen that it was clearly written in the form filled up by the informant and the other candidates that the B. Ed. course provided by CMJ University was not recognized by NCTE. The informant as well as the other candidates who took admission in the said B. Ed. course were all teachers and as such were educated persons and it can be inferred that they knowingly have taken admission in the said course issued by CMJ University knowing that the same was not recognized by NCTE. Further, it can be seen that the accused had arranged the regular classes for the B. Ed. course at Narayanpur Higher Secondary School. PW-4 Sri Mohan Bharali also in that regard stated that the regular B. Ed. course was provided by the accused under CMJ University through the GEA National College of Guwahati arranging the classes at Narayanpur Higher Secondary School and besides the informant and few others the rest persons who took admission in the said course duly completed the said B. Ed. course. It can also be further seen from the evidence on record that due money receipts were issued by the accused after taking money for admission fees from the informant and the other persons who took admission and the said amount was deposited by him to the CMJ University.

11. So in the given position it can be seen that the accused in fact have provided the B. Ed. course as promised and the informant as well as the other candidates viz. Smti. Nijumoni Boruah, Sri Champak Kr. Borah and Sri Bijay Mudoi had taken admission in the said B. Ed. course knowing that the said course was not recognized by NCTE as can be deciphered from Ext-B. So it can be held that the accused had not cheated the informant Smti. Phulo Borah and the other candidates' viz. Smti. Nijumoni Boruah,

Sri Champak Kr. Borah and Sri Bijay Mudoi as alleged by concealing the fact that the B. Ed. course provided was not recognized by NCTE.

12. PW-6 SI Jayanta Deka, I/O also in his cross-examination had stated that he could not collect any material to substantiate the fact that the certificate of the B. Ed. issued by CMJ University is not valid and he also did not find any material to show that the accused had misappropriated the fees amount.

13. So from the above discussion it is clear that the accused who issued money receipts for the fees taken had deposited it to the CMJ University and didn't misappropriate the fees money taken for his own use.

14. Hence, in the given position it can no way be concluded that the accused cheated the informant and the other candidates or that he had misappropriated the fees amount paid by the informant and the other candidates for the B. Ed. course.

15. So the aforesaid points for determination consequently are held in negative.

16. The prosecution has as such failed to prove the case against the accused under section 406/420 of the Indian Penal Code and as such he is acquitted from the said offences and set at liberty.

Bail bond is extended to for the further 6(six) months from today.

The judgment is delivered and operative part of the same is pronounced in the open court on this 25th day of January, 2021.

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Dictated and Corrected by me:

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Transcribed and typed by me:
Narayan Chetri, Stenographer

Continued (Appendix)

A P P E N D I X

WITNESSES FROM THE PROSECUTION SIDE

Sri Simanta Hazarika (PW-1)
Smti. Nijumoni Boruah (PW-2)
Sri Champak Kr. Borah (PW-3)
Sri Mohan Bharali (PW-4)
Sri Bijay Mudoi (PW-5)
SI Jayanta Deka (PW-6)

PROSECUTION EXHIBIT

Ejahaar (Ext-1)
Seizure list (Ext-2)
Signature of the witness [Ext-2(1)]
Signature of the seizing officer as [Ext-2(2)]
Rough sketch map of the place of occurrence (Ext-3)
Signature of the I/O [Ext-3(1)]
Charge-sheet (Ext-4)
Signature of the I/O [Ext-4(1)]

WITNESSES FROM THE DEFENCE SIDE

Nil

EXHIBITS FROM THE DEFENCE SIDE

The document of the signatures of persons attending the general meeting for B. Ed course at Narayanpur Higher Secondary School (Ext-A)
Signature of Sri Simanta Hazarika as [Ext-A(1)]
Signature of Smti. Nijumoni Boruah as [Ext-A(2)]
Common Application Form for admission in B. Ed. Course of CMJ University (Ext-B) Money receipt of Rs. 15,000/- (rupees fifteen thousand) issued by

CMJ University and GEA National College of paying the admission amount (Ext-C)

Signature of Sri Simanta Hazarika [Ext-C(1)]

Another money receipt of Rs. 15,000/- (rupees fifteen thousand) issued by CMJ university and GEA College for B. Ed. admission course (Ext-D)

Another money receipt of Rs. 15,000/- (rupees fifteen thousand) issued by CMJ University and GEA National College for B. Ed. admission course (Ext-E)

Attendance sheet of the counseling center of B. Ed. course (Ext-F)

Photograph of the members along with the Director Sri Nabajyoti Bharali (Ext-G)

WITNESSES AND EXHIBITS FROM THE COURT SIDE

Nil

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur