

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

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

**G.R. 1103/2013**

Under section 379/417 of the Indian Penal Code  
Under section 379/120-B/417 of the Indian Penal Code

**State of Assam**  
**-Vs-**  
**(1) Md. Motiur Rahman**  
**(2) Md. Mofidul Islam**

.....Accused persons

Date of framing charge : 03.04.2021  
Dates of recording evidence of PW : 26.04.2016, 09.05.2018,  
30.06.2018, 13.11.2019,  
10.03.2021  
Date of examination u/s 313, Cr.P.C. : 17.03.2021  
Dates of Argument : 17.03.2021  
Date of judgment : **26.03.2021**

**Advocates appeared in the case:-**

Sri Prasanta Dutta, Addl. P.P., for the State

Sri Ranjan Kr. Saha, Advocate, for the accused persons

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

1. The brief resume of the prosecution case is that one Sri Nabam Atum had lodged an ejahar before the In-charge of Banderdewa Police Outpost on 15.07.2013 alleging inter alia that on 14.07.2013 at about 11:00 to 11:30 AM a person introduced himself to be Mr. Gopal called him over phone in his mobile number and convinced him to provide labourers and in that regard had called him at Hotel Blue Sky situated at Banderdewa Assam side where he had even arranged a room

bearing Room No. 102 for that purpose. Accordingly, they met and during the discussion he convinced him to provide 30 (thirty) labourers for building construction and deceitfully took cash of Rs. 1,20,000/- (Rupees one lakh twenty thousand) in advance for providing labourers. Then immediately after handing over that money a police person entered into the room and enquired that whether any illegal work is going on there and without verifying anything he took Mr. Gopal with him and disappeared. He was surprised that why the police person didn't enquire him or take him also to the Police Station. Later the Hotel Manager told him that the police was from Banderdewa Police Outpost viz. Ct. Jeena and that no name was registered against the booking of Room No. 102 in the hotel. So he suspected that Mr. Gopal along with the policeman Ct. Jeena of Banderdewa Police Outpost as well as the Manager of Hotel Blue Sky had cheated him of Rs. 1,20,000/- (Rupees one lakh twenty thousand). Hence, the case.

2. The said ejahar was sent to Bihpuria Police Station where a case was registered vide Bihpuria P.S. Case No. 160/2013 under section 120-B/420/34 of the Indian Penal Code. The investigating officer, after completing the investigation, submitted charge-sheet under section 120-B/420/34 of the Indian Penal Code against the accused persons viz. Md. Mofidul Islam and Md. Motiur Rahman to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 120-B/420/34 of the Indian Penal Code was taken as per section 190(1)(b) of the Code of Criminal Procedure. The accused persons entered their appearance before the Court after receiving the summons. Copies were furnished to the accused persons as per provision contained in section 207 of the Code of Criminal Procedure. After considering the materials on record and hearing both the sides, charge under section 379/417 of the Indian Penal Code was framed against the accused Md. Motiur Rahman and under section 327/120-B/417 of the Indian Penal Code was framed against the accused Md.

Mofidul Islam. The charges were read over and explained to the accused persons above named to which they pleaded not guilty and claimed to be tried.

**POINTS FOR DETERMINATION:**

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

(a) Whether the accused Md. Motiur Rahman had committed theft of Rs. 1,20,000/- (Rupees one lakh twenty thousand) from the informant ?

(b) Whether the accused Md. Motiur Rahman had cheated the informant by taking money from him in the name of providing labourers?

(c) Whether the accused Md. Mofidul Islam had done criminal conspiracy along with co-accused Md. Motiur Rahm to commit theft of Rs. 1,20,000/- (Rupees one lakh twenty thousand) from the informant ?

(d) Whether the accused Md. Mofidul Islam did criminal conspiracy along with co-accused Md. Motiur Rahman to cheat the informant and took money in the name of providing labourers ?

5. During the trial the prosecution side examined as many as 5 (five) witnesses including the Investigating Officer (I/O) of this case viz. Md. Abu Bakkar Jinnah as PW-1, Sri Suman Boruah as PW-2, Sri Umesh Paswan as PW-3, Inspector Badrul Islam Mazumdar, the I/O as PW-4 and Sri Prabin Kalita, retired S.I of Police, another I/O of this case as PW-5. The prosecution had exhibited the seizure list as Ext-1 and the signatures of the witnesses therein as Ext-1(1) and Ext-1(2), the rough sketch map of the place of occurrence as Ext-2 and the signature of the I/O (PW-5) therein as Ext-2(1), the charge sheet as Ext-3 and the signature of the I/O (PW-4) therein as Ext-3(1), the extract copy of the

G.D.E No. 237 dated 15.07.2013 as Ext-4 and the signature of the I/O (PW-5) therein as Ext-4(1).

6. I have heard the argument of both sides and thereupon come to the following finding:

**DISCUSSION, DECISION AND REASONS THEREOF:**

7. To decide the aforesaid points of determinations let us have a scrutiny of the evidence on record.

8. PW-1 Md. Abu Bakkar Jinnah testified that he didn't know the informant or the accused and one day in the year 2013 while he was doing duty in the Blue Sky Hotel situated at Banderdewa he heard a hue and cry and went to see what had happened. At that time a person came down from the hotel and told him that some money was stolen. He knows nothing besides that.

9. So PW-1 has not implicated any of the accused persons and he in fact doesn't know anything in details about the incident and he is a mere hearsay witness.

10. PW-2 Sri Suman Boruah testified that he doesn't know the informant or the accused of this case. As for the incident that happened he narrated that on the day of incident three persons came in the Blue Sky Hotel where he was working as a receptionist and they asked him for a room. The said room was accordingly given and thereafter the said three persons asked him to bring cigarette for them. He as such went away to bring the same and when he returned a police personnel came to the hotel and asked him that whether any incident had taken place. PW-2 replied that no such incident took place but the police personnel said that someone had called him over phone informing that some incident had taken place in the hotel. Thereafter he left. PW-2 further stated that he will not be able to recognize the

three persons as the incident took place many years ago. In his cross-examination PW-2 stated that the two accused persons present in the dock were not amongst the said three persons who went to the hotel in search of the room.

11. So it can be seen that PW-2 also has not implicated any of the accused persons and he is not aware of anything about the incident.

12. PW-3 Sri Umesh Paswan deposed that he doesn't know the informant or the accused persons and on the day of incident he was not present at the place of occurrence. PW-3 stated that he is the owner of the Hotel Blue Sky and that he came to know about the incident after two days of the incident. PW-3 stated that while the hotel Manager was present three persons arrived at the hotel and asked the Manager to bring cigarette for them. He as such went to bring the same and by the time he returned all the three persons went away. PW-3 in his cross-examination stated that there was no entry of the names of the three persons in the register book of his hotel.

13. So PW-3 has also not implicated the accused persons and in fact doesn't even know them. Further he didn't state anything incriminating in his evidence.

14. PW-4 Inspector Badrul Islam Mazumdar, the I/O of this case deposed that on 15.07.2013 while he was working as Attached Officer at North Lakhimpur Police Station one Nabam Atum had lodged an ejarah in the Banderdewa Police Outpost. The said case was registered in the Bihpuria Police Station and SI Prabin Kalita had examined the informant Nabam Atum at the Banderdewa Police Outpost and recorded his statement and thereafter visited the place of occurrence. The said I/O prepared the rough sketch map of the place of occurrence and also examined the witnesses found in and around the place of occurrence. Thereafter he seized the hotel register of Hotel Blue Sky.

The said I/O thereafter arrested accused Md. Mofidul Islam but in the meantime the said I/O got transferred from Banderdewa Police Outpost and thereafter on 29.09.2013 the Officer-in-charge of Bihpuria Police Station handed him over the case diary to conduct the further investigation of this case. PW-4 stated that he found the investigation of the case to have been already completed by the previous I/O SI Prabin Kalita and as such he submitted charge sheet against the accused persons Md. Motiur Rahman and Md. Mofidul Islam under section 120-B/420/34 of the Indian Penal Code showing Md. Motiur Rahman as absconder in the charge sheet.

15. PW-5 Sri Prabin Kalita, other I/O of this case deposed that on 15.07.2013 while he was posted as In-charge in the Banderdewa Police Outpost one Sri Nabam Atum had lodged an ejahar and this case was endorsed to him for investigation. He recorded the statement of the informant and proceeded to the place of occurrence. He had recorded the statements of the witnesses in the place of occurrence and had also seized the hotel boarder entry register of Blue Sky Hotel. PW-5 stated that when he had visited the Blue Sky Hotel the accused Mofidul Islam was present there. The said accused had fled when he reached the place of occurrence and he tried to search for the accused but could not nab him. Accused Mofidul Islam was later arrested by the Bongalmara Police Outpost on 19.07.2013 and thereafter on 20.07.2013 the PW-5 brought the said accused from Bongalmora Police Outpost and forwarded him to the learned Judicial Magistrate. PW-5 stated that he collected the call data of the phone number 9401801576 which the informant had mentioned in his ejahar. PW-5 stated that he could find the said mobile number to be in the name of Md. Motiur Rahman and as such tried to arrest him. PW-5 the I/O in his cross-examination stated that the informant didn't mention the name of the accused in the ejahar. He further stated that he could not submit the call data record of the mobile number 9401801576 nor had

collected any documents from the Service Provider to show that the said number was owned by the accused Motiur Rahman.

16. So if we go to look in whole the evidence of the prosecution side it can be seen that the informant and the victim of this case Sri Nabam Atum was failed to be examined by the prosecution side as he could not be traced and as such his appearance could not be compelled. The rest PWs besides the I/Os didn't say anything about the accused persons and neither they have implicated the accused persons. They didn't even have any knowledge about the incident and were mere a hearsay witnesses. They couldn't even throw any light on the incident alleged by the prosecution side. As for the I/Os (PW-4 and PW-5) they merely stated that they had arrested the accused persons but could not give any cogent evidence or material to show that how they had found the complicity of the accused persons to be there in the commission of offences alleged in this case. The PW-5 Sri Prabin Kalita, the I/O stated that phone number from which the call came to the informant assuring him of providing labourers belonged to accused Md. Motiur Rahman but he failed to submit any document to show that the said phone belonged to the accused Md. Motiur Rahman.

17. The prosecution has miserably failed to produce any cogent evidence to prove the charges against the accused persons. The PWs that the prosecution side examined had no idea about the case and even the investigation conducted by the I/Os are totally sloppy and vague one. So from the evidence on record it can no way be concluded at all that the accused persons had committed any cheating or had stolen any money from the informant or that the accused person did any act of criminal conspiracy.

18. So no offence is made out against the accused persons and the aforesaid points of determination as such are held in negative.

19. The prosecution has failed to prove the case against the accused Md. Motiur Rahman under section 379/417 of the Indian Penal Code and also failed to prove the case under section 379/120-B/417 of the Indian Penal Code against the accused Md. Mofidul Islam and as such both the accused persons are acquitted from the said offences and are set at liberty.

Seized articles be destroyed as per procedure.

Bailbonds are extended to further six months from today.

Let a copy of this Judgment be sent to the District Magistrate, Lakhimpur.

The judgment is delivered and operative part of the same is pronounced in the open court on this 26<sup>th</sup> day of March, 2021.

**-Sd-**

**(Shri Akhtabul Ala)**  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur

Dictated & corrected by me-

**-Sd-**

**(Shri Akhtabul Ala)**  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur

Transcribed & typed by-  
Sri Narayan Chetri, Stenographer

Contd. .... Appendix



**A P P E N D I X****WITNESSES FROM THE PROSECUTION SIDE**

Md. Abu Bakkar Jinnah (PW-1)

Sri Suman Boruah (PW-2)

Sri Umesh Paswan (PW-3)

Inspector Badrul Islam Mazumdar, the I/O (PW-4)

Sri Prabin Kalita, another I/O (PW-5)

**PROSECUTION EXHIBITS**

Seizure list (Ext-1)

Sketch map of the place of occurrence (Ext-2)

Signature of the I/O (PW-5) [Ext-2(1)]

Charge sheet (Ext-3)

Signature of the I/O (PW-4) [Ext-3(1)]

Extract copy of the G.D. Entry (Ext-4)

Signature of the I/O (PW-5) [Ext-4(1)]

**WITNESSES FROM THE DEFENCE SIDE**

Nil

**DEFENCE EXHIBITS**

Nil

**-Sd-**

**(Shri Akhtabul Ala)**  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur