

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE  
AT NORTH LAKHIMPUR**

G.R CASE NO: 771 OF 2017  
PROSECUTOR: STATE OF ASSAM Vs  
ACCUSED: MD. NAZIR ALI @ NAZIM

DISTRICT: NORTH LAKHIMPUR  
IN THE COURT OF ADDITIONAL CHIEF JUDICIAL  
MAGISTRATE, AT NORTH LAKHIMPUR

GR CASE NO: 771 / 2017

U/S 406/420 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MD. NAZIR ALI @ NAZIM

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA  
ADVOCATE FOR THE ACCUSED: MR. DAMBARU BHUYAN

CHARGE FRAMED ON : 09.09.2019  
EVIDENCE RECORDED ON : 06.12.2019, 26.03.2021

ARGUMENT HEARD ON : 30.03.2021  
JUDGMENT DELIVERED ON : 30.03.2021

**JUDGMENT**

**PROSECUTION'S CASE IN BRIEF:**

1. Prosecution's case in brief as it reveals from the FIR is that on 24/03/2017, informant Sri Phuntso Tashi entered into an agreement with accused Md. Nazim Ali for purchasing one motorcycle bearing registration no. AS 07 J 3365 belonging to the accused for a consideration amount of Rupees 85,000/-. Accordingly, the informant paid an amount of Rupees 78,000/- to the bank account of accused but the accused then fled away with the motorcycle. The

informant then lodged an FIR about the occurrence before the Officer in charge of Banderdewa police out post.

2. On receipt of the F.I.R, a case was registered being numbered as North Lakhimpur P.S Case No. 239/2017. After investigation, I.O of the case submitted charge sheet against accused person Sri Nazir Ali @ Nazim the offences punishable u/s 406/420 of IPC. Copies of relevant documents were furnished to the accused person u/s 207 CrPC. Considering the relevant documents and after hearing both the parties, charges were framed against the accused for the offences punishable under section 406/420 of IPC. The charges were then read over and explained to the accused person to which he pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined two witnesses, whereas the defence did not examine any witness. The accused was examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statements made by accused and the tenor of cross-examination of prosecution witnesses by defence. I have heard the learned counsel for both the parties.

4. Upon hearing and on perusal of record I have framed the following points for determination-

5. **POINTS FOR DETERMINATION:**

(i) Whether the accused person on 24/03/2017, being entrusted with an amount of Rupees 78,000/- by informant Sri Phuntso Tashi for purchasing the motorcycle belonging to accused, dishonestly misappropriated or converted the said amount to his own use, or disposed of the said amount in violation of any agreement made between them regarding discharge of such trust, and thereby committed an offence punishable u/s 406 of IPC?

(ii) Whether the accused on 24/03/2017, cheated the informant by falsely promising to sell his motorcycle to the informant and thereby dishonestly induced the informant so deceived to deliver an amount of Rupees 78,000/- to him, and thereby committed an offence punishable under section 420 of IPC?

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

**POINT NO. 1& 2:**

6. For the sake of convenience and as because the point no.1 & 2 are inter-connected, hence, they are taken up herein together for discussion & decision as follows:

7. As regards the aforesaid point for determination, informant Sri Phuntso Tashi as PW1 in his evidence in chief has stated that in the year 2017 the accused promised to sell a motorcycle to him/PW1 for an amount of Rupees 72,000/-. Accordingly, he/PW1 paid approximately Rupees 72,000/- in the bank account of accused but the accused fled away with the motorcycle. He lodged an lodged an F.I.R about the occurrence in Banderdewa Police Out Post. Thereafter, the mater involved got settled amicably and the accused returned him the aforesaid amount of Rupees 72,000/-.

8. On perusal of the above evidence deposited by PW1, it is seen that the accused allegedly promised to sell the motorcycle for Rupees 72,000/- and accordingly he/PW1 deposited Rupees 72,000/- in the bank account of accused. However, in this respect, perusal of exhibit-1/F.I.R shows that the accused allegedly agreed to sell the motorcycle for Rupees 85,000/- and accordingly the informant deposited Rupees 78,000/- in the bank account of accused. This shows that there is material inconsistency in the version of PW1/informant as regards the total consideration price agreed between the parties and also the total amount allegedly deposited in the bank account of accused. However, it is important to note that the exhibit – 2 bank account statement submitted by PW1 supports the contents of FIR by showing that an amount of Rupees 78,000/- was deposited in the bank account of accused.

9. Now, if the version of informant in the FIR is to be believed, then it can be seen that the informant did not paid/deposited the entire consideration amount i.e., Rupees 85,000/- in the bank account of accused on the day of occurrence. As stated above, the exhibit – 2 bank account statement produced by informant/PW1 shows that an amount of Rupees 78,000/- only was deposited in the bank account of accused on the day of occurrence. At this juncture, it is important to note that the informant/PW1 has nowhere alleged that the accused agreed to hand over physical possession of the motorcycle to him/PW1 on payment of Rupees 78,000/-

only. Under such circumstances, there is no basis to presume that the accused was under an obligation to hand over the physical possession of that motorcycle to the informant on the day of occurrence on deposit of Rupees 78,000/- in his bank account by informant. As such, it cannot be said that the accused unlawfully fled away with the motorcycle, or that the accused misappropriated the aforesaid amount deposited in his bank account. In fact, the informant/PW1 has specifically stated that the accused had subsequently returned the amount to him/PW1 which was earlier deposited in the bank account of accused by him/PW1.

10. Considering the above discussion, I find that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that the accused person has cheated the informant, or misappropriated the money which was deposited in the bank account of accused by informant. Needless to mention here that PW2 Sri Mukut Saikia in his evidence has stated that he do not know anything about the occurrence. As such, it is clear that there is nothing in his evidence which can support the case of prosecution.

*DECISION: Point no.1 & 2 are therefore decided in the negative and goes against the prosecution.*

### **ORDER**

11. In view of the discussions made above and the decisions reached in the foregoing points for determination, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that accused persons Md. Nazir Ali @ Nazim has committed the offences under section 406/420 of IPC as alleged, and as such, the said accused person is acquitted of the charges under section 406/420 of IPC and he be set at liberty forthwith.

The bail bond of the accused persons shall remain in force for another six months from today.

This judgment is given under my hand, and seal of this court on this the 30<sup>th</sup> day of March, 2021.

The case is disposed of on contest.

(F. U Choudhury)  
Additional Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur

**APPENDIX****PROSECUTION EXHIBITS:**

Exhibit.1 – FIR

Exhibit.2 – Bank Account Statement

**DEFENCE EXHIBITS:**

NIL

**PROSECUTION WITNESSES:**

1. PW-1 – Sri Phuntso Tashi
2. PW-2 – Sri Mukut Saikia

**DEFENCE WITNESSES:**

NIL

(F. U Choudhury)  
Additional Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur