

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

G.R CASE NO: 1031 OF 2019  
PROSECUTOR: STATE OF ASSAM Vs  
ACCUSED: SRI MUKUT DUTTA

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

GR CASE NO: 1031/ 2017

U/S 188/417 of IPC

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI MUKUT DUTTA

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA  
ADVOCATES FOR THE ACCUSED: SRI JAYANTA HAZARIKA  
SMTI MOROMI DOIMARI

OFFENCE EXPLAINED ON : 30/01/2020  
EVIDENCE RECORDED ON : 29/02/2020

ARGUMENT HEARD ON : 29/02/2020  
JUDGMENT DELIVERED ON : 29/02/2020

**JUDGMENT**

**PROSECUTION'S CASE IN BRIEF**

1. Prosecution's case in brief as it reveals from the FIR is that on 28.04.2019, while informant Sri Khirod Ch. Gogoi, being the Headmaster of Angarkhowa Chariali High School, was performing duty in the examination centre of that school, at that time, accused Sri Mukul Dutta appeared there as a candidate of that examination and carried a mobile phone with him inside the examination centre in spite of strict prohibition. Thereafter, the accused went outside while the examination was going on and sent a photograph of question paper to

some of his friends. In the meantime, the informant caught the accused and handed him to the police. The informant thereafter lodged an FIR about the occurrence before the Officer-in-charge of Panigaon police Station.

2. On receipt of the F.I.R, the I/C of Khelmati O.P forwarded the same to the O/C North Lakhimpur P.S who registered a case being numbered as North Lakhimpur P.S Case No. 475/17. After investigation, I.O of the case submitted charge sheet against accused Sri Mukut Dutta for the offences punishable under section 188/417 of I.P.C. Copies of relevant documents were furnished to the accused person u/s 207 CrPC. Considering the relevant documents and hearing both the parties, particulars of offences punishable u/s 188/417 of IPC are 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 one witness whereas the accused did not examine any witness in support of his defence. The examination of the accused person u/s 313 CrPC was dispensed with finding no incriminating materials against him. 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-

**POINT FOR DETERMINATION:**

(i) Whether on 28.04.2020, the accused appeared as a candidate for an examination at Angarkhowa Chariali High School and carried a mobile phone inside the examination centre, knowing that carrying such mobile phone is prohibited by an order promulgated by a public servant lawfully empowered to promulgate such order, and thereby committed an offence punishable u/s 188 of IPC?

(ii) Whether the accused on 28.04.2019, at about 10:30 AM, appeared as a candidate for an examination at Angarkhowa Chariali High School and deceived the informant by secretly carrying a mobile phone with him and thereby dishonestly and fraudulently induced the informant so deceived to allow him to enter inside the examination centre, which the informant would not have allowed if he were not so deceived, and thereby committed an offence punishable u/s 417 of IPC?

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

**POINT NO.1 & 2**

5. For the sake of convenience, and as the point no.1 & 2 are interconnected, hence they are taken up herein together for discussion and decision. As regards the aforesaid points for determination, informant Sri Khirod Ch. Gogoi as PW-1 in his evidence-in-chief has stated that about one year back, he was serving as Headmaster cum examination in-charge of Angarkhowa Chariali High School. On the day of occurrence, an examination in connection with some post in APDCL was conducted in the aforesaid school and he was performing his duty as centre-in-charge of that school for that examination. On that day, the accused appeared in that school as a candidate for that examination. At that time, he found a mobile phone in the bag of accused while checking the same and accordingly he lodged an FIR against the accused in that respect. Exhibit-1 is that FIR in which Exhibit-1(1) is his signature. During cross-examination, PW1 has stated that after lodging of that FIR, the aforesaid matter got settled amicably between both the parties due to which he is not willing to proceed with this case any further. PW-1 has also stated that he has no objection if the accused is acquitted from this case.

6. At the time of argument, learned counsel for the defence submitted that the prosecution has failed to prove its case as alleged and hence the accused is liable to be acquitted from this case.

7. On going through the evidence deposed by PW-1 as narrated above, it is seen that at the time of occurrence, the informant was allegedly performing duty as centre in-charge at Angarkhowa Chariali High School with respect to an examination conducted by APDCL and at the time the accused appeared in that exam centre as a candidate and the informant found a mobile phone inside the bag of accused. Now, even if the aforesaid allegation made by informant/PW1 is presumed to be correct then also, in my opinion, the ingredients of the offence punishable u/s 188 of IPC are not attracted. This is because there is nothing in the evidence of PW-1 which can show that carrying of mobile phone was prohibited inside the exam centre. The PW1 has not produced any document which can show that an order was promulgated by a public servant banning mobile phone inside the exam centre. In fact, perusal of case record shows that no such order or even the admit card of the candidate was seized

to show that mobile phone was banned inside the exam centre. Be it mentioned here that the very basis of the offence u/s 188 of I.P.C is the existence of an order duly promulgated by a public servant. Hence, in the absence of such alleged order, it is clear that the offence u/s 188 of I.P.C is not attracted in the case in hand.

8. Moreover, the PW1 has not stating anything specifically about any act of cheating by the accused. Simply carrying a mobile phone inside the exam centre cannot be understood as cheating unless and until it is proved that the carrying of mobile phone was banned and the accused carried such mobile phone by making false representation to the concerned authority. However, as stated above, no such prohibition could be proved by PW1. Hence, it is clear that the ingredients of Section 417 of I.P.C are also not attracted in the case in hand.

9. Considering the above, it is clear that the PW-1 has failed to prove beyond reasonable doubt that the accused has committed the offences as alleged in the FIR.

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

### **ORDER**

10. In view of the discussions made above and the decisions reached in the foregoing point for determination, it is held that the witness examined by prosecution has failed to prove beyond reasonable doubts that accused Sri Mukut Dutta has committed the offence punishable under section 188/417 of IPC as alleged, and as such, the accused person is acquitted of the charges under section 188/417 of IPC on benefit of doubt and he be set at liberty forthwith.

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

The articles seized vide M.R No. 11/2019 shall be released to the custody of its owner i.e., accused Sri Mukul Dutta, on production of ownership document and on execution of proper bond as per law.

This judgment is given under my hand, and seal of this court on this the 29<sup>th</sup> day of February, 2020.

The case is disposed of on contest.

F.U. Choudhury  
Additional Chief Judicial Magistrate  
North Lakhimpur

**APPENDIX****(A) PROSECUTION EXHIBITS**

Exhibit.1 – F.I.R

**(B) DEFENCE EXHIBITS**

Nil

**(C) PROSECUTION WITNESSES**

P.W. 1 – Sri Khirod Ch. Gogoi

**(D) DEFENCE WITNESSES**

Nil

F.U. Choudhury  
Additional Chief Judicial Magistrate  
North Lakhimpur