

**IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE  
(SADAR), NORTH LAKHIMPUR, LAKHIMPUR**

**GR CASE NO : 826 of 2013**

**U/S 420/34 of IPC**

**State**

**-Versus-**

- 1. Md. Mizanur Rahman**
- 2. Sri Bhaktaram Mandal**
- 3. Md. Nur Mohammad**

**.....Accused persons.**

**PRESENT : Smt. Sorbani Bhattacharjee , AJS  
Sub Divisional Judicial Magistrate (Sadar)  
Lakhimpur, North Lakhimpur.**

**ADVOCATES APPEARED-**

**FOR THE PROSECUTION : Sri Khirod Kr. Kakoti.**

**FOR THE ACCUSED : Mr. Rajib Gogoi  
Md. Khursed Alam,  
Mr. Nandeswar Phukan**

**EVIDENCE RECORDED ON : 19.11.2018, 15.02.2019**

**ARGUMENT HEARD ON : 22.05.2019**

**JUDGMENT DELIVERED ON: 22.05.2019**

### **JUDGMENT**

1. The prosecution story in brief is that about three months prior to lodging of FIR, an unknown person rang the mother-in-law of the informant Smti Bina Bora over phone and started to have conversation with her. After that the unknown person and Bina Bora used to have regular conversation and one and half months prior to the lodging of FIR the unknown person requested them to purchase gold ornaments weighing 3 tola which was his ancestral property. In this regard till the date of lodging of FIR the informant deposited Rs.7,000/- in the bank account of Mizanur Rahman bearing A/C No.30429148234. The informant also gave Rs.50,000/- in this regard. On 02.06.2013 when the informant visited the house of that person at Narayanpur then one Sanjib Mandal, Sahadev Mandal and Smti Milan Mandal shown him a pot/pitcher made of brass instead of 3 tola gold and told him to pay Rs.2,50,000/- to him. Later on, he came to know that the aforesaid persons cheated him by taking Rs.50,000/- from him. Hence, he lodged this case.

2. The Officer-in-charge, Narayanpur police station, on receipt of Ejahar registered Narayanpur P.S. Case No. 85/2013, U/S 420 of IPC and started investigation. After completion of the investigation, the concerned I.O. submitted charge sheet against the accused persons namely, Md. Mizanur Rahman, Sri Bhaktaram Mandal, Md. Nur Mohammad and Smti Milan Mandal U/S 420 of IPC. During the pendency of this case accused Smti Milan Mandal expired and the case against her was abated by learned Judicial Magistrate, First Class, vide order dated 19.09.2015 and the case proceeded against the other three accused persons.

3. In due course, the accused persons appeared before the Court and the copies of relevant documents were furnished to

them as per section 207 of CrPC. Having found a prima facie case against the accused persons the charge U/S 420/34 of IPC was framed which was read over and explained to them to which they pleaded not guilty and claimed to be tried.

4. The prosecution, in support of its case, examined four witnesses. As per the submission of learned Assistant Public Prosecutor further evidence of prosecution side is closed. The statement of the accused persons namely, Md. Mizanur Rahman, Sri Bhaktaram Mandal and Md. Nur Mohammad have been recorded U/S 313 Cr.P.C. Defence side examined no witnesses. I have heard the arguments advanced by the learned counsels for both sides.

**5. POINTS FOR DETERMINATION:-**

Whether the accused persons, in furtherance of their common intention, on 02.06.2013, at Narayanpur, cheated Sri Durgeswar Koch, by dishonestly inducing him to deliver 3 (three) tola of gold but instead delivered fake gold to him and thereby committed an offence punishable U/S 420/34 of Indian Penal Code ?

**DISCUSSION, DECISION AND REASONS THEREOF:**

6. PW-1 Sri Durgeswar Konch in his evidence deposed that he is the informant of this case. Exhibit-1 is the ejahar and Exhibit-1(1) is his signature. He knows the accused Sanjib Mandal and Milan Mandal. He does not know the other accused persons by name. In the year 2013 the accused Sanjib Mandal had telephonic introduction with his mother-in-law Bina Borah. After few days they started to visit the house of Bina Borah and had a good relation like family members. One day Sanjib Mandal asked for some money from her for treatment of his brother Sahadev Mandal at Guwahati who is in serious condition. He does not know about the exact amount of money. He had some doubt and he made any

enquiry himself. He went to the house of Sanjib Mandal at Narayanpur and saw Sahadev in bedridden condition. He informed Bina Borah about all these and stated her that Sahadev is in serious condition. His father-in-law Bubul Borah deposited Rs. 7,000/- in the SBI bank account of one Mizanur Rahman for Sanjib Mandal. Sanjib Mandal said that he had no account and gave the account number of Mizanur. After getting the money Sanjib Mandal stopped conversation with them and started to avoid their calls. Till date they did not get back the money. Then out of anger he lodged this case. Police recorded his statement. Ext-2 is a piece of paper and Ext-2(1) is his signature.

Cross examination for Bhakta Mandal :-

He denied the suggestion that he stated falsely that he knows Bhakta Mandal and visited his house. He does not know why he put his signature in Ext-2.

Cross examination for Mizanur Rahman:-

He does not know accused Mizanur Rahman. He denied the suggestion that he stated falsely that accused Sanjib Mandal gave him the account no. of Mizanur and he deposited Rs. 7,000/- in his account. he had no conversation ever with Mizanur.

7. PW-2 Sri Bubul Bora in his evidence deposed that informant Durgeswar Koch is his son-in-law. He does not know the accused persons. His wife Bina Borah had introduction with one person whose name he does not know. That unknown person asked for Rs.7,000/- from his wife. On 30.05.2013 his wife Bina Borah deposited Rs.7,000/- in the account of one Mizanur Rahman. That unknown person did not return the money. Then his son-in-law lodged this case. Defence declined to cross-examine him.

8. PW-3 Sri Fuleswar Gogoi in his evidence deposed that he does not know the informant and accused persons. He does not know anything about the incident. Defence declined to cross-examine him.

9. PW-4 Sri Jugen Saikia in his evidence deposed that on 03.06.2013 he was working at Narayanpur P.S. as ASI .On that day one Durgeswar Konch lodged an ejahar before O/C Narayanpur P.S. and the same was registered by O/C as NPR P.S. case no. 85/2013 U.S 420 of IPC and the same was endorsed in his name for investigation. He recorded the statement of informant in the P.S. On 03.06.2013 he arrested accused Bhakta Mandal and Shiva Mandal and seized the mobile phone of informant in the P.S. Ext-3 is the seizure list of mobile phone of Nur Mohammad and Ext-3(1) is his signature. Ext-4 is the seizure list of mobile phone of Bhakta Ram Mandal and Ext-4(1) is his signature. On the next day he visited the P.O. and prepared sketch map of the P.O. Ext-5 is the sketch map and Ext-5(1) is his signature. On the same day he recorded the statements of two witnesses in the P.S. On 08.09.2013 he arrested accused Nur Mohammad and accused Mizanur Rahman was absconding. Mizanur Rahman was declared absconder by him in the CS. On 09.10.2013 he has submitted CS in this case against Bhakta Mandal, Milan Mandal, Nur Mohammad, Mizanur Rahman vide CS no. 120/13 U/S 420 of IPC. Ext- 6 is the CS and Ext-6(1) is his signature.

In cross-examination, he deposed that the seized mobile phones were sent to Court Malkhana. The said mobile phones are not here in the Court. He has not examined the authority of the mobile service provider to confirm whether the seized mobile phone of Ext-3 was actually of the accused Nur Mohammad or not. The seizure lists is prepared in the police station. At the time of investigation he was an ASI. He was authorized to investigate by SP but he has not submitted the related authorization letter in this case.

10. In this case prosecution examined altogether four witnesses. In his evidence PW-1 who is the informant of this case has deposed that he knows the accused Sanjib Mandal and Milan Mandal but he does not know the other accused persons. From perusal of the case-record it is found that there is no accused with the name of Sanjib Mandal and Milan Mandal has already expired. Informant

could not identify the other accused persons against whom the case is now proceeding. From his evidence it is revealed that in the year 2013 one Sanjib Mandal had telephonic introduction with his mother-in-law Bina Bora and he started to visit Bina Bora's house. He had a good relation with Bina Bora like family members. Prosecution failed to examine Smti Bina Bora in this case. His evidence further reveals that Sanjib Mandal asked Bina Bora for some money for the treatment of his brother at Guwahati. The informant had some doubt and made an enquiry himself. PW-1 deposited Rs.7,000/- in the SBI bank account of accused Mizanur Rahman for Sanjib Mandal as Sanjib Mandal reported to have no bank account in his name. After getting the money Sanjib Mandal stopped the conversation with them and started to avoid their calls. As they did not get back the money hence, PW-1 lodged this case.

11. From the evidence of PW-1 it is seen that his main allegation is against one Sanjib Mandal but prosecution has failed to make him an accused in this case. The version of the informant in his FIR (Ext.1) and in his evidence are inconsistent. In his ejarah he has mentioned the names of three persons namely, Sanjib Mandal, Sahadev Mandal and Smti Milan Mandal who cheated him of Rs.57,000/- with a promise to sell a gold pot to him which turned to be a fake gold pot. But in his evidence PW-1 is silent about the fake gold. In this case out of three FIR-named persons only Milan Mandal has been charge-sheeted as an accused in this case who has already expired. There is no allegation in the FIR or in the evidence of PW-1 regarding the involvement of accused persons Nur Mohammad, Bhaktaram Mandal in this case. Accused Mizanur Rahman is also not alleged for committing any cheating with him in the FIR as well as in his evidence. It is only mentioned in the FIR and in his evidence by the informant that as per the instruction of Sanjib Mandal he deposited Rs.7,000/- in the bank account of accused Mizanur Rahman as he has no bank account in his name. Prosecution has failed to show how Mizanur Rahman is involved in this case and whether he had any guilty intention of cheating the

informant along with one Sanjib Mandal. The evidence of PW-4 who is the I.O. of this case reveals that he seized three mobile phones of informant, Bhaktaram Mandal and Nur Mohammad but he failed to explain how the mobile phones were related to this case and how he came to the conclusion that the accused persons were involved in this case during investigation done by him. In his cross-examination he has admitted that he has not examined the authority of mobile service provider to confirm whether the seized mobile phones of Ext.3 was actually of accused Nur Mohammad or not. In his evidence it also cannot be ascertained whether he had gathered any information regarding the other two mobile phones from the authority of the mobile service providers.

12. The evidence of PW-2 Sri Bubul Bora reveals that he does not know the accused persons of this case. His evidence also reveals that his wife Bina Bora had introduction with some unknown person who asked her for Rs.7,000/-. On 30.05.2013 Bina Bora deposited Rs.7,000/- in the bank account of accused Mizanur Rahman and the unknown person did not return the money and the informant lodged this case. From his evidence it is apparent that no money was given by informant for PW-2 rather it was given by Bina Bora in the account of accused Mizanur Rahman for one unknown person. Prosecution failed to find out the missing link how the Mizanur is related to the unknown person for whom the money was deposited in the bank account of Mizanur Rahman. PW-3 who is an independent witness of this case expressed his ignorance about the whole incident.

13. From the testimony of the PWs, it is apparent that prosecution has miserably failed to show how the accused persons are involved in this case. In such circumstances, the accused persons are entitled to get acquitted. Situated thus, I am of the opinion that the ingredients of the offences u/s 420/34 of IPC have not been proved against the accused persons beyond all reasonable doubt by the prosecution and hence the accused persons are hold not guilty for the alleged offences.

**ORDER**

14. Accordingly, the accused persons Md. Mizanur Rahman, Sri Bhaktaram Mandal, Md. Nur Mohammad are acquitted of the offence U/S 420/34 of IPC on benefit of doubt and they are set at liberty forthwith.

The seized articles related to this case are to be disposed of in due course as per law.

The bail bond of the accused persons and their sureties shall remain in force for a period of 6 months from today as per amended CrPC.

**Given under my hand and seal of this court on this 22<sup>nd</sup> day of May, 2019.**

**Smti Sorbani Bhattacharjee, AJS  
Sub Divisional Judicial Magistrate (S)  
Lakhimpur, North Lakhimpur**

**GR 826 of 2013**

**APPENDIX**

***PROSECUTION EXHIBITS:***

- Ext.1 : Ejahar
- Ext.2 : Seizure memo
- Ext.3 : Seizure list
- Ext.4 : Seizure memo
- Ext.5 : Sketch-map
- Ext.6 : Charge-sheet

***DEFENCE EXHIBITS***

NIL

***PROSECUTION WITNESSES :***

- (1) PW-1 Sri Durgeswar Konch
- (2) PW-2 Sri Bubul Bora
- (3) PW-3 Sri Fuleswar Gogoi
- (4) PW-4 Sri Jugen Saikia

***DEFENCE WITNESSES***

NONE

***MATERIAL EXHIBITS***

NIL

**Smt. Sorbani Bhattacharjee, AJS  
Sub Divisional Judicial Magistrate (S)  
Lakhimpur, North Lakhimpur**