

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

G.R CASE NO: 2252 OF 2017
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: MD. NAZRUL ISLAM

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

GR CASE NO: 2252 / 2017

U/S 409 OF I.P.C R/W SECTION 7 OF E.C ACT

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MD. NAZRUL ISLAM

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: SMTI M.D. GOHAIN BARUAH

CHARGE FRAMED ON : 29.11.2019
EVIDENCE RECORDED ON : 28/02/2020, 19/03/2021, 01/04/2021

ARGUMENT HEARD ON : 01.04.2021
JUDGMENT DELIVERED ON : 01.04.2021

JUDGMENT

PROSECUTION'S CASE IN BRIEF

1. Prosecution's case in brief as it reveals from the FIR is that the informants named in therein are residents of Haripur village and having BPL card under Nowboicha Co-operative Society. Accused Md. Nazrul Islam is having a fair price shop in Haripur village. However, the accused had been misappropriating the rice allotted in the name of informants since many days. The accused has even kept the BPL card of all the informants with him except informant Musstt. Abida Sultana. On being asked by the informants about the matter, the accused informed that the BPL cards in the name of the informants had been cancelled.

The informants thereafter filed applications under RTI Act and came to know about the misappropriation by the accused. The accused thereafter threatened to kill the informants if they take recourse of law. Subsequently, the informants lodged a joint FIR about the occurrence before the Officer-in-charge of Laluk Police Station.

2. On receipt of F.I.R, the O/C of Laluk P.S registered a case being numbered as Laluk P.S Case No. 234/17. After investigation, I.O of the case submitted charge sheet against accused Md. Nazrul Islam for the offences punishable under section 409 of I.P.C read with Section 7 of the Essential Commodities Act. Copies of relevant documents were furnished to the accused person u/s 207 CrPC. Considering the relevant documents and hearing both the parties, charges were framed against the said accused for the offences punishable under section 409 of I.P.C read with Section 7 of the Essential Commodities Act. 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 five witnesses 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-

POINTS FOR DETERMINATION:

(i) Whether the accused person about 09 months prior to lodging of this case, in his capacity as the owner of fair price shop and a public servant, being entrusted with the BPL cards belonging to informants and also the rice sanctioned against those card, or having dominion over the BPL Card and the rice sanctioned against those card, dishonestly misappropriated or converted to his own use, the aforesaid cards and the rice sanctioned against those card, and thereby committed an offence punishable u/s 447 of IPC?

(ii) Whether the accused person about 09 months prior to the lodging of this case, in violation of the Assam Public Distribution Article Order 1982 of the Food & Civil Supplies department of the Government of Assam, with respect to sale,

distribution, consumption, stock of essential commodities in fair price shop, dishonestly kept the BPL Cards of informant and also the rice sanctioned against those cards, and thereby committed an offence punishable u/s 7 of the Essential Commodities Act?

DISCUSSION OF EVIDENCE, DECISION, AND REASONS THEREOF:

POINT NO.1, 2 & 3

5. For the sake of convenience, and as because point no.1 & 2 are interconnected, hence they are taken up herein together for discussion & decision. As regards the aforesaid points for determination, informants Musstt. Abida Sultana as PW1, Musstt. Jubeda Begum as PW2, and Musstt. Halma Khatun as PW3 in their respective evidence have stated that about one year back, they initially did not get the articles against their BPL cards but subsequently they have got all their entitlements. They have lodged this case out of misunderstanding. Similarly, informant Musstt. Sahera Khatun as PW4 and Musstt. Ajida Khatun as PW5 in their respective evidence in chief have stated that about two years back, they have an altercation with the accused with respect to sanction of certain articles from the fair price shop of accused due to which they have lodged an FIR against the accused.

6. The PW1, PW2, PW3, PW4 & PW5 have further stated that after lodging of the FIR, the matter involved in this case got settled amicably due to which they are not interested to proceed with this case any further. During their cross-examinations, the said witnesses have stated that they have no objection if the accused is acquitted.

7. 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.

8. On going through the evidence deposed by PW-1, PW2, PW3, PW4 & PW5 as narrated above, it is seen that at the time of occurrence, they allegedly did not get certain articles against their BPL Cards from the fair price shop of accused. However, there is nothing in the evidence of said witnesses which can show that the accused had dishonestly or intentionally withhold those articles, or that the accused had used those articles for his wrongful gain. In fact, the

PW1 in her cross-examination had specifically mentioned that she was not provided with the rice in time as the same was not supplied by the concerned department to the fair price shop of accused. This shows that there is no question of withholding the supply of rice by accused, or use of such rice by accused for his wrongful gain, as because the accused was not even supplied with rice by the concerned government department at the relevant time. In addition to that, it is confirmed by PW1, PW2 & PW3 that they subsequently got all their entitlements from the accused. Under such circumstances, it is clear that the evidence on record is in no way satisfactory to show that the accused had misappropriated any article as alleged. Hence, I find that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that the accused has committed the offence as alleged in the FIR and as quoted in the aforesaid points for determination.

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

ORDER

9. In view of the discussion made above and the decision 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 Md. Nazrul Islam has committed the offences punishable under section under section 409 of I.P.C read with Section 7 of the Essential Commodities Act as alleged, and as such, the above named accused person is acquitted of the charges under section under section 409 of I.P.C read with Section 7 of the Essential Commodities Act 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.

This judgment is given under my hand, and seal of this court on this the 01st day of April, 2021.

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 – Musstt. Abida Sultana

P.W. 2 – Musstt. Jubeda Begum

P.W. 3 – Musstt. Halima Khatun

P.W. 4 – Musstt. Sahera Khatun

P.W. 5 –Musstt. Ajida Khatun.

(D) **DEFENCE WITNESSES**

Nil

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur