

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE :
BONGAIGAON.**

GR CASE No. 753/2008.

U/Ss. 468/472 IPC.

State of Assam

-Vs-

Sri Upamanya Das.

Present: **Sri A.U.Ahmed, AJS**
Chief Judicial Magistrate,
Bongaigaon.

Name of the informant:

Sri Dharmeswar Pathak, SI of Police,
S/o Late Praneswar Pathak,
C/o Bongaigaon PS,
PS& Dist-Bongaigaon

Advocates appeared:

For the Prosecution: **Mr. T. Bhowmik, Ld. Assistant PP.**

For the Defence: **Mr. Ratan Debnath.**

Argument heard on: **30-09-2013.**

Judgment pronounced and delivered on: **01-10-2013.**

J U D G M E N T

1. The prosecution case in brief is that on 30.12.2008 at 1:30 Pm on the basis of secret information regarding forgery of documents and possessing of counterfeit seals by K.R Communication situated at AOC Road, Bongaigaon the informant along with staff and DSP (H.Q), Bongaigaon rushed to the PO and made search in the K.R Communication and seized some application forms with witness certificates and counterfeited seals. The witness certificates were signed by one Mohit Pathak, Assistant Engineer, Bongaigaon Division Irrigation but in fact there was no such person named Mohit Pathak working in as an Assistant

Engineer in Bongaigaon Division Irrigation. On the same day the informant

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lodged a written ejahar with Bongaigaon PS to that effect. On receipt of the written ejahar, Bongaigaon PS registered a criminal case Vide Bongaigaon PS Case No. 534/2008 U/Ss. 468/472 IPC. On completion of investigation the charge sheet was submitted U/Ss.468/472 IPC against the accused person. Hence the prosecution case has come up.

2. On completion of the appearance of the accused person, copy was supplied to him. Having very carefully gone through the submission of both sides as well as case diary I have found a prima-facie materials U/Ss.468/472 IPC and framed charge accordingly against them. The aforesaid charges are read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

3. During trial prosecution has examined as many as 6(six) prosecution witnesses in support of its case. The accused person has been examined under section 313 CrPC. Defence has examined none. The plea of defence is of total denial.

4. **-: POINT FOR DETERMINATION :-**

(a) Whether the accused person committed the offence U/Ss.468/427 IPC?

Gopi Krishna Prasad as PW3. PW1 has admitted in his cross-examination that he cannot say what were written in Ext1 and at the time seizing the seized articles were not shown to him. His evidence only shows that the police only took his signature on Ext1 and Ext2 and that he was not at all conversant with contents of Ext1 and Ext2. PW3 has clearly shows that the police took his signature on a blank

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paper. His evidence is totally silent that what was seized by Ext2. It has become crystal clear that PW1 and PW3 have not supported the prosecution case.

8. Ext1 shows that it was prepared in presence of Babu Khan and Anup Jaiswal. The prosecution has examined Babu Khan as PW2 and Anup Jaiswal as PW1. Evidence of PW1 and PW2 does not show what was seized by Ext1. Their evidence does not support the contents of Ext1. Evidence of PW4 and PW5 has not at all supported the prosecution case.

9. Can the evidence of PW1 be relied upon? A fact can be proved by solitary evidence. As per Indian Evidence Act emphasis is given on quality of evidence but not quantity of witness. PW1 is S.I. Dharmeswar Pathak who is the informant-cum-investigating officer. In this case preliminary and basic investigation of this case was done by PW1. He has stated in the testimony that on 30-12-2008. He was attached in Bongaigaon PS and on that that at 1 pm on secret information he came to know that there were forge seals and forge document regarding mobile connection in the

K.R. communication centre situated at A.O.C. Road, Bongaigaon. Thereafter as O/C was not present informing DSP Hear quarter over phone he along with staff rush to the PO. He in presence of witnesses made charge in the aforesaid centre and during charge three numbers of seals, two numbers of registers books and 17 number of duly filled up application form he seized there from. Ext1 is the said seizure list and Ext 1 (3) is the signature is the accused. Ext 1 for his signature M-Ext1 to M-Ext3 are the seized seals, M-Ext4 is the register of

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5.

prepaid detail of care communication centre M-Ext5 is the register of postpaid of the care communication. He also seized one seal from the room attached to care communication in back side on being shown by employee Babu Khan, vide Ext2 (3) his signature M-Ext6 is said seal. Thereafter he lodge a written ejahar Ext3 is his signature. The prosecution has not produced any document wherein seal seized by Ext2 was used. The prosecution also has not produced any document wherein some one signed as Mohit Pathak as Assistant Engineer Bongaigaon Irrigation Division. The prosecution has not be seized application forms which were seized by Ext1. I have very carefully gone through aforesaid case laws. I find also that there is a doubt in complains section 100 (4) of the Cr.P.C. in making search in the care communication centre. In view of discussion made above I find the evidence of PW6 not free from doubt.

10. In the result I find that the prosecution has failed to prove its case against the accused person beyond

all reasonable doubts. Hence on benefit of doubt the accused person is hereby accused form the charge levelled against him and let him he set at liberty. The bail bond stands cancelled. Let the seized articles be destroyed in due course of law. Accordingly this case is disposed of on contest.

11. The Judgment is pronounced and delivered in the open court on this **1st October, 2013** under my hand and seal of this Court.

(Sri A. U. Ahmed)
**Chief Judicial Magistrate,
BONGAIGAON.**

Dictated and corrected by me.....

(Sri A. U. Ahmed)
**Chief Judicial Magistrate,
BONGAIGAON.**
