

Assam Schedule VII, Form No. 132.

HIGH COURT FORM NO. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT.

District :- Bongaigaon.

IN THE COURT OF CIVIL JUDGE :::: BONGAIGAON.

**Present :- Smti M.C.Bordoloi,  
Civil Judge,  
Bongaigaon.**

**Thursday, the 21<sup>st</sup> day of December, 2017.**

**Money Suit No. 9 of 2013.**

1. Ziaul Islam Sarkar,  
S/o Late Sadeque Hussian Sarkar,  
R/o Bidya Para, Ward No. 3,  
Abhayapuri Town,  
P.S. & P.O. Abhayapuri,  
Dist - Bongaigaon,(Assam).

.....Plaintiff.

Versus

1. Md. Abdul Wahed,  
S/o Md. Sukur Ali,  
R/o vill – Piradhara (part-II),  
P.O. Piradhara (via Abhayapuri),  
P.S. Abhayapuri & Dist – Bongaigaon,(Assam).

..... Defendant.

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*M.C.B.*  
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(2)

The suit coming for final hearing on 30.10.2017, 16.12.2017

(I) Given date or dates

in the presence of

Mr. D.J. Mukherjee,

Advocate for plaintiff

Mr. Pulak Sarma

Advocate for Defendant

and having stood for consideration to this on the 21<sup>st</sup> day of December, 2017 the Court delivered the following Judgment:

**Money Suit 9/2013.**

**JUDGMENT :::**

1. This is a suit for damages for malicious prosecution.
2. The plaintiff's suit as set out in the plaint is given briefly hereinunder :
3. **Plaintiff's Case :**

That plaintiff Ziaul Islam working as a Gram Sevak in the Office of the Block Development Officer, Tapattary Block, Abhayapuri for over 15 years, have been serving the public at large with full dedication and as a recognition of his service he had also been promoted as an Extension Officer (Credit, I/C) and posted in the Office of the Block Development Officer,

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Tapattary Block in the year 2003. That the plaintiff and his family members have a reputation in society and are loved and respected by one and all.

That the defendant Md. Abdul Wahed resident of village Piradhara Part -II, under Abhayapuri Police Station approached the plaintiff having introduced himself as the leader of Piradhara Janakalyan Self Help Group for a loan of Rs. 3,00,000/- (Rs. Three lakhs) in the name of their Self Help Group, for setting up a business of diary farming, consequent to which the plaintiff required the defendant to fulfill the required norms and formalities for availing the loan facility while the defendant refused to fulfill the same and instead offered illegal gratification to the plaintiff for securing the loan and on refusal of the plaintiff to yield to the defendant's ill motive, the defendant with malafide intention lodged an 'ejahar' before the Officer In-charge Abhayapuri Police Station on 25.7.2003, consequent to which the police proceeded against plaintiff and one Md. Fazar Ali and at the instance of the defendant, submitted charge-sheet against the plaintiff and said Fazar Ali before the learned Sub-Divisional Judicial Magistrate, North Salmara Abhayapuri, who having taken cognizance of the offence proceeded with the trial of the case record after conclusion of trial vide judgment dated 8.6.2010 convicted the plaintiff U/S 420/409 IPC and sentenced him to undergo rigorous imprisonment for a period of 2 years and pay a fine of Rs. 5000/- (Rs. Five thousand) and in default to undergo rigorous imprisonment for a period of 3 months.

That the plaintiff being aggrieved by the aforesaid order of conviction impugned the same in appeal and the Hon'ble Appellate Court vide judgment dated 30.10.2012 set aside the order of conviction passed by the learned trial Court and acquitted the plaintiff / accused from the charges brought

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about against him. It is alleged that the defendant by lodging the FIR had caused irreparable loss, untold suffering, harassment and monetary loss to the plaintiff for his wrongful gain.

It is further averred that due to the initiation of the aforesaid proceeding, the plaintiff's reputation in society has been lowered and due to the visit of the police to his house on different occasions, people of the locality started avoiding the plaintiff and his family members which has caused severe mental pain and agony to the plaintiff which could not be measured in terms of money. That the plaintiff had to expend considerable money for securing anticipatory bail and for defending the criminal case thereby incurring expenditure to the tune of Rs. 75,00,000/- (Rs. Seventy five thousand). That the plaintiff being a differently abled person also had to spend huge money for his conveyance and advocate's fees and other incidental expenditure for attending the Court on the various dates for defending the criminal case plaintiff quantifying the costs of litigation and the damages against his mental and physical suffering at Rs. 5,00,000/- (Rs. Five lakhs) instituted the present suit for recovery of same alongwith costs of the suit.

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4.

**Defendant's Plea :**

The defendant entered appearance and filed his written statement raising the pleas of absence of cause of action, non-joinder of necessary party, non-maintainability etc. Besides the aforesaid pleas the defendant averred that the plaintiff is a person of harmful repute and that the plaintiff had misappropriated the loan amount in the name of Piradhara Janakalyan Self Help Group leading the defendant and one Nurul Islam to lodge the ejarah against the plaintiff. The defendant further averred that he

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was not instrumental in procuring the witnesses to incriminate the plaintiff in any manner as alleged and that the Hon'ble Appellate Court had set aside the order of conviction on the ground of non securing of sanction from the concerned authority before initiation of prosecution against the plaintiff, he being a public servant and the said order of acquittal cannot be construed in order as holding that plaintiff was prosecuted without reasonable and probable cause. Defendant denying the plaintiff's case averred that he had only informed the Officer In-charge of the Police Station and the concerned Investigating Officer had during investigation found sufficient materials to proceed and on completion of investigation submitted charge-sheet against the plaintiff.

The defendant further averred that he had lodged the ejahar not in his personal capacity but as the Secretary of the Self Help Group in reference as the plaintiff in order to fulfill his evil design had misappropriated the loan sanctioned in the name of the defendant Self Help Group. It is alleged that the plaintiff after taking signature in blank papers delivered only 67,500 @ of Rs. 7,500 per member and the defendant suspecting the activities of the plaintiff approached the BDO informing the matter of misappropriation of the sanctioned loan amount and the concerned SDO (Civil) North Salmara, Abhayapuri, then sealed the almirah requiring the refund of the entire amount to the BDO and initiated a departmental proceeding against the plaintiff. The defendant accordingly prays for dismissal of the plaintiff's suit with costs.

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5. Upon perusal of pleadings, vide order dated 28.4.2014, one of my learned predecessor-in-chair framed the following issues for adjudication.

**I S S U E S**

**(i) Whether there is any cause of action for the suit ?**

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*(ii) Whether the defendant lodged a false FIR with Abhayapuri Police Station on 25.7.2003 ?*

*(iii) Whether the plaintiff as a result of such false case against him had to lose his reputation and dignity in the eyes of public ?*

*(iv) Whether the plaintiff suffered monetary loss during the period of trial he faced as a result of false case ?*

*(v) Whether the plaintiff is entitled to get a decree as prayed for ?*

*(vii) To what relief, if any, the parties are entitled ?*

6. Thereafter again vide order dated 28.7.2015 two numbers of additional issues were framed which are given hereinunder :

**ADDITIONAL ISSUES**

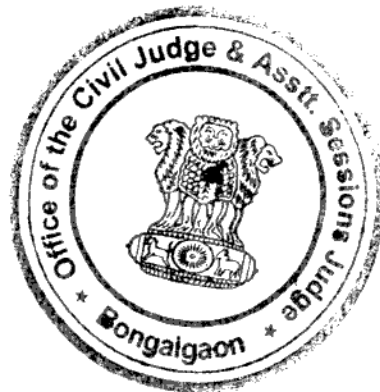
*1) Whether the defendant in prosecuting the plaintiff had acted without reasonable and probable cause, as alleged ?*

*2) Whether the defendant was actuated by malice in prosecuting the plaintiff ?*

Again pursuant to a petition of the defendant, vide order dated 20.1.2017 another additional issue was framed which is given below.

**ADDITIONAL ISSUE NO. 3**

*1) Whether the suit is maintainable ?*



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7. Both sides adduced evidence. Plaintiff in order to prove his case examined 5 number of witnesses and exhibited some documents while the defendant examined only 2 witnesses. Both sides cross-examined each others witnesses.

8. **Arguments :**

Heard the arguments advanced by the learned counsels of both sides.

8.(i) Learned counsel for the plaintiff submits that the defendant with evil intention and malice lodged the ejahar and set the criminal law into motion against the plaintiff causing much mental harassment and financial loss to the plaintiff. Learned counsel submits that the plaintiff had been acquitted in the criminal case and therefore for the loss reputation in society owing to the criminal action against the plaintiff and also for the financial loss incurred by him while defending the criminal case and also in impugning the order of conviction in the Appellate Court, Plaintiff had to expend considerable sum of money, which he seeks recovery from the defendant. Learned counsel submits that the suit ought to be decreed for recovery of damages to the tune of Rs. 5,00,000/- (Rs. Five lakhs) alongwith costs of the suit.

8(ii). Controverting the above submissions, learned counsel for the defendant submits that a suit for malicious prosecution succeeds only when plaintiff successfully proves the following essential ingredients viz:

1. That he was prosecuted by the defendant.
2. The prosecution was instituted without any reasonable and probable cause.

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3. The defendant acted maliciously and not with a mere intention of carrying the law into effect.

4. The proceedings complained of terminated in favour of the present plaintiff.

5. Plaintiff suffered damage as a result of the prosecution.

Learned counsel submits that plaintiff could not disprove the fact that the defendant had lodged the ejahar against him with reasonable and probable cause. Learned counsel further submits that though the criminal proceeding terminated in acquittal yet it was only on technical ground that the plaintiff was given the benefit of doubt and same cannot be inferred that plaintiff had not committed any misdoings. Learned counsel prays for dismissal of the plaintiff's suit with costs.

9. Heard. Perused the case record.

10. My decision on the above issues along with reasons is given hereinunder:

**Discussions, Decisions and Reasons Therefor:**

11. **Issue No. 1 :**

Issue No. 1 relates to the question of presence of cause of action for the suit.

Plaintiff has instituted the present suit for damages alleging malicious prosecution by the defendant.

The defendant, on the other hand, denying the plaintiff's case averred that he had lodged the ejahar dated 20.9.2003 alongwith one Nurul Islam as the Secretary of Piradhara Janakalyan Self-Help Group, in the interest of the said Self-Help Group as the plaintiff and his associate Fazar Ali had misappropriated loan amount of Rs.3,00,000/- (Rs. Three lakhs) sanctioned in the name of their self-help group and had only given Rs.67,500/- (Rs. Sixty seven

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thousand five hundred) to the members of the group. The defendant averred that he had only lodged the ejahar learning about the alleged act of misappropriation of money and he has not had any evil design or malafide as alleged by the plaintiff. The defendant denied having lodged the ejahar falsely and denied further that the plaintiff was entitled to damages.

The rival claims and contentions of the parties discloses a cause of action for the suit.

Whether the plaintiff succeeds in establishing his cause of action or not will be addressed in the length of the judgment.

The issue is decided in the affirmative in favour of the plaintiff.

**Issue Nos. 2, 3 and Additional Issue Nos. 1 and 2 :**

The four issues viz. Issue No. 2, Issue No. 3, Additional issue no. 1 and Additional issue no. 2 being inter-twined are addressed together for the sake of brevity and to avoid repetition in the marshalling of evidence.

**Issue No. 2** relates to the question whether the defendant lodged a false FIR with Abhayapuri Police Station on 25.7.2013.

and **Issue No. 3** relates to the question whether the plaintiff as a result of such false case against him had to lose his reputation and dignity in the eyes of public

Again **Additional Issue No. 1** relates to the question whether the defendant in prosecuting the plaintiff had acted without reasonable and probable cause ?

While **Additional Issue No. 2** relates to the question whether the defendant was actuated by malice in prosecuting the plaintiff.

To address the issues, the evidence on record is visited.

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Plaintiff / PW1 in his evidence-in-affidavit averred that the defendant lodged an ejahar with the Officer-in-charge Abhayapuri Police Station against him and one Fazar Ali alleging mis-appropriation of funds being sanctioned to one Self-Help Group namely Piradhara Janakalyan Self-Help Group. PW1 averred that the defendant's act of filing a criminal case against him was with ill motive and malafide intention. PW1 in support of his case Ext 1 being the certified copy of FIR of Abhayapuri Police Station Case No. 109/03, Ext 2 being the certified copy of ejahar submitted by defendant, Ext 3 certified copy of charge-sheet, Ext 4 being the forwarding report.

In his cross-examination PW1 disclosed that the Secretary of Piradhara Janakalyan Self-Help Group comprising of 10 members had lodged the case for the said Self-Help Group though the Self-Help Group was not registered.

PW2's evidence-in-affidavit was a replica of that PW1. PW2 in her cross-examination disclosed that Piradhara Janakalyan Self-Help Group's Secretary Abdul Wahed have lodged a case against her husband.

Now perusal of the Ext 1 which is the certified copy of the 'proforma' of the first information report, discloses that the name of the informant was Abdul Wahed and the Ext 2 the certified copy of 'ejahar' discloses the lodging of the ejahar by Abdul Wahed in his capacity of Secretary Janakalyan Got Piradhara Part- II and one Nurul Islam. Again Ext 3 discloses that charge-sheet has been led against one Fazar Ali and the plaintiff and the informant has been shown as a witness therein in the capacity of the informant.

Further perusal of Ext 4 which is the forwarding report and Ext 5 which is the certified copy of the judgment passed by the learned Sub-Divisional Judicial Magistrate (M), North Salmara Abhayapuri then,

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discloses that accused Ziaul Islam Sarkar and Fazar Ali were found guilty and were convicted under relevant provisions of law and sentenced to under go imprisonment alongwith imposition of fine.

Ext 7 which is the certified copy of the judgment in Criminal Appeal No. 23 (2) / 2010 discloses that the judgment of conviction passed by the learned Sub-Divisional Judicial Magistrate in GR Case No. 156/03 was appealed against and vide the said judgment impugned judgment of conviction was set aside on the ground that the prosecution has failed to prove the entrustment of any property upon the appellants and also for the want of prosecution sanction for initiation of prosecution against appellant No. 1. **In fact, the appeal was allowed holding that prosecution had failed to prove the case against the accused beyond shadow of doubt.** But perusal of the Ext 7 nowhere discloses that the appellate Court being the Court of Hon'ble Additional Sessions Judge (FTC) Bongaigaon, arrived at a finding that the allegation made were false. Rather the Hon'ble Court had set aside the order of conviction **only on the ground of the inability of the prosecution to prove the charge.**

**The failure of the prosecution to prove any charge cannot be inferred as the charge being based on a false information.**

DW1/the defendant and DW2/Nurul Islam in their respective cross-examination maintained that their Got 'Piradhara Janakalyan Got' had a membership of 10 people and that they had opened a bank account in the name of the said group and that the pass book of the same is with the plaintiff. Both the Dws disclosed that a loan of Rs. 3,00,000/- (Rs. Three lakhs) had been sanctioned in the name of their group that is to the tune of Rs. 30,000/- (Rs. Thirty thousand) only per member. However, both the Dws admitted that

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they had not submitted any documents pertaining to the sanction of the loan or the bank account, or the pass book in the instant case.

DW1 also disclosed in his cross-examination that he is ignorant if the bank officials and the veterinary officials had sanctioned the loan amount after inspection of the cattle. DW1 denied the plaintiff's suggestion that he had required one Jahanuddin that his cattle would be inspected by the bank officials and the veterinary officials and that he would give Rs. 200/- (Rs. Two hundred) only per cow to said Jahanuddin. DW1 denied further the suggestion that he had lodged the case against the plaintiff as he was unable to misappropriate the money falsely.

The defendant side failed to exhibit any document in support of their contention that a loan has been sanctioned to them.

It is an admitted fact that Ziaul Islam Sarkar was a official working at Tapattary Block in the capacity of a 'Gram Sevak' aiding persons for securing loan for Self-Help Group.

That the defendant was a member and Secretary of 'Piradhara Self-Help Group' is not disputed. Though the plaintiff had raised the question of registration of the said Group but the existence of **the Self-Help Group as a entity is not in question**. Admittedly no loan sanction order is exhibited by the defendant but that they are Group. From the perusal of the certified copy of judgment of Hon'ble Appellate Court that is Ext 7 it is seen that PW5 had admitted the sanction of the loan amount of Rs. 3,00,000/- (Rs. Three lakhs). **Therefore, the question of sanction of loan amount is not in dispute but as held by the Hon'ble Appellate Court the evidence to show the withdrawl of the sanctioned amount by the plaintiff is lacking**. Both the Dws remained firm in their evidence that their loan sanctioned amount had been

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mis-appropriated, though they failed to prove the same. Hence, in the above circumstances, it cannot be said that the defendant had lodged the case against the plaintiff falsely.

Again PW2 in her cross-examination disclosed that the defendant was not having bitter relationship with her husband. The plaintiff failed to prove any grudge held by the defendant against the plaintiff for lodging a false case against him.

In fact, Plaintiff failed to allege and prove affirmatively the non-existence of reasonable and probable cause.

Now it is to be seen whether the defendant' act was actuated by malice.

**The Case of Gaya Prasad Vs. Bhagat Singh** reported in ILR (1908)30All 525 (PC), would be apposite to be referred herein. The Privy Council held therein that: if a person does nothing beyond giving information to the police which he considers to be true, an action for damages for malicious prosecution is not maintainable against him. On the other hand, besides setting the law in motion, if he takes an active part in the conduct of the prosecution, he may be regarded as the real prosecutor, although the actual prosecution is by the police and he would be rendered him liable for damages.

In fact, a person who instigated false and malicious prosecution is thus responsible for it and is liable for damages.

It must be understood that to prosecute is to set the law in motion and the law is only set in motion by an appeal to some persons clothed with judicial authority in regard to the matter in question. It is not sufficient that the defendant to only set the law in motion against the plaintiff, in the case of malicious prosecution. **The person liable is to prosecute and instigate the**

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**prosecution against the person against whom proceeding is due.**

In fact, instigating a prosecution is however, to be distinguished from the act of merely giving information on the strength of which a prosecution is commenced by some one in the exercise of his own discretion.

Therefore, in the instant case it cannot be said that the defendant who was simply a listed witness had instigated prosecution with malafide. Plaintiff failed to show that the FIR against the plaintiff was actuated by malice. The plaintiff could not prove that the defendant had taken extra ordinary measures to ensure that the plaintiff would be convicted.

Again the evidence of PW1, PW2 and PW3 when scrutinized discloses that though the Pws in their evidence-in-affidavit stated that the plaintiff suffered loss of prestige and reputation in society but no evidence had been adduced by them to show as to what was the stature the plaintiff enjoyed in society at the relevant time. PW3 in his cross-examination disclosed that he is ignorant as to when the alleged occurrence took place nor he could say when police visited the house of the plaintiff. He confirmed the fact that plaintiff is not talking terms with the defendant. Similarly, PW5 also disclosed in his cross-examination that he is ignorant as to when the police visited the house of the plaintiff. Though plaintiff averred that due to the visit of the police to his house his neighbour looked down upon him. But the plaintiff's witness who failed to even rememeber when police ever visited plaintiff's house would not bar the plaintiff from their society as alleged. The alleged boycott of the plaintiff by his neighbours causing his loss of reputation is then not probalised. In fact, plaintiff failed to show that he had suffered loss of his alleged reputation in society and dignity in eyes of the public.

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The issues are decided in the negative against the plaintiff.

**Additional Issue No. 3 :**

Additional Issue No. 3 relates to the question of the maintainability of the suit.

Plaintiff had instituted the suit for malicious prosecution claiming damages against the defendant. But as discussed in Issue Nos. 2, 3 and Additional Issue Nos. 1 and 2, I am constrained to hold that the plaintiff having failed to prove that **defendant had lodged the suit in his personal capacity** and that defendant was actuated by malice against the plaintiff in lodging the FIR, no action for malicious prosecution would therefore lie. The suit is not maintainable therefore.

The issue is decided in the negative against the plaintiff.

**Issue No. 4 :**

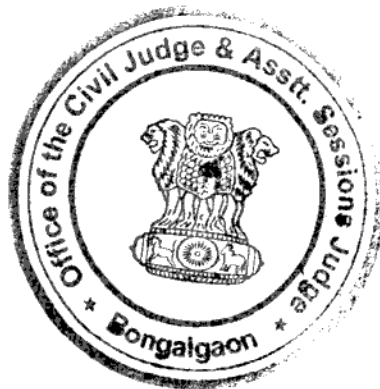
Issue No. 4 relates to the question whether the plaintiff suffered mental loss during the period of trial if faced as a result of false case.

It is the plaintiff's pleaded case that he suffered mentally during the period when he faced trial. Plaintiff as PW1 reiterated his contentions in his evidence-in-affidavit. PW1 had quantified the costs incurred by him defending the criminal case and appeal to the tune of Rs. 5,00,000/- (Rs. Five lakhs). In support of his case PW1 exhibited the certified copy of FIR, Ext 2 the ejahar, Ext 7 certified copy of judgment passed in Criminal Appeal No. 23(2)/10, Ext 9 being the certified copy of the Hon'ble Gauhati High Court.

Perusal of he exhibited documents nowhere discloses as to what was the actual costs incurred by plaintiff in defending the cases. No money receipt of the advocate engaged by him in the said cases has been

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exhibited. In fact plaintiff failed to show as to what was the expense incurred towards his defending the criminal cases. **Further that the said criminal action lodged was a false one also could not be proved as has been disclosed in Issue No. 2.**

Accordingly, the issue is decided in the negative against the plaintiff.

**Issue Nos. 5 and 6 :**

Issue No. 5 relates to the question whether the plaintiff is entitled to get a decree as prayed for.

Issue No. 6 relates to the question what reliefs the parties are entitled to.

The two issues being inter-related are addressed together for the sake of convenience.

In view of the discussions and decisions arrived at in Issue Nos. 1, 2, 3, 4 and Additional Issue Nos. 1, 2 and 3, I am constrained to hold that the suit of the plaintiff not being maintainable, the plaintiff is not entitled to a decree as prayed for.

The issues are decided in the negative against the plaintiff.

**ORDER**

15. In the light of the foregoing discussions, the plaintiff's suit is dismissed on contest with costs.

Prepare a decree accordingly.

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Given under my hand and seal of this Court on the 21<sup>st</sup>  
day of December, 2017.

*M.C. Bordoloi*  
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*M.C. Bordoloi*  
21/12/17  
(Smti .M.C.Bordoloi)  
Civil Judge  
Bongaigaon **Civil Judge,  
Bongaigaon**

Dictated and corrected by me

*M.C. Bordoloi*  
21/12/17  
(Smti .M.C.Bordoloi)  
Civil Judge  
Bongaigaon. **Civil Judge,  
Bongaigaon**



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APPENDIX

Plaintiff's witness:

PW1 – Ziaul Islam Sarkar  
PW2 – Mustt. Amina Begum  
PW3 – Smt. Shanti Rabi Das  
PW4 – Jabina Yasmin  
PW5 – Babidul Islam

Plaintiff's exhibits:

Ext 1 - Certified copy of FIR  
Ext 2 – Certified copy of Ejahar  
Ext 3 – Certified copy of Chargesheet  
Ext 4 - Certified copy of the forwarding reported  
Ext 5 - Certified copy of the Judgment  
Ext 6 – Suspension order from service  
Ext 7 – certified copy of the Judgment dtd 30.10.2012  
Ext 8 - certified copy of order dated 30.10.2012  
Ext 9 – certified copy of order passed by Hon'ble High Court

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Defendant's witness:

DW 1 – Md. Abdul Wahed  
DW 2 – Nurul Islam

Defendant's exhibits:

Nil

Court witness:

Nil

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