

DISTRICT: BONGAIGAON.
IN THE COURT OF MUNSIFF CUM JUDICIAL MAGISTRATE FIRST CLASS,
BONGAIGAON

G.R. CASE NO. 388/2011 UNDER SECTIONS 420/468 IPC.

MD. MAJED ALI GAJI,
SON OF LATE KASEM ALI,
RESIDENT OF VILLAGE: NO. 2 DHUPURI, PS: MANIKPUR
DISTRICT: BONGAIGAON, ASSAM

.....**ACCUSED PERSON**
-VERSUS-

STATE OF ASSAM –

.....**PROSECUTOR**

PRESENT: UTTAM CHETRI, MUNSIFF CUM JUDICIAL MAGISTRATE FIRST
CLASS, BONGAIGAON

ADVOCATE FOR THE PROSECUTION:	APP, AK DEKA
ADVOCATE FOR THE ACCUSED PERSON:	ADV. S. SARKAR
CHARGE FRAMED ON:	29.11.2016
EVIDENCE RECORDED ON:	07.01.2017, 25.01.2017, 23.02.2017, 22.03.2017
ARGUMENT HEARD ON:	29.03.2017
JUDGMENT DELIVERED ON:	12.04.2017

JUDGMENT

1. The prosecution case in a nutshell is that the informant Rajen Talukdar, SI, Manikpur Police Station lodged an ejarah on 05.08.2011 before the Manikpur Police Station stating inter alia that on 05.08.2011 on receiving information that Md. Majed Ali Gaji, resident of 2 No. Dhupuri under Manikpur Police Station was selling forged certificates in respect of High School and offices to the public, he entered the information in General Diary as GDE No. 96 dated 05.08.2011 and went to the house of Md. Majed Ali Gaji on 05.08.2011 at about 6 AM in the morning, searched his house and found many forged documents which he seized as per the seizure list.

2. It is pertinent to mention herein that SI, Rajen Talukdar who was Officer in Charge of the Manikpur Police Station registered the FIR lodged by him as Manikpur Police Station Case No. 167/2011 under Sections 120-B/420/468 IPC and entrusted Kulesh Chakrabarty to investigate into the matter. On completion of the investigation, SI, Kulesh Chakrabarty submitted the case record to SI, Rajen Talukdar who submitted charge-sheet against the accused person Md. Majed Ali Gaji under Sections 420/468 IPC.

3. The accused person entered his appearance in response to the process issued. Copies of the relevant documents were furnished to the accused person in accordance with Section 207 Criminal Procedure Code, 1973. Formal charges were, accordingly, framed against the accused person Md. Majed Ali Gaji under Sections 420/468 IPC and read over and explained to the accused person to whom he pleaded not guilty and claimed to be tried.

4. During trial, the prosecution examined 6 (six) witnesses and exhibited 5 (five) documents after which the prosecution evidence was closed. The statement of the accused person was, accordingly, recorded in a separate sheet of paper as mandated by Section 313 Criminal Procedure Code, 1973 wherein the accused person denied the entire allegations made against him. Defence did not adduce any evidence.

5. Upon hearing both the parties and on perusal of the case record, the following points for determination have been formulated by this Court.

- i)** Whether the accused person Md. Majed Ali Gaji cheated the public by dishonestly inducing them to deliver the property belonging to them or any part of valuable security or anything signed or sealed which is capable of being converted into valuable security and, thereby, committed an offence punishable under Section 420 IPC?
- ii)** Whether the accused person forged certain documents such as certificates issued in the name of Gaon Panchayat, forged certificates issued by the DC, Barpeta etc. intending that it shall be used for the purpose of cheating and, thereby, committed an offence punishable under Section 468 IPC?

6. I have heard the learned counsel for both sides and have gone through the evidence on record which is outlined below.

EVIDENCE

7. PW1 in his examination in chief had stated that he does not know the informant; that the accused person is his father; that he does not know anything about the incident; that the police had taken his signature in a blank page.

8. PW1 in his cross-examination had stated that the police took his signature in a blank page in the Police Station; that he does not know why the police had taken his signature; that the police had not taken his statement.

9. PW2 in his examination in chief had stated that he does not know the informant but knows the accused person who is standing at the dock; that he does not know anything about the incident. Defence declined to cross-examine PW2.

10. PW3 in his examination in chief had stated that he knows both the informant and the accused person who is standing at the dock; that he does not know anything about the incident. Defence declined to cross-examine PW3.

11. PW4 in his examination in chief had stated that he does not know the informant but knows the accused person who is standing at the dock; that he does not know anything about the incident. Defence declined to cross-examine PW4.

12. PW5 in his examination in chief had stated that on 05.08.2011 when he was posted as O/C, Manikpur he received an information from Sri Ram Charan Barman, DSP Headquarter, Bongaigaon on the same day at about 6 AM in the morning that some persons are selling forged certificates; that he, accordingly, went to Dhupuri along with Sri Ram Charan Barman and searched the house of Majed Ali Gaji and found some forged certificates issued in the name of Gaon Panchayat, forged certificates issued by the DC, Barpeta and many other forged certificates; that he, accordingly, seized all the aforesaid documents in the presence of witnesses and brought the accused Majed Ali Gaji to Manikpur Police Station along with

the seized documents; that he also filed an 'ejahar' in respect of the aforesaid incident and entrusted SI Kulesh Chakrabarty to investigate the case; that Exhibit 1 is the 'ejahar' and Exhibit 1 (1) is his signature; that Exhibit 2 is the GD extract copy and Exhibit 2 (1) is his signature; that Exhibit 3 is the seizure list and Exhibit 3 (1) is his signature.

13. PW5 in his cross-examination had stated that he went to Majed Ali Gaji's house at 6 AM in the morning along with 6-7 staffs of Manikpur Police Station; that none of the staffs who were present with him were made seizure witness in the present case; that he had filed 'ejahar', seized the documents and filed chargesheet in the present case; that at the time of filing the 'ejahar' he was working as O/C, Manikpur; that he had addressed the O/C, Manikpur in the ejahar; that he had not seen the seized articles in the Court today; that he had made GD entry in respect of the present case; that there is over writing and white marks in the extract copy of the GD Entry and no initial has been marked in the aforesaid over writing; that the Investigating Officer has not taken his statement in the present case. PW5 had denied the suggestion that no forged documents were recovered from the house of the accused person. PW5 had also denied the suggesting that the accused has been falsely implicated in the present case.

14. PW6 in his examination in chief had stated that on 05.07.2011, SI, Rajendra Talukdar lodged an FIR against the accused person and registered the same as Manikpur Police Station Case No. 167/11 under Sections 120(B)/420/468 IPC and entrusted him to investigate the case; that he, accordingly, recorded the statement of the witnesses and handed over the case record to the O/C, Rajen Talukdar on completion of the investigation; that on 30.06.2013 Rajendra Talukdar submitted charge sheet in the present case against the accused Majed Ali under Sections 420/468 IPC; that Exhibit 4 is the memo of arrest and Exhibit 4 (1) is his signature; that Exhibit 5 is the charge sheet and Exhibit 5 (1) is the signature of Rajendra Talukdar, O/C, Manikpur Police Station.

15. PW6 in his cross-examination had stated that he did not go to the place of occurrence on being entrusted to investigate the case; that he had investigated the case from the Police Station as per the direction of O/C, Rajendra Talukdar; that he does not know what was seized by O/C, Rajendra Talukdar; that O/C, Rajendra Talukdar had submitted charge sheet after taking the case from him; that he had not taken the statement of O/C, Rajendra Talukdar. PW6 had denied the suggestion that he had not

taken the statement of witnesses as mentioned in the case record. PW6 had also denied the suggestion that he had not properly investigated the present case.

APPRECIATION OF EVIDENCE

16. The informant Rajen Talukdar, SI, Manikpur Police Station who had also registered the FIR and had filed charge-sheet in the present case had alleged in his FIR dated 05.08.2011 that on receiving the information that Md. Majed Ali Gaji, resident of 2 No. Dhupuri under Manikpur Police Station was selling forged certificates in respect of High School and offices to the public, he entered the information in the General Diary as GDE No. 96 dated 05.08.2011 and went to the house of Md. Majed Ali Gaji on 05.08.2011 at about 6 AM in the morning, searched his house and found many forged documents which he seized as per the seizure list.

17. To substantiate the aforesaid allegation, the prosecution had examined 6 witnesses i.e., PW1, PW2, PW3, PW4, PW5 and PW6 (Investigating Officer). PW1, PW2, PW3 and PW4 had stated in their evidence that they don't know anything about the incident. PW6 who is the investigating officer in the present case had stated in his cross-examination that ***'he did not go to the place of occurrence on being entrusted to investigate the case; that he had investigated the case from the Police Station as per the direction of O/C, Rajendra Talukdar; that he does not know what was seized by O/C, Rajendra Talukdar; that O/C, Rajendra Talukdar had submitted charge sheet after taking the case from him; that he had not taken the statement of O/C, Rajendra Talukdar'***.

18. Perusal of the record reveals that there are no materials on record to show that the forged documents such as certificates issued in the name of Gaon Panchayat, forged certificates issued by the DC, Barpeta etc. were seized from the possession of the accused person as alleged in the FIR. In fact none of the independent witnesses including the Investigating Officer had corroborated the allegation made in the FIR in respect of seizure of the forged documents allegedly made from the house of the accused. Thus non-corroboration of the alleged seizure made from the house of the accused person creates a doubt on the prosecution story that the forged documents were seized from the house of the accused as alleged and the accused person deserves benefit of doubt in this respect. Further there are also no materials on record to show that the accused person Md. Majed Ali

Gaji cheated the public by dishonestly inducing them to deliver the property belonging to them or any part of valuable security or anything signed or sealed which is capable of being converted into valuable security or forged certain documents such as certificates issued in the name of Gaon Panchayat, forged certificates issued by the DC, Barpeta etc. intending that it shall be used for the purpose of cheating so as to sustain his conviction under Section 420/468 IPC.

19. As such, I am inclined to pronounce the accused clear of all imputations. Accordingly it is held that the prosecution has failed to bring home the charges under Sections 420/468 IPC against the accused. I find no ground for holding the accused guilty of committing the alleged offences. As such, both the points for determination are answered in the negative in favour of the accused.

ORDER

In view of the discussion made above and the decisions reached in the foregoing points for determination, it is held that the prosecution has failed to prove beyond reasonable doubt that the accused Md. Majed Ali Gaji had committed the offence punishable under Sections 420/468 IPC. As such, the accused is acquitted of the charges under Sections 420/468. The bail bond of the accused and his surety shall remain in force for six months from today in compliance with Sec. 437-A, Criminal Procedure Code. Case is disposed of on contest. Seized articles be destroyed in due course of time as per law.

Given under my hand and the seal of this court on this 12th day of April, 2017 at Bongaigaon.

(Uttam Chetri)
Munsiff cum Judicial
Magistrate First Class,
Bongaigaon

APPENDIX

PROSECUTION EXHIBITS:

1. Exhibit 1- FIR dated 05.08.2011
2. Exhibit 2- Extract copy of GDE No. 96 dated 05.08.2011
3. Exhibit 3- Seizure list dated 05.08.2011
4. Exhibit 4- Memo or Arrest dated 05.08.2011
5. Exhibit 5- Charge-sheet dated 30.06.2013

DEFENCE EXHIBITS:

NONE

PROSECUTION WITNESSES:

1. PW1- Rafiqul Ali @ Gazi @Babu
2. PW2- Yusuf Ali Seikh
3. PW3- Aminul Haque Gazi
4. PW4- Idrish Ali Gazi
5. PW5- Rajendra Talukdar
6. PW6- Rajendra Talukdar

DEFENCE WITNESS:

NONE

(Uttam Chetri)
Munsiff cum Judicial
Magistrate First Class,
Bongaigaon