

**IN THE COURT OF JUDICIAL MAGISTRATE CLASS I BONGAIGAON**

**PRESENT: SYEDA FARIDA AFZAL ZINNAT, AJS**

**G.R. CASE 45/2010**

**U/S 420 I.P.C read with section 4, The Prize Chits and Money Circulation Schemes (Banning) Act, 1978**

**STATE OF ASSAM VERSUS BISWAJIT MUCHAHARY**

**FOR THE PROSECUTION: Sri. R. C. Mahato, Asst. P.P**

**FOR THE ACCUSED: Mr. B. Choudhury, Mr. Sarkar Advocates**

**EVIDENCE RECORDED ON: 12/12/2012, 19/2/2013, 18/3/2013, 15/5/2013, 22/8/2013, 16/9/2013, 9/5/2014,**

**ARGUMENTS HEARD ON : 29/8/2014, 12/9/2014**

**JUDGMENT DELIVERED ON: 26/9/2014**

**JUDGMENT**

1. On 31/1/2010 S.I. Johir Uddin Mullah of Dhaligaon P.S lodged a First Information Report i.e. Exhibit 1, alleging that he enquired into the Dhaligaon P.S G.D Entry No. 1022 dated 31/1/2010 and during the enquiry it came to light that an office under the name and style of Quantum Funds Online was being run unauthorizedly by one Biswajit Muchahary where huge amount of cash transaction by public deposit was going on since last one year without any valid license or permission from competent authority and that Biswajit Muchahary was cheating the public by engaging agents and promising huge returns on any deposit and by taking cash without giving any receipts or promissory notes.
2. Upon receiving the FIR it was registered as Dhaligaon P.S Case No. 12/2010 U/S 420 IPC read

with Section 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and after investigation police submitted charge sheet U/S 420 IPC read with Section 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 against accused Biswajit Muchahary.

3. Cognizance was taken by learned C.J.M, Bongaigaon and the case was transferred to the Court of Learned S.D.J.M (S), Bongaigaon for disposal. As the Court of learned S.D.J.M (S), Bongaigaon was lying vacant the case was further transferred to this Court for disposal.

4. The accused person appeared on receiving summons and copies of relevant documents were furnished to him in compliance with section 207 of the Code of Criminal Procedure, 1973. After hearing both sides and perusing materials available on record a prima facie case was found to be well established u/s 420 IPC read with Section 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 against the accused person above named. Charge u/s 420 IPC read with Section 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 were framed which were read over to the accused to which he pleaded not guilty and claimed to be tried.

5. Prosecution adduced the evidences of nine witnesses and exhibited materials. At the close of prosecution evidence the accused person was examined u/s 313 Cr.P.C. He denied all the allegations levelled against him but declined to adduce any evidence.

6. I have heard oral argument addressed by Learned Counsel for both parties.

7. In order to determine whether the accused person is liable as charged I framed the following points for determination:

I. Whether the accused person in the year 2009 at Chapaguri, promoted or conducted any prize chit or money circulation scheme or enrolled as a member to any such chit or scheme, or participated in it otherwise, or received or remitted any money in pursuance of such chit or scheme and thereby committed an offence punishable under section 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978?

II. Whether the accused person on the same time and place, cheated the public and thereby dishonestly induced them to deliver money to him and thereby committed an offence punishable U/S 420 IPC?

**DISCUSSION DECISION AND REASONS THEREOF**

8. PW1 (S.I Johir Uddin Mullah) is the informant. He stated that on 31/1/2010 he was working as second officer at Dhaligaon P.S and on that day the Officer-in-Charge entrusted him with the enquiry on the basis of G.D. Entry regarding the information that Quantum Funds Online was being run unauthorizedly at Chapaguri. He stated that he did not find Biswajit Muchahary when he went to investigate but he found an office staff Dharanidhar Muchahary, who, upon enquiry, said that the office was running since last year and a half and huge amount of cash was collected from public without giving any receipts. According to PW1 Quantum Funds Online was being run without any permission of the Reserve Bank of India. He lodged

the F.I.R on the same day and identified the F.I.R as Exhibit 1 and his signature as Exhibit 1(1).

9. PW1 was cross examined extensively by the learned defence counsel Mr. B. Choudhury. In his cross examination PW1 stated that two days before he went to the office of Quantum Funds Online a murder along with dacoity and assault took place there in which the accused Biswajit Muchahary was severely injured and was admitted at Lower Assam Hospital and that the victim of the murder was the owner of the building where the office of Quantum Funds Online was situated. He admitted that he did not collect any information or any document which links Biswajit Muchahary to Quantum Funds Online. He also admitted that Dhaligaon P.S G.D Entry No. 1022 dated 31/1/2010 was the First Information and not Exhibit 1 but the extract copy of the G.D. Entry was not submitted along with the Exhibit 1.

10. PW2 Daithun Daimary stated that the office of Quantum Funds Online was situated near his home and He knows that the office was sealed by police. He stated that police broke open the seal of the office and seized some documents in his presence. He identified the seizure lists as Exhibit 2 and 3 and his signature as Exhibit 2(1) and 3(1).

11. PW2 stated during his cross examination that he does not know when police broke open the seal and that he cannot say exactly what articles were seized by police.

12. PW3 Jwnglary Daimary stated that she worked in the Computer Section of Quantum Funds Online in the year 2009. That, she used to create online i/d of customers when they deposited money and the money invested by customer were converted to dollars and the interest was returned in dollars which were returned to customers and that the transactions

took place via Western Union Money Transfer. According to PW3 the website closed in the year 2010. She stated that it was mentioned in the website that it was a website of the United States of America and that she does not know where the head office was situated.

13. During cross examination she stated that Biswajit Muchahary is not the proprietor.

14. PW4 Ganga Basumatary stated in her evidence that she used to maintain the Case Register at the office of Quantum Funds Online at Chapaguri where the accused appointed her. She stated that when customer deposited money she used to receive and enter into the register and that after the dacoity the office was closed.

15. PW5 Biraj Mohan Basumatary stated that on 7/9/2009 he deposited Rs. 51,000/- at Quantum Funds Online. That, he gave the money to Binay Basumatary who was an agent of Quantum Funds Online and Biswajit Muchahary was the owner of Quantum Funds Online. That, he deposited Rs. 50,000/- in the name of his wife Degrw Basumatary, Rs. 15,000/- in the name of his daughter Jyotsna Basumatary and Rs. 30,000/- in another account and he received back Rs. 90,000/- upon this money from Quantum Funds Online. That, Binay Basumatary told him that the money will grow three times in three months. That, no receipts were issued against the deposits by Quantum Funds Online. That, on 31/1/2010 he went to the office of Quantum Funds Online and found that the office was locked and that later on he came to that the organisation was fraud.

16. During cross examination PW5 stated that Quantum Funds Online is an American Company and he does not know what kind of business the company

carries on. He could not say the dates on which he deposited money in the names of his wife and daughter and he also could not state on which date he received Rs. 90,000/- back. PW5 admitted that he does not have any document to prove that Biswajit Muchahary is the owner of Quantum Funds Online. He stated that he did not lodge any complaint against Binay Basumatary. He admitted that he stated before police that on 31/1/2010 there was a murder and dacoity in the office of Quantum Funds Online in which dacoits looted huge amount of money and the owner of the building where the office of Quantum Funds Online was situated died in the incident.

17. PW6 Sanjay Basumatary and PW7 Bhaben Narzary denied to have known anything about Quantum Funds Online.

18. PW8 Dharanidhar Daimary stated that about three years ago his brother-in-law was murdered in an incident of dacoity at Chapaguri and at that time police obtained his signatures in Exhibit 2 and 3 which he identified as Exhibit 2(2) and 3(2). He stated that he does not know what was written in the seizure lists.

19. PW9 Prakash Basumatary stated that he does not know the accused. That, he deposited Rs. 51,000/- at Quantum Funds Online in the year 2009 and receipt was issued against the deposit but the receipt is not with him now. That, he heard that the money would be doubled in 6 months. That, someone looted the office in 2010. That, he searched the website but after the dacoity the website was closed.

20. A thorough scrutiny of the evidence of the witnesses shows that prosecution could not establish that accused was the owner of Quantum Funds Online or that accused received or remitted any money deposited in the Quantum Funds Online. There is no any document to link the accused with the website. Although PW4 Ganga Basumatary stated in her evidence that she used to maintain the Case Register at the office of Quantum Funds Online at Chapaguri where the accused appointed her but prosecution could not produce any appointment letter to show that accused appointed the PW4 in the office.

21. It is the case of the prosecution that accused cheated the public by inducing them to deposit money promising huge returns on any deposit. But none of the prosecution witnesses stated that the accused induced them to deliver money to him. PW5 stated that he deposited the money with one Binay Bsumatary. But Binay Basumatary was not arrayed as an accused.

22. Let us now take a look into the statement of the accused taken under section 313 of the Code of Criminal Procedure. Regarding the Rs. 18, 49,300/- seized by the police from the office of Quantum Funds Online, the accused stated that he is unaware about the money and that it is not his money. Further he stated that he worked as an agent of Birla Sun Life Insurance in 2009 and that he and the other agents used to do the insurance policy related works in the office of Birla Sun Life Insurance situated in front of Pranab Mandir at Chapaguri. That, at that time some people used to deposit money in Quantum Funds Online. As there was internet connection in their office they used to

create online id for people when people asked them. He stated that he does not know where the money went.

23. The decision of the Hon'ble Gauhati High Court in **Abdul Hakim Quadri vs State of Assam** may be cited here to discuss the value of the statement of the accused U/s 313 Cr.P.C. the Hon'ble Gauhati High Court discussed that - The very purpose of introducing sec 313 in the scheme of criminal trial is to afford an opportunity to the accused personally and that too, without administering any oath to explain the circumstances, appearing against him during the trial....The relevance and significance of sub-section (4) to sec 313 also cannot be lost sight of, in as much as, admissions and confessions made by an accused in the said statement can be given due weightage and considered along with other admissible evidence.
24. From the statement of the accused a reasonable question arises as to whether any investigation was carried on to find out who created the website of Quantum Funds Online and from where the website was in operation.
25. Prosecution could not establish any connection between the accused and Quantum Funds Online.
26. The Hon'ble Supreme Court has held in **Sukhdeo Jha Utpal vs. The State of Bihar; AIR 1957 SC 466** as under :-
- "On charge of cheating, the fact that the accused made a false representation with the knowledge, that it was false and that he had a dishonest intention to induce the person deceived to part with his property, at the very time when he made a false representation, is an essential ingredient of the offence. On such a charge, the burden lies on**

the prosecution to prove affirmatively, not only that the accused has made a false representation, but also he made it with a dishonest intention, knowing that the representation he was making was false." But from the evidence on record it is seen that there is no evidence on record to show that the accused made any false representation of huge returns to public as alleged by the prosecution.

27. Accordingly I am of the considered opinion that the charge under section 420 IPC read with Section 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 could not be established by the prosecution beyond all reasonable doubt. Hence the accused is held not guilty and as a result he is acquitted.

**O R D E R**

The accused Biswajit Muchahary is hereby acquitted of the offence under section 420 IPC read with Section 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and set at liberty. His bail bond shall remain in force for next 6 (six) months or till furnishing of fresh surety by them u/s 437(A) Cr.P.C. the seized articles shall be disposed off in accordance with law in due course of time.

This judgment is pronounced and delivered in the open Court, which is given under my hand and seal of the Court, on this **26<sup>th</sup> day of September, 2014.**

***Syeda Farida Afzal Zinnat***  
***Judicial Magistrate, 1<sup>st</sup> class***  
***Bongaigaon***

**APPENDIX:**

*LIST OF WITNESSES:*

*FOR THE PROSECUTION:*

1. PW1: Johir Uddin Mullah
2. PW2: Daithun Daimary
3. PW3: Jwnglary Daimary
4. PW4: Ganga Basumatary
5. PW5: Biraj Mohan Basumatary
6. PW6: Sanjay Basumatary
7. PW7: Bhaben Narzary
8. PW8: Dharanidhar Daimary
9. PW9: Prakash Basumatary

LIST OF EXHIBITS:

1. Exhibit 1: Ejahar
2. Exhibit 1(1): Signature of PW1
3. Exhibit 2,3: Seizure List
4. Exhibit 2(1), 3(1): Signature of PW2
5. Exhibit 2(2), 3(2): Signature of PW8