

**IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE,**  
**MORIGAON**

**G. R. Case No: 1746/16**

**Under section 427/447 of Indian Penal Code**

**State**

**Vs**

**1. Md. Mohammad Ali**

S/o Md. Shahnewaz Khan, R/o Behuguri, P.S. Mikirbheta, Morigaon, Assam

**2. Md. Riaj Uddin**

S/o Late Sajal Khan, R/o Behuguri, P.S. Mikirbheta, Morigaon, Assam

**3. Md. Matab Uddin**

S/o Late Sajal Khan, R/o Behuguri, P.S. Mikirbheta, Morigaon, Assam

**4. Md. Fakar Uddin**

S/o Md. Aptom Uddin, R/o Behuguri, P.S. Mikirbheta, Morigaon, Assam

**5. Md. Moisor Ali**

S/o Late Amsor Ali, R/o Behuguri, P.S. Mikirbheta, Morigaon, Assam

**6. Md. Taj Uddin**

S/o Md. Rahim Box, R/o Behuguri, P.S. Mikirbheta, Morigaon, Assam

**7. Md. Islam Uddin**

S/o Md. Rahim Box, R/o Behuguri, P.S. Mikirbheta, Morigaon, Assam

**8. Md. Majibur Rahman**

S/o Late Wahed Ali, R/o Behuguri, P.S. Mikirbheta, Morigaon, Assam

**9. Md. Saleem Uddin**

S/o Late Wahed Ali, R/o Behuguri, P.S. Mikirbheta, Morigaon, Assam

.....Accused persons

**Present: Lohit Kumar Sarmah, SDJM(S), Morigaon**

**Advocates appeared**

For the State: Smti. B. Devi

For the accused persons: Mr. G. S. Deka

Evidence recorded on: 21.11.2019

Argument heard on: 21.11.2019

Judgment delivered on: 21.11.2019

## **JUDGMENT**

1. The informant Sri Diyu Dashad lodged an ejahar before Mikirbheta P.S. on 14.7.2016 stating inter alia that he is the "moholdar" of Deorah loch. On 14.7.2016 at about 1 pm the accused persons entered into the said loch of the informant armed with dao, spear, bow etc., cut the fencing of around 600 hands long made of bamboo in the east part of the said loch when all the fishes from the loch came out of that and they also took around 200 hands long fishnet lying on the bank. The accused persons cut into pieces around 400 hands long fishnet. Such activity of the accused persons caused a loss worth Rs.870000/-.Hence the informant had filed this case.
2. The ejahar was received and registered as Mikirbheta PS case No. 257/16 u/s 147/148/447/427/379 IPC.
3. The I/O after due investigation of the case submitted charge sheet u/s 447/427/34 IPC against the accused persons.
4. Copy of the relevant documents were furnished to the accused persons.
5. On perusal of the case record sufficient ground u/s 427/447 IPC were found against the accused persons and accordingly which were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
6. The prosecution has examined only one witness i.e., the informant-cum-victim. The statement of the accused persons u/s 313 CrPC was recorded. The defence side adduced no evidence and pleaded for total denial.

### **POINTS FOR DETERMINATION:**

- i) Whether the accused persons 14.7.2016 at about 1 pm, committed mischief and thereby caused loss or damage to the amount of fifty rupees or upwards to the informant's property and thereby committed an offence punishable under section 427 of the IPC?
- ii) Whether the accused persons 14.7.2016 at about 1 pm, committed criminal trespass by entering into or upon property in the possession of the informant with intent to commit an offence

and thereby committed an offence punishable under Sec. 447 IPC?

7. I have heard the oral arguments put forward by both the Counsels. I have also gone through the entire evidence available on record. My discussion and reasons for the decision are discussed below.

**DISCUSSION, DECISION AND REASONS THEREOF:**

8. PW-1 Sri Diju Das who is the informant-cum-victim deposed that the accused persons are known to him. The incident took place in the year 2016 in Deorah loch at around 1 am. On the day of incident PW1 had some verbal altercation with the accused persons but later he has amicably settled the matter with the accused persons hence he doesn't want to proceed with the case anymore. Ext-1 is the ejahar and Ext-1(1) is his signature. In cross-examination PW1 stated that he does not have any objection if the accused persons are acquitted of this case.
9. From the deposition of PW1 it appears that there is nothing incriminating against the accused persons. PW1 who is the informant-cum-victim himself has not supported the case. In his deposition he stated that he had some verbal altercations with the accused persons. He further stated that they have amicably settled the matter between themselves; hence he does not have any objection if the accused persons are acquitted of the case. Further PW1 has not at all implicated the accused persons u/s 427/447IPC.
10. In view of the above, it is held that the prosecution has failed to establish the charges u/s 427/447 IPC against the accused persons. Accordingly the accused persons namely Mahammad Ali, Riajuddin, Matabuddin, Fakaruddin, Moibur Ali, Tajuddin, Islamuddin, Mojibur Rahman and Salimuddin are acquitted of the alleged offences levelled against them and set at liberty.
11. Bail bond and affidavit furnished by the bailor is extended for a period of six months from today.

Given under my hand and seal of this Court on the 21<sup>st</sup> day of November, 2019 at Morigaon.

Lohit Kumar Sarmah  
SDJM(S), Morigaon

**APPENDIX**

**Prosecution witnesses:**

PW1- Sri Diju Das (Informant-cum-victim)

**Exhibits for the prosecution:**

Ext-1: Ejahar

**Defence witness :**

Nil

**Exhibits for defence:**

Nil

Lohit Kumar Sarmah  
SDJM(S), Morigaon