

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

G.R. CASE NO.65/2017

State

Vs.

- 1. Md. Giasuddin
Son of Md. Marfat Ali**
- 2. Md. Rajab Ali
Son of Md. Janab Ali
Both residents of village: Nagabandha
P.S.- Laharighat,
District- Morigaon, Assam**

Present: Sri N.K. Das, AJS
Chief Judicial Magistrate, Morigaon

For the state: Mrs. A. Kakati, Addl. P.P.

For the defense: Md. J.A. Bhutto, Md. A. Shahnaz, Advocates

Charge framed: u/s 406/420/506(II)/34 of IPC

Evidence recorded on: 1-10-2019

Argument heard on: 1-10-2019

Judgment delivered on: 16-10-2019

JUDGMENT

1. The prosecution case in brief is that one Md. Rahmat Ali filed a complaint in the court of Chief Judicial Magistrate, Morigaon against the accused persons namely Md. Giasuddin and Md. Rajab Ali alleging therein that both the parties reside within the jurisdiction of the court. It is alleged that for several days prior to filing of the complaint, the aforementioned two accused persons were indulging in corruption. The accused Md. Giasuddin was the Secretary of Nagabandha Samabai Samiti Limited and accused Md. Rajab Ali was the president of Nagabandha Samabai Samiti Limited. Both the accused persons, in the year 2015/2016 obtained allotment of 240 quintals of flour but they, by hatching a conspiracy, sold the same and misappropriated the money. When such action of the accused persons came to be known, they were asked regarding the same. However, the accused persons expressed various excuses and tried to counsel the complainant. On 6-12-2016, the complainant, along with the

witnesses listed in the complaint, asked the accused persons regarding the same but the accused persons threatened to kill him in presence of the witnesses. At the time of filing of the complaint, residents of both the two Samabai Samiti did not get flour on two occasions and the agents, who were listed as witnesses, also did not get the flour. It is also alleged in the complaint that both the accused persons illegally kept the cards for rice and by using those cards they used to purchase rice. It is also alleged that the accused persons transferred 373 rice cards from the jurisdiction of Nagabandha Gaon Panchayat to Palahjuri by influencing the suppliers. The complainant subsequently came to know that the accused Md. Giasuddin received huge sums of money in order to do the said transfers. According to the complainant, both the accused persons, instead of working for public good, have been working against the interest of the public.

2. The said complaint was forwarded, as per the prayer of the complainant, to the Officer-in-Charge of Laharighat police station for registering a case, for investigation and for submission of report under section 173 CrPC. Accordingly, the complaint was received in the Laharighat police station on 5-1-2017 and a Laharighat police station case No.5/2017 under sections 420/406/506 IPC was registered and one sub inspector of police Md. Ibrahim Ali was assigned to investigate the case. On completion of investigation police submitted final report as no evidence was found against the accused persons.

3. Subsequently, the case record of this case was put up in view of order dated 1-6-2017 passed in the complaint case bearing CR No.451/2017. Vide the said order dated 1-6-2017 passed in CR Case No.451/2017, the said CR Case and this GR Case No.65/2017 was directed to be put up together. Subsequently, vide order dated 15-6-2017, passed in the CR Case No.451/2017, it was directed that both the complaint case and the GR case shall proceed as a case instituted on police report. Further, vide order dated 15-6-2017 passed on the GR Case No.65/2017; it was found that this GR No.65/2017 was instituted on an FIR filed by the informant against the accused persons against whom the aforementioned complaint was also filed later. The matter and the parties were same in both the cases.

4. Vide the said order dated 15-6-2017 passed in this case cognizance of the offences under sections 406/420/506(II)/34 IPC was taken against the

aforementioned two accused persons by rejecting the Final Report and both the accused persons were summoned to face the trial.

5. On appearance of the accused persons before court, copies of all relevant documents were furnished to the accused persons under section 207 CrPC. After hearing both sides on the point of consideration of charge, perusal of the case record, prima facie materials of offences under sections 406/420/506(II)/34 IPC was found and charge under the aforesaid sections of law was framed against both the accused persons. The accused persons pleaded not guilty when the charge was read over and explained to them.

6. Prosecution in support of its case examined 1 (one) witness and exhibited one document i.e. the ejahar. For lack of incriminating materials, examination of the accused persons under section 313 CrPC was dispensed with. Defense side refused to adduce any evidence.

7. I have heard the argument of Mr. Dhrubajyoti Nath, the learned APP as well as the argument of Md. Julfikar Ali Bhutto, assisted by Md. Albert Shahnaz, learned counsels for the defence. I have also perused the case record and considered the same. The points for determination are as under:

- I. Whether the accused persons, during the year 2015/2016, at village Nagabandha under Laharighat police station, in the district of Morigaon, in furtherance of their common intention, being entrusted with certain property namely 240 quintal of flour, committed criminal breach of trust; and thereby committed an offence punishable under section 406 IPC, read with section 34 IPC?
- II. Whether the accused persons, on or about the same period and place, in furtherance of their common intention, cheated the 373 ration card holders under the Nagabandha Gaon Panchayat, and thereby committed an offence punishable under section 420 IPC, read with section 34 IPC?
- III. Whether the accused persons, on or about 6-12-2016 at village Nagabandha under Laharighat police station, in the district of Morigaon, in furtherance of their common intention, threatened to kill

Md. Rohmat Ali, with intent to cause alarm to him and thereby committed an offence punishable under section 506(II) IPC, read with section 34 IPC?

Discussion of evidence, decision and reasons therefor:

8. The informant cum alleged victim Md. Rohmat Ali, as PW-1, in his deposition has not supported his own case and did not implicate the accused persons with the alleged offences. The PW-1 deposed that that matter has already been amicably settled by them at the intervention of the local villagers. According to the PW-1, the case was filed due to misunderstanding and as such, he no longer wants to proceed with the case.

9. It is seen that there is absolutely nothing in the evidence of the witness against the accused person to implicate him with the alleged offence. The key witness, who is the informant cum alleged victim of the case, did not implicate the accused person with the alleged offence. In view of the deposition of the witness, the prosecution side did not proceed further to summon and examine the remaining witnesses as their evidence is not likely to improve the prosecution case and closed the prosecution evidence and perhaps rightly so.

10. For the aforesaid reasons and discussion the points for determination are answered in the negative.

11. The prosecution has failed to prove the case against the accused persons. As such, the accused persons are found not guilty and accordingly acquitted of offences under sections 406/420/506(II)/34 IPC alleged against him. They be set at liberty forthwith. Their bail bonds shall remain in force for six months from today in view of section 437A of CrPC.

12. The judgment is pronounced in open court and given under my hand and seal on this 16th day of October, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

- (A) PROSECUTION EXHIBITS:**
Ext.-1: Ejahar
- (B) DEFENCE EXHIBITS**
None
- (C) EXHIBITS PRODUCED BY WITNESSES**
None
- (D) COURT EXHIBITS**
None
- (E) PROSECUTION WITNESSES**
P.W.-1: Md. Rohmat Ali
- (F) DEFENCE WITNESSES**
None
- (G) COURT WITNESSES**
None

Chief Judicial Magistrate, Morigaon