

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

G. R. Case No: 388/13

U/s 188 IPC

**State**

**Vs**

**1. Md. Sahar Ali**

S/o Late Basiruddin, R/o Khataguri, P.S. Morigaon, Assam.

**2. Md. Abdul Motin**

S/o Late Samed Ali, R/o Goroimari, P.S. Laharighat, Morigaon, Assam.

**3. Md. Nematullah**

S/o Late Abdul Kuddus, R/o Uttar Khatabori, P.S. Morigaon, Assam.

.....Accused persons

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

**Advocates appeared**

For the State: Smti. Banti Devi

For the accused persons: Mr. A. Salam

Evidence recorded on: 6.6.2015

Argument heard on: 19.3.2019

Judgment delivered on: 19.3.2019

**JUDGMENT**

1. The informant Sri Tilou Bordoloi had lodged an ejahar before Mikirbheta PS on 4.4.2013 stating inter alia that on 19.3.2013 the accused persons illegally entered into the land of the informant and started living with their families. When the informant went to inquire about the same with the accused persons then they armed with dao tried to kill the informant. Hence the informant filed this case.
2. The ejahar was received and registered as Mikirbheta PS case No. 61/13 u/s 188 IPC.
3. The I/O after due investigation of the case submitted charge sheet u/s 188 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 188 IPC were found against the accused persons and accordingly the particulars of offences under the above

section was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

6. The prosecution has examined one witness i.e. informant and the 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 on 19.3.2013 disobeyed order duly promulgated by the court and entered into the land of the informant and thereby committed an offence punishable under Sec. 188 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. PW1 Tilou Bordoloi who is the informant deposed that he filed this case against the accused persons vide Ext-1 and Ext-1(1) and 1(2) are his signatures. The accused persons forcibly constructed a house in the land of PW1. PW1 filed this case vide Ext-1 before the Deputy Commissioner, Morigaon. He filed this case to crumple the house constructed by the accused persons forcibly. In cross-examination PW1 stated that he is not a government servant. No Court has seized or attached his land and no case has been filed against his land by any Court. His case was continuing in the office of the Deputy Commissioner, Morigaon and PW1 has no right to file this case. In view of the deposition of the informant and the informant not being the public servant, the investigating officer was ordered to appear physically in the court. Accordingly the investigating officer was appeared and he was examined. In his examination he stated that according to section 195 CRPC he should not have filed charge sheet in this case. He filed this charge sheet by mistake. From the examination of the investigating officer it is revealed that the case was related to some land which ought to have been proceeded before the deputy commissioner, but due to some mistake it culminated into the charge sheet against the accused persons. Hence there is no case at all against the accused persons.

9. From the deposition of PW1 and the investigating officer, it appears that there is nothing incriminating against the accused persons. Further PW1 has not at all implicated the accused persons u/s 188 IPC.
10. In view of the above I am of the opinion that the prosecution has failed to establish the charges u/s 188 IPC against the accused persons Sahar Ali, Abdul Motin and Nematullah. Accordingly the accused persons are acquitted of the alleged offences leveled against them and set at liberty.
11. Bail bonds and affidavits furnished by the bailor are extended for a period of six months from today.

Given under my hand and seal of this Court on the 19<sup>th</sup> day of March, 2019 at Morigaon.

Lohit Kumar Sarmah  
SDJM(S), Morigaon

#### **APPENDIX**

**Prosecution witnesses:**

PW1- Sri Tilou Bordoloi (Informant)

**Exhibits for the prosecution:**

Ext-1 : Complainant petition before the DC, Morigaon.

**Defence witness :**

Nil.

**Exhibits for defence:**

Nil.

Lohit Kumar Sarmah  
SDJM(S), Morigaon