

**G.R.CASE NO. 1602/2008**

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST  
CLASS, DIBRUGARH, ASSAM**

**G.R.CASE NO. 1602/2008**

(U/S- 420 IPC)

**Present: Smti. Sanskrita Khanikar, A.J.S.**

Judicial Magistrate First Class, Dibrugarh

**State**

- VS -

**Md. Akramuddin Ahmed**

S/O - Late Mazharul Haque

R/O - Malakhubasa, Boiragimath

P.S. - Dibrugarh

Dist - Dibrugarh, Assam

.....Accused person

Advocate for the Prosecution : Learned Smti. Lakshmi  
Mohan

Advocate for the Defence : Learned Sri Shyamal Seal

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Evidence recorded on : 22-09-2015, 01-06-2016,  
15-11-2017, 01-11-2018,  
07-04-2021

Argument heard on : 14-12-2021

Judgment delivered on : 20-12-2021

**J U D G M E N T**

1. The prosecution case as stated in the F.I.R. dated 29-08-2008 is that the informant is the Senior Manager of Central Bank, Dibrugarh Branch. On the same date, he lodged a written ejahar alleging that the accused, namely, Md. Akrammudin Ahmed had taken a loan of about Rs. 87,40,000/- from the Central Bank, Dibrugarh Branch for setting up a factory for production of green tea leaves at Longshu Gaon, Dikom. He mortgaged the factory shed and landed properties at Tezpur in favour of the bank to secure the said loan. The machineries of the factory were hypothecated to the bank. The said mortgage is still continuing in as much as the loan has not been liquidated till date. The informant alleged that on 29-08-2008, when he visited the factory site of the accused at Longshu Gaon, Dikom as per the terms of the agreement with the bank, he found that the accused had dismantled and removed all the tea machinery which had been installed in the factory. The said machinery whose

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value will be about Rs. 52,40,000/- at the minimum was hypothecated to the bank and as such, the accused had no right to remove the same without the consent of the bank. The accused was holding the same for and on behalf of the bank. The informant questioned about the same to the accused but the accused did not reply. It has also been alleged that the accused also sold out the entire stock of green tea leaves and took away the money which he was supposed to deposit in the loan account as per the terms of the agreement. As such, the informant on behalf of the bank lodged the F.I.R. against the accused.

2. A case was registered at Dibrugarh P.S. subsequent to the lodging of this F.I.R. The F.I.R. was lodged by the informant, namely, Sri Uttam Chandra Gogoi. Upon completion of investigation, the police submitted charge-sheet against the accused person, namely, Md. Akramuddin Ahmed for commission of the offence u/sec 406/420 of the Indian Penal Code (hereinafter referred to as I.P.C.).

3. The accused person stood for trial. Copies of the relevant documents were furnished to the accused person as required by Section 207 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.). Upon finding prima facie grounds, charge u/sec 420 of the IPC were made out against the accused person and accordingly the

particulars of charge framed under sections 420 of the IPC was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

4. Prosecution in order to prove its case and to nail the guilt of the accused person has examined as many as 6 (six) witnesses namely Sri Rubul Das as PW-1, Sri Bikram Prajapati as PW-2, Smti. Rasmi Prajapati as PW-3, Md. Saiful Islam Borah as PW-4, Sri Uttam Chandra Gogoi as PW-5 and Sri Uma Rajkonwar as PW-6.

The prosecution also took aid of 4 (four) documents which were exhibited as follows:

The Ejahar as Exhibit 1; the seizure list as Exhibit 2; the sketch-map of the place of occurrence as Exhibit 3 and the charge-sheet as Exhibit 4.

After recording the prosecution evidence, the statement of the accused person was recorded u/sec 313 of Cr.P.C. The defence plea is that of total denial and the accused person claimed innocence. The defence adduced no evidence.

5. I have heard the arguments from both sides and perused the entire evidence on record.

6. THE POINT FOR DETERMINATION

Whether the accused person on 29-08-2008 and even prior to that at Longshu Gaon, Dibrugarh cheated

the Central Bank of India, Dibrugarh Branch by dishonestly inducing the bank official to deliver an amount of Rs. 87,40,000/- as loan to him and thereby committed an offence punishable u/sec 420 of the IPC?

**DISCUSSION, DECISION AND REASONS THEREOF:**

7. PW-1, in his evidence, has deposed that the accused is known to him but the informant is not known to him. He stated that many years ago, he used to work for the accused when he had started a new factory. He does not know if the Central Bank of India had instituted any case against the accused.

His cross-examination was declined by the defence.

8. PW-2 in his evidence, has deposed that the informant and the accused are not known to him. He stated that several years ago, the police had come to the house of one of the tenants of his landlord at Boiragimath, Dibrugarh and at that time, the police had taken his signature on some paper. He does not know why his signature was taken by the police on that day.

His cross-examination was declined by the defence.

9. PW-3 in his evidence has deposed that the accused and the informant are not known to him. He stated that he knows nothing about the incident.

His cross-examination was declined by the defence.

10. PW-4, in his evidence deposed that the accused is known to him but the informant is not known to him. According to him, the defendant after taking a loan from the Central Bank of India, opened a factory of green tea leaves at Longshu Gaon, Dikom and that the accused had purchased some land from him in this connection. He had heard that the accused had taken a loan of about Rs. 50,000/- at the first instance and that later on, he had heard that that the accused was to take another loan but could not say if the accused had applied for any such loan. He stated that later the accused suffered losses at his business. His machinery was spoilt and he suffered from financial losses due to which he went away to his home at Tezpur. He could not say if the accused repaid the loan amount to the bank. But later, he stated that the bank had affixed a notice at the accused person's factory for auction sale as he failed to repay the loan amount to the bank. He also stated that the factory was closed several years ago and no auction sale was conducted. The factory is still there but its equipments have been stolen. His statement was not recorded by the police.

During his cross-examination he stated that he had seen the notice affixed by the bank on the factory but he does not know if the bank had already conducted the auction sale of the factory. He did not ask or enquire at the bank as to why the bank had affixed the notice at the accused person's factory. He also did not try to find out the loan

amount taken by the accused from the bank or whether the accused had repaid the loan amount or not. He denied the defence suggestion that there are no more dues to be repaid to the bank by the accused

11. PW-5 being the informant deposed in his evidence that both the informant and the accused person are unknown to him. He lodged the instant case against the accused in 2008 when he was working as Senior Manager, Central Bank, Dibrugarh Branch. He stated that the accused had availed a loan of about Rs. 80,00,000/- from the Central Bank, Dibrugarh Branch for setting up a factory of green tea leaves at Dikom. When he visited the accused person's factory during periodical inspection, he found that the accused, without informing the bank had shifted the factory equipment and that the factory itself was not in a working condition. But on one of his previous visits to the accused person's factory, he had found it in a running condition. He, then, informed about the matter to the senior bank officials and subsequently lodged an ejahar against the accused at Dikom Police O.P. He stated that the said loan could not be recovered by the bank from the accused. According to him, a case against the accused is also pending in the Debt Recovery Tribunal. He proved Exhibit 1 as the ejahar by identifying Exhibit 1(1) as his signature therein. He proved Exhibit 2 as the seizure list by identifying Exhibit 2(1) as his signature therein.

During his cross-examination, he stated that the accused had taken the said loan by mortgaging his land with the bank. The accused was paying the term loan instalments. The instant case was filed only to recover the loan amount from the accused. The case against the accused at the DRT was instituted regarding the same matter. According to him, the said case at the DRT has already been settled. When he had gone for inspecting the accused person's factory, the entrance of the factory was locked and there was no one in the factory. Nobody opened the lock for him to enter inside the factory. He denied the defence suggestion that as the factory itself was locked, he could not tell if the factory equipment were not in the factory. He could not tell what equipment was there in the factory. If the equipment of tea factory is damaged, the same are usually brought to a repair workshop at Lahoal. He denied the defence suggestion that he never went on the periodical inspection to the accused person's factory and that he levelled false allegations against the accused.

12. PW-6 being the I.O. deposed in his evidence that on 30-08-2008, he was posted as I/C of Dikom Police O.P. On the same day, the informant/PW-5 being the Senior Manager of Central Bank, Dibrugarh Branch lodged a written ejahar against the accused. The ejahar was entered by him into the General Diary vide G.D.E. No. 926 dated 30-08-2008 and the original ejahar was sent to



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Lahoal P.S. for registration. The O/C then entrusted him with the investigation of the instant case. He recorded the statement of the informant at the P.S. itself and then he proceeded to the place of occurrence. He prepared a rough sketch-map of the place of occurrence. He proved Exhibit 3 as the sketch-map by identifying Exhibit 3(1) as his signature therein. The informant had handed a list of the machinery available at the factory of the accused person and some bills/receipts of the factory machinery purchased by the accused. Upon visiting the factory of the accused person, he did not find the requisite amount of machinery in the factory. He also recorded the statements of the witnesses at the factory. He proved Exhibit 2 as the seizure list by identifying Exhibit 2(1) as his signature therein. Subsequently, the accused appeared in the P.S. with an interim bail order and was accordingly released on bail. Thereafter, PW-6 was transferred and as such, he handed over the case diary to the O/C, Lahoal P.S. The charge-sheet was later on submitted by Sri Bhabakanta Das against the accused u/sec 406/420 of the IPC. He proved Exhibit 4 as the charge-sheet by identifying Exhibit 4(1) as the signature of Sri Bhabakanta Das with which he is acquainted.

During his cross-examination, he stated that the instant case was filed and investigated into for loan recovery. He stated to have known that as per sections 4 and 5 of the Cr.P.C., the police are not empowered to investigate into

money recovery cases and that as per Part 5 of the Assam Police Manual, he is not empowered to investigate into the instant case. He does not know if any civil suit was filed against the accused for loan recovery. He denied the defence suggestion that no such incident as stated in the ejahar had occurred and that he had not carried out the investigation of the case properly.

13. Now, the stage has been set to appreciate the evidence on record in the light of the essential ingredients of the offences alleged to have been committed by the accused.

14. I have heard the arguments of the learned Asst. Public Prosecutor and the learned defence counsel.

15. Firstly, in order to establish the offence u/sec 420 IP, the prosecution has to satisfy the following ingredients:

a) Cheating

b) Dishonest intention of the accused at the very inception

c) Dishonest inducement by the accused in order to make any person deliver any property or to do or to omit to do something which he would otherwise not have done or omitted

PWs 1, 2 and 3 have categorically testified that they have no knowledge about the incident and as such their cross-examination was declined by the defence.

PW-4 testified that later the accused suffered losses at his business and that his machinery at the factory was spoilt and he suffered from financial losses due to which he went away to his home at Tezpur. He could not say if the accused repaid the loan amount to the bank. But later, he stated that the bank had affixed a notice at the accused person's factory for auction sale as he failed to repay the loan amount to the bank. He also stated that the factory was closed several years ago and no auction sale was conducted. The factory is still there but its equipments have been stolen. It transpires from his deposition that there was no dishonest intention of the accused to cheat the bank at the inception as he subsequently suffered losses in his business. Moreover, the bank itself did not conduct the auction sale for reasons best known to it.

PW-5/informant stated in his cross-examination that the accused was paying the term loan instalments. This itself indicates that there was no dishonest intention of the accused from the inception to cheat the bank. PW-5/informant further stated in his cross-examination that the instant case was filed only to recover the loan amount from the accused. The case against the accused at the DRT was instituted regarding the same matter. According

to him, the said case at the DRT has already been settled. He also stated in his cross-examination that the factory of the accused person was locked which contradicts his statement that the accused had shifted his factory machinery without informing the bank.

PW-6 being the I.O. recounted the process of investigation carried out by him. Although he stated that he did not find the requisite amount of machinery at the factory of the accused, he failed to specifically state as to what machinery or equipment was missing therefrom.

Moreover, none of the PWs could prove through their testimonies that the factory machinery was actually shifted, gotten rid of or sold by the accused. As such, the likelihood or possibility of theft or damage of the factory machinery of the accused cannot be ruled out.

It is one of the cardinal principles of criminal jurisprudence that the prosecution must prove the guilt of the accused beyond all reasonable doubt. As is clear from the above discussion, the evidence on record is quite inadequate to establish the prosecution case and there is ample scope of reasonable doubt as to the factum of the occurrence alleged.

Resultantly, it transpires that the act alleged to have been committed by the accused is bereft of the essential ingredients of Section 420 IPC. As such, in the absence of

any cogent evidence, I am not inclined to hold the accused person guilty u/sec 420 IPC.

16. Situated thus, I am constrained to hold that the prosecution has failed to establish the guilt of the accused Md. Akramuddin Ahmed u/sec 420 IPC beyond all reasonable doubt. As such the point of determination is answered in the negative in favour of the accused.

**ORDER**

17. In view of the decision made above, the accused, namely, Md. Akramuddin Ahmed is acquitted of the charge of the offence under section 420 IPC and set at liberty forthwith.

His bail bonds shall remain in force for six months from today in compliance with section 437-A, Cr.P.C.

The case is disposed of on contest.

Given under my hand and the seal of this Court on this 20<sup>th</sup> day of December, 2021 at Dibrugarh.

Typed by: Self

Sanskrita Khanikar

Judicial Magistrate First Class

Dibrugarh

**APPENDIX**

**A. Prosecution witnesses:-**

- i) Sri Rubul Das as PW-1
- ii) Sri Bikram Prajapati as PW-2
- iii) Smti. Rasmi Prajapati as PW-3
- iv) Md. Saiful Islam Borah as PW-4
- v) Sri Uttam Chandra Gogoi as PW-5
- vi) Sri Uma Rajkonwar as PW-6

**B. Defence witnesses:- Nil**

**C. Prosecution exhibits:-**

- i) The Ejahar as Exhibit 1
- ii) The seizure list as Exhibit 2
- iii) The sketch-map of the place of occurrence as Exhibit 3
- iv) The charge-sheet as Exhibit 4

**D. Defence exhibits:- Nil**

Sanskrita Khanikar  
Judicial Magistrate First Class  
Dibrugarh