

**IN THE COURT OF THE ADDL.CHIEF JUDICIAL
MAGISTRATE, GOLAGHAT.**

GR CASE No.981/11

State

-vs-

1)Biman Dutta,
2) Nitul Dutta,
U/s 406/420/34 IPC

Present :**Mrs.M.Dutta,**
Addl.Chief Judicial Magistrate,
Golaghat.

COUNSELS APPEARED :

For the prosecution : Mr.N.Hazarika,Addl.PP,
Golaghat.
For the defence : Mr.D.P.Joisowal,Advocate,
Golaghat.
Evidence recorded on : 21.03.12,12.04.13,02.06.12,
19.08.13,
Argument heard on : 29.10.13
Judgment delivered on : 12.11.13

J U D G M E N T

1) The prosecution case is launched on the basis of a complaint petition filed by the complainant Rajumoni Bora on 19.07.11 before the learned Chief Judicial Magistrate, Golaghat to the effect that the accused No.1 was ex-president of Renaissance NGO located at Baruahbamun gaon, as well as Co-ordinator of Micro Insurance and he was responsible to deposit the premium of 300 customers in the LIC. But he did not pay the premium against the policy No.446016330, 446017104, 446017810, 446017814, 446017105 and other customers of Micro Insurance. Though the accused persons are liable to account per year but they failed to account for the year 2009-10, 2010-11 and they themselves self restrained it, besides they

themselves restrained television, LPG gas cylinder, one computer and various utensils of the office of NGO. In this regard , the president of Renaissance issued a notice to the accused Nitul Dutta, but no reply was given and accused Biman Dutta expelled from his post as per public meeting and the complainant is appointed as Secretary of NGO. Hence this case stands for trial.

2) The learned Chief Judicial Magistrate, Golaghat forwarded the complaint petition to the Officer-in-Charge Dergaon PS for taking necessary action as per law.

3) Receiving the complaint petition, O/c of Dergaon PS registered a case No.164/11 u/s 406/420/379/34 IPC and started investigation and on completion of the investigation the police accordingly submitted chargesheet against the accused u/s 406/420/379/34 IPC.

4) In response to the process issued from the court, the accused persons appeared before the court to stand trial. Necessary copies were furnished to them by my learned predecessor and formal charge u/s 406/420/34 IPC was framed, when the charge was read over and explained to them, they pleaded not guilty and claimed to be tried.

5) The prosecution side to establish its case examined all total 6(six) witnesses while defence adduced none. The accused persons were examined u/s 313 Cr.PC. They declined to adduce evidence. I have heard the arguments put forwarded by the learned counsels of both sides.

6) **POINTS FOR DETERMINATION :**

In this way the points for determination in this case are framed thus :

(i) Whether the accused persons in furtherance of their common intention in the last two years being entrusted with the premiums of Micro insurance of LIC and the funds of the Renaissance NGO belonging to the customers and said NGO ,

committed criminal breach of trust, thereby committed an offence punishable u/s 406/34 IPC, as alleged ?

(ii) Whether the accused persons in furtherance of their common intention cheated the complainant Sri Rajumoni Borah and other members or customers by dishonestly inducing them to deliver that premium amounts, and thereby committed an offence punishable u/s 420/34 IPC, as alleged ?

DECISION & REASONS THEREOF:

7) To decide the points stated above, I have carefully gone through the evidence on record.

8) PW-1 Rajumoni Bora, informant in this case, in his evidence has stated that he is an agent of Renaissance NGO of Baruahbamun gaon and LIC. He stated that he collects the LIC premium from the customer and deposits with the co-coordinator of Renaissance NGO Biman Dutta and Biman Dutta deposited the same in the LIC office. He stated that he collected premiums from 2007 till 2011 and the amounts were deposited to Biman Dutta. He stated that Biman Dutta had deposited only one month premium and remaining he did not deposit. When he inquired about in at LIC office, Jorhat he came to know it. Finding no other alternative he had taken help from law. He lodged ejarah at Dergaon PS through court. Ext.1 is the said ejarah and Ext.1(1) and Ext.1(2) are his signatures.

9) During his cross-examination he has stated that the accused persons appointed him as agent on verbal. He also stated that now he is working as secretary of NOG. He came to know on 12.07.11 from newspaper due to breaking of principles of Constitution of NGO and misappropriation of fund the accused persons were suspended. The accused persons complained him and Ripul Dutta for misappropriation of fund of Rs.1,56,000/-. He further stated that after giving initial on pass books with seal, he handed over it to the

customers. He stated that he did not state before the police that accused Biman Dutta had appointed him as an agent.

10) PW-2 Ripul Dutta in his evidence has stated that he is chairman of Renaissance NGO and the informant Rajumoni Bora is the executive member of it. The informant was also agent of said NGO and LIC. He stated that the amounts which were collected by the informant were deposited to Biman Dutta since 2004-07. In 2011 one policy holder claimed death benefit and came to Biman Dutta to know about it. Being unsatisfied, the said holder inquired at Jorhat LIC Office and the office informed the said claimant that only one or two premiums were deposited. Knowing the fact the informant lodged case against the accused persons.

11) During his cross-examination he has stated that the responsibility of collecting premium from the LIC policy holders was with the complainant. As per rule of insurance, one customer could have only one insurance policy in his name. The customers who had claimed that the money of insurance and how many policy they have it is not known to him. LIC office had informed the police regarding misappropriation of money from the customers who did not inform him. The accused persons had published a news in the newspaper that he and the complainant had misappropriated the money from the Renaissance NGO and they had received the notice in the newspaper just before one week before filing of this case. But PW-2 had never filed any case against the accused persons for publication of such news that after filing of the case PW-2 became the president of Renaissance NGO and the complainant Rajumoni Bora was the secretary of the same NGO. They have also registered their names in the Renaissance Society Act. He further stated that he never stated before the police that the accused Biman Dutta had collected premium for the LIC.

12) PW-3 Diganta Gogoi in his evidence has stated that he does not know anything about the occurrence.

13) PW-4 Smti.Ranu Khatanier in her evidence has stated that the accused persons told her to work as an agent of Renaissance NOG and LIC in the year 2010. Thereafter she collected premiums for about 5/6 months from customers and deposited the same to the accused persons but afterwards the accused persons stopped to come her and then she informed it to Ripul Dutta, the chairman. When Ripul Dutta inquired about it at Jorhat LIC office, he came to know that the accused persons deposited only one premium.

14) PW-5 Rajib Sarma in his evidence has stated that the accused Biman Dutta was secretary of Renaissance NGO and accused Nitul Dutta was president of it. He stated that in the year 2007 he opened a LIC policy in the name of his mother Labayanya Devi and gave 5 nos. premium. He came to know that the premiums were not deposited at the LIC office. He enquired about it at Jorhat LIC office and came to know the fact that the premiums were not deposited in the office. Later came to know the informant lodged a case against the accused persons.

15) During cross-examination he has stated that accused Nitul Dutta left the office of the Renaissance NGO after filing of this case. At present there is no president in the Renaissance NGO. He is the member of the Renaissance NGO.

16) PW-6 Kamaluddin Ahmed IO of this case, in his evidence has stated that on 21.07.11 he was working as SI at Dergaon PS and on that day the informant Rajumoni Bora gave an ejahar and O/c registered it and entrusted him for investigation. Accordingly he went to the place of occurrence i.e. Baruabamun gaon, recorded the statements of the witnesses, drew sketch map. Ext.2 is the sketch map and Ext.2(1) is his signature. The accused persons were arrested and

forwarded to the court on 23.07.11. after completion of the investigation he submitted chargesheet against the accused persons u/s 406/420/34 IPC. Ext.3 is the chargesheet and Ext.3(1) is his signature.

17) Now Let me see this case through the angle of merit also, what force of evidence to rope the accused persons for the alleged charge. Here the main offence alleged by the complainant is that the accused persons had committed an offence u/s 420 IPC that the accused persons cheated the customers of Renaissance NGO by collecting premium and not paying to the Renaissance NGO as per provision of section 420 IPC. **The essential ingredients of section 420 IPC are :-**

(i) There must be deception i.e.the accused must have deceived someone,

(ii) That by the said deception. The accused must induce a person,

(a) to deliver any property, or

(b) to make, alter or destroy the whole or part of the valuable security or any thing which is signed or

(iii) That the accused did so dishonestly.

18) The allegation against the accused person was that they collected premium being agent but did not deposit the same to the LIC and failed to submit statements account for the year 2009,2010 and 2011. but on perusal of the evidence on record, it appears that nowhere it is mentioned in the evidence that how much amount of money as premium was collected by the accused persons and from whom.

19) In case of Hridaya Ranjan Deb Verma Vs State of Bihar reported in AIR 2000 SC 2341 while considering the dishonest inducement the Apex Court held as follows.

“In determining the question it has to be kept in the mind that distinctions between mere breach of contract and offence of cheating

is fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for his subsequent conduct is not sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction that is the time when the offence said to have been committed. Therefore, it is the intention, which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making promise. From his mere failure to keep up promise subsequently such a capable intention right at the beginning, that is, when he made the promise cannot be presumed.”

20) From the evidence of the prosecution witnesses it also seen that there exists enmity between the complainant and the accused persons. No receipts were also given to the customers after premium was collected from them. In order to prove an offence punishable u/s 420 IPC, it must be proved that the complainant parted with his property acting on the representation which was false to the knowledge of the accused and that the accused had dishonest intention from the outset. When the evidence of the prosecution witnesses were scrutinized, nowhere it can be seen that the accused persons have deceived the customers nor there is any inducement by the accused persons to deliver any property to them. Surprisingly from the evidence it is seen that the witnesses could not give correct amount of premium collected from the customers by the accused persons which they were bound to deposit in the LIC. Mere stating that the accused persons had not deposited the premiums is not sufficient to convict them u/s 420 IPC. Non-examination of any official of the LIC also creates a doubt that there was cheating by the accused persons or that the accused persons tried to deceive customers by non-paying the

premiums timely in the LIC. After discussion of the above, I find that essential ingredients of section 420 IPC is not attracted in this case.

21) Now let me see what actual position in law involved in section 406 IPC and what does it deal. The above question brings me to the decision R S Sodhi and Ors. Vs. Partha Pratim Saikia reported in 2009(4) GLT 685.

22) In the said case Hon'ble High Court has analyzed what is legal proposition involved in the offence of "criminal breach of trust." In 'criminal breach of trust' the accused comes into the possession of the property or acquires dominion over the property honestly and bonafide, but he develops dishonest intention subsequent to the taking possession of, subsequent of having acquired the dominion over, the property and, having developed such dishonest intention, he dishonestly misappropriates or converts to his own use the property from dishonestly use the property or dishonestly uses or disposes the property in violation of any direction of law prescribing the mode in which he has made touching the discharge of such trust, or willfully suffers any other person so to do".

23) Thus in short while in "criminal breach of trust", the accused comes into possession of the property without dishonest intention and develops dishonest intention subsequent to his coming into possession of the property, the offence of cheating one, where in the case has dishonest intention from very commencement of the transaction on.

24) The expression 'entrustment' carries with it the implication that the transferee has legal custody of the property for the benefit of the transferor himself. The transferee obtains it for safe retention and under no circumstances he acquires a right to dispose of that property in contravention of the condition of entrustment. In the present case material available on record, does not show any entrustment in legal sense to attract the offence of 'criminal breach of trust.'

25) The ingredients of criminal breach of trust are that(a) that the accused must have been entrusted with the property or dominion over it and (b) and the accused must have misappropriated the property or disposed of that property in violation of such trust. But on microscopic scrutiny of the witnesses it is found that the accused were not entrusted with any amount of premium as no documents were produced before the court as material witness to prove that the accused had misappropriated the same that to be paid for the customers in the LIC. On behalf of Renaissance NGO, though PW-2 has stated in his evidence that the complainant who collected the premiums from the customers had deposited the amount to accused, Biman Dutta but the prosecution side has failed to submit any document in this regard. PW-1 also stated in his evidence that after collection of premium from the customers for LIC policy, he deposited the amount to Renaissance NGO, co-ordinator accused Biman Dutta who further deposited the amount to the LIC office. Regarding deposition of premiums collected from the customers to be deposited in the LIC prosecution side has failed to submit any document to prove that the accused Biman Dutta was entrusted with the premiums and later he misappropriated. In order to bring home the charge of criminal breach of trust here have to be an entrustment, thereafter misappropriation or conversion of one own use or use in any legal direction or of any legal contract and finally misappropriates or converses or disposal must be with a dishonest intention.

26) But coming to the present case in hand when the prosecution could not prove that the entrustment was there to the accused person of the premium collected from the customers, misappropriate does not arise.

27) From the perusal of the above evidence on record, it cannot be

proved that the accused misappropriated the premiums amount collected from the customers to be paid to the LIC.

28) For the purpose of holding a person guilty u/s 420 IPC, the evidence adduced must be established beyond reasonable doubt, mensrea on his part. The prosecution has to prove every ingredient of offence in question beyond a shadow of doubt including the burden of proving the mental state of the accused whoever intention or knowledge forms one of the ingredients of the offence and that the act of the accused was intention. The conduct of the complainant side witnesses has really thrown doubt to the present case. Law is very clear that when documentary or oral evidence is required to determine the claim, the appropriate remedy is civil court. Therefore what emerges from the above discussions with the ingredients of section 420/406 IPC are absent in the evidence adduced by the complainant side to hold the accused guilty of those charges. Accordingly the accused persons are acquitted from the charges u/s 420/406/34 IPC and set them at liberty forthwith. Their bail bonds stands cancelled.

29) Judgment is pronounced in the open court under my hand and seal of this court on this 12th day of November, 2013.

Dictated & corrected

by me.

Addl.Chief Judicial Magistrate,
Golaghat.

Addl.Chief Judicial Magistrate,
Golaghat.