

IN THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS: GOLAGHAT, ASSAM

G.R. CASE NO - 167/2012.

U/S 468 of Indian Penal Code.



STATE

V.

SRI NILPABAN BARUAH.

.....Accused person.

PRESENT: - MRS. LEENA DOLEY, AJS

J.M. FIRST CLASS, GOLAGHAT.

FOR THE PROSECUTION: - MRS DIPLIP GOGOI, Asstt. P.P

FOR THE DEFENCE: - SRI M.K.BURAGOHAIN, Advocate.

EVIDENCE RECORDED ON: - 21-03-2013, 20-04-2013, 27-05-2013, 31-08-2013

23-09-2013.

ARGUMENTS HEARD ON: - 23-10-2013, 12-11-13.

JUDGMENT DELIVERED ON: - 12-11-2013.

JUDGMENT

1. The prosecution case in brief is that Sri Nilpaban Bora was caught red handed in the United Bank of India, Bokakhat Branch on 10-02-2012 while he was trying to receive the payment of an amount of Rs 2000/- from the

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account No - 107746 and later Sri Ranendrajeet Barman the Manger of the bank lodged an FIR in the Bokakhat police station with this regard.

2. The police registered a case bearing Bokakhat P.S. Case No 17/2012 and investigated the case. After investigation the police submitted the charge-sheet U/S 468 of the Indian Penal Code and was registered as G.R. Case No-167/2012. Cognizance was taken by the Chief Judicial Magistrate and the case was transferred to this court for trial.
3. The accused person appeared in the court on 05-05-2012 and was allowed to remain in his previous bail. Copies of relevant documents were furnished to the accused as required U/S 207 of Criminal Procedure Code. After a preliminary hearing formal charge U/S 468 IPC was framed against the accused and when the charge was read over and explained to the accused he pleaded not guilty and claimed to stand trial.
4. Prosecution examined nine witnesses in order to prove its case and the accused did not examine any witness.
5. The accused was examined under section 313 of the Code of Criminal Procedure on 09-10-2013 and in his examination he has denied the allegations leveled against him and stated those to be baseless.
6. Heard the arguments advanced by the Learned Counsels of both the sides.
7. After analyzing the evidences and various documents in record and also after hearing the arguments lead by the Learned counsels of both the sides I frame the following points for determination:

Whether the accused on 10-02-2012 forged a bank withdrawal slip putting signature of Smti Meghali Saikia intending that it shall be used for the purpose of cheating and thereby committed offences punishable U/S 468 IPC.

If yes, what punishments does he deserves?


8. DISCUSSIONS, DECISION AND REASONS THEREOF:-

I have carefully examined the evidences on record, analyzed the relevant documents on record and after hearing the arguments advanced by the




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Learned Counsels of both the sides, give my decision on the above noted points as follows:-



i) PW4 has deposed that one day Smti Meghali Hazarika came to the bank to up to date her passbook and then she complained him that Rs 3000/- has been shown as withdrawn from her account which she has not withdrawn. Thereafter he took her to the Deputy Manager and then the facility of withdrawing money through withdrawal slip for her account was cancelled and withdrawal through cheque facility was initiated. PW1, PW2 and PW3 have deposed in the same manner to the extent that the account holder Smti Meghali Hazarika a client of the United Bank of India, Bokakhat Branch complained that amounts have been deducted from her account but she has not withdrawn those amounts and thereafter the aforesaid bank officials cancelled the withdrawal of money from her account with withdrawal slip and furnished her cheque facility for withdrawal. After a few days later the accused came to the bank to PW4 as cashier, with a withdrawal slip of Rs 2000/- with signature of Smti Meghali Hazarika and as PW4 remembered the complaint of Smti Meghali Hazarika he asked the accused whose money he has come to withdraw and to which the accused replied that he has come to withdraw money for his mother. Thereafter PW4 took the accused and the withdrawal form before the Deputy Manager and then returned to his counter.

ii) PW2 is the informant and was the Deputy Manager of the United Bank of India, Bokakhat Branch at the time of incident and has deposed that as the accused was produced before him along with the withdrawal slip he verified the signature of Smti Meghali Hazarika over the withdrawal slip with their official record and found the same to be different and hence called the police and handed over the accused to the police. He has deposed that thereafter he lodged an FIR. Exhibit 3 is the FIR and Exhibit 3(1) is his signature. He has deposed that the police seized the withdrawal form of that day and two other withdrawal forms through which on two other occasions money were withdrawn from the account of Smti Meghali Hazarika and that he has signed as a witness in the seizure list. Exhibit 1(2) is his signature. He has deposed that he has witnessed the withdrawal forms so seized by the police in the court. M.Ext 1, M.Ext2(1) and M.Ext 2(2) are those forms.

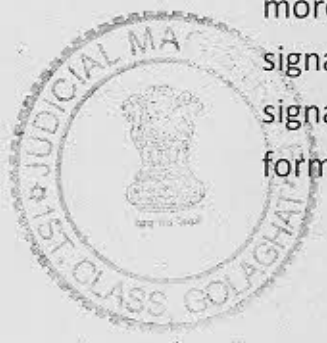
  
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iii) PW1, PW3 and PW4 have all corroborated the evidence of PW2 as they have also deposed in the same manner and all of these witnesses have also witnessed the material exhibits in the court. PW1 has put his signature in the seizure list through which the police seized the withdrawal form from the accused and Exhibit 1 is the seizure list and Exhibit 1(1) is his signature. He has deposed that the police also seized two more withdrawal forms dated 02-01-12 and 03-01-12 and he put his signature as a witness. Exhibit 2 is the seizure list and Exhibit 2(1) is his signature. He has also deposed that he has witnessed those withdrawal forms in the court and M.Ext 1, M.Ext 2(1) and M.Ext 2(2) are those forms.

iv) PW5 is the holder of the account from whose account money have been withdrawn without her knowledge and in her examination in chief has deposed that she has a savings bank account in United Bank of India, Bokakhat Branch bearing No – 107746 and in January 2012 visited the Bank for withdrawal of pension amount and then came to know that there was no money in her account. She has deposed that one Mukul Deka bank official informed her that amount of Rs 2000/- on 02-01-2012 and an amount of Rs 1000/- on 03-01-2012 have been withdrawn from her account to which she has denied of withdrawing any money. She has deposed that the bank officials thereafter showed her the withdrawal slips of aforesaid dates and amounts and then she denied the signature over those withdrawal slip for which reason the bank officials cancelled her withdrawal facility with withdrawal slip and initiated withdrawal through cheque from that very day. PW5 has in every way corroborated with the evidences of other prosecution witnesses discussed above. She has deposed that in January 2012 again after some days she was informed by one Dipak Sarmah that the person who has withdrawn her money was caught by the police. She has deposed that the accused was caught as after initiation of withdrawal through cheque facility, he came to the bank for withdrawing money through a withdrawal form which was not in his knowledge.

v) PW9 is the investigating officer and has done his regular investigation. PW9 in his examination in chief has deposed that he visited the place of occurrence i.e. the bank on receiving the FIR and prepared a sketch map and seized the withdrawal forms. Exhibit 4 is the sketch map and Exhibit 4(1) is his signature. Exhibit 1 and 2 are the seizure list and Exhibit 1(3) and 2(2) are his signatures. He has deposed that he forwarded the accused to be produced before the court and submitted the charge sheet on completion of the investigation. Exhibit 5 is the charge sheet and Exhibit 5(1) is his signature.

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vi) Up till the discussions made above all the prosecution witnesses have very well corroborated with each other and have supported the prosecution case and it can be conjectured that the accused is responsible for the act of withdrawing money by putting forged signature of the account holder. But the accused in his examination U/S 313 CrPC has denied the allegations against him and stated that he never visited the bank and it was the account holder's son Mayur Hazarika who went to withdraw money and was caught and that he was standing outside the bank but was caught later. The accused in his examination has further deposed that on the day of the incident he, Mayur Hazarika and other two boys namely Naba Kanta Pegu and Bijit Das went to the market and thereafter he accompanied Mayur to the bank where the guard took them for enquiring and later they both were taken to the police station but Smti Meghali Hazarika appeared in the police station and took Mayur with her and he was left in the police station.

vii) The Ld. Defence Counsel has advanced arguments that the accused has not committed any offence and that the son of the account holder Mayur Hazarika used to withdraw money from his mother's account and on the day of incident also the accused was falsely implicated. The Ld. Counsel for the accused has also argued that the FIR itself states that there was someone more who tried to withdraw money but that person fled away. Under such circumstance it is pertinent to ascertain what the other witnesses have to say.

viii) PW6 is the son of the account holder and has deposed that the accused is his senior in college and that there are instances when his mother Smti Meghali Hazarika has sent him to withdraw money from her account. He has denied the suggestion that on the day of incident he was in the bank and went there to withdraw money from his mother's account but fled away when a commotion took place. PW8 was the security personnel in the said Bank on the day of incident and in his examination in chief has also narrated the same story as that of other witnesses and that the police visited the bank and took the accused along with them. He has also deposed that he saw the account holder and her son in the police station and also heard the son of the account holder saying that he has withdrawn money for two times with forged signature of his mother and the other times the accused has withdrawn the money with forged signature of the account holder.

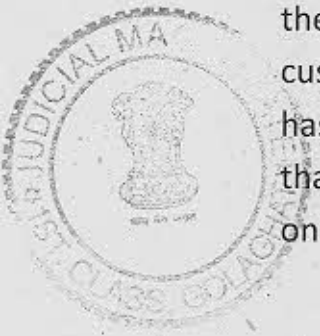
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ix) PW5 being the mother of PW6 (Mayur Hazarika) has in her cross examination admitted that she has sent her son to withdraw money from the bank twice when she was ill and also stated before the court that she has signed in the withdrawal slips at home before she has sent her son for withdrawing money. And PW8 in his cross examination has deposed that he does not know if the son of the account holder went to the bank on the day of incident and that he fled away from there, as there were many customers in the bank on that day. He has denied the suggestion that he has not deposed before the investigation officer in his earlier statement that he heard the son of the account holder saying in the police station that on the day of incident the accused went to withdraw money from the bank.

x) Now that PW5 being the account holder has also supported the testimony of PW6, whom the accused person has alleged of committing the offence and the admission of PW8 that he does not know if the son Mayur Hazarika visited the bank on the day of incident or not, the arrow of suspicion cannot be turned towards PW6 (Mayur Hazarika). Further PW9 being the investigating officer has not deposed any such statement which implicates the son of the account holder in this incident and has also denied the suggestion that the bank officials handed over the son of the account holder in the police station as an accused. He has also denied the suggestion that the accused was not handed over as an accused but was only produced in the police station on suspicion. Further none of the other prosecution witnesses have even uttered any word about the involvement of the son of the account holder in this incident or even uttered that the son was caught in the bank and was produced as an accused in the police station, which again raises a doubt in the statement of the accused where he stated that the son of the account holder was also caught and produced in the police station.

xi) The accused in this case is alleged of committing an offence punishable U/S 468 IPC which defines that –“whoever commits forgery intending that the document or electronic record forged shall be used for the purpose of cheating shall be punished”.

xii) Now it is to ascertain whether the withdrawal form i.e. M.Ext 1 is a forged document or not. Section 463 IPC defines what is forgery – “whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or



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