

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, DHUBRI

Case no : GR (GPR) 54 of 2007

State of Assam
-Vrs-
Smti Kalpana Roy Choudhury
.....Accused Person

Present : Shri S. Datta, AJS

Learned Advocates appeared :

For the prosecution ----- Md. J. Bari Sarkar, APP

For the defence ----- Shri A. L. Bairagi

Evidence recorded on : 08.9.10, 14.8.12 & 04.12.12

Argument heard on : 07.8.13 & 13.9.13

Judgment delivered on : 16.9.13

Penal law involved : u/s 468/420/406 IPC

J U D G M E N T

1. A complaint was lodged on 12.3.07 by one Shri Ujjal Kumar Adhikary to the effect, *inter alia*, that he purchased a bus which was financed by the Tata Finance. Subsequently the accused person came in contact with him and persuaded him to transfer the finance in her name promising a lower rate of interest. The complainant accordingly got a release from the Tata Finance on being refinanced of Rs.1,10,000/- by the accused person on condition of repayment in 23 EMIs @ Rs.6200/- & another (last) instalment of Rs.6992/-. At that time, the accused person took signatures of the complainant on a blank printed form & other documents as security.

2. On 21.11.05 the complainant went to Vallore for treatment of his elder brother Ajit and on that very day the accused person took away the vehicle to her custody without his knowledge. The complainant returned after about one month and, on 24.12.05, the accused person sent him an Advocate's Notice demanding six instalments (Rs.43,710) which allegedly remained unpaid. The complainant replied to the notice whereupon the accused person sent another notice dated 07.01.06 to him claiming Rs.2,50,000/- as the principal amount. The complainant alleged that the claim was false ; the accused person manipulated those blank form & papers which were signed by him on good faith. She even lodged an Ejahar on 09.3.06 claiming theft of the vehicle and got an order of zimma passed in her favour on the basis of those false documents.

3. The complaint was sent to the Gouripur PS u/s 156(3) CrPC and the police, after investigation, submitted charge-sheet against the accused person. On her appearance before the Court, the charges u/s 468/420/406 IPC were framed against and read over & explained to her by my learned predecessor, after supplying the copies u/s 207 CrPC and hearing both sides, to which the accused person pleaded not guilty & claimed to be tried, as the order dated 01.6.10 shows.

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4. During trial, the prosecution examined four witnesses including the complainant (now informant) and the incriminating materials so brought into the evidence on records were put to the accused person u/s 313 CrPC ; she denied the allegations and declined to adduce any evidence. I have heard the argument of both sides at length.

5. The **Points for Determination** in this case are :

(i) whether on or after 01.3.05 the accused person forged the aforesaid blank printed form & documents (which was signed & delivered to her by the informant for securing his debt of Rs.1,10,000/- to her) for the purpose of cheating the informant in the following manner and thus committed an offence punishable u/s 468 IPC ;

(ii) whether on or before 01.3.05 the accused person, by deceiving the informant, fraudulently and/or dishonestly promised him a lower interest-rate than the Tata Finance and thereby induced him to deliver the aforesaid blank form & documents signed by him with the intention of causing him to pay to her an amount higher than what he was liable under the agreement and thus committed an offence punishable u/s 420 IPC ;

(iii) whether the accused person being entrusted with any property misappropriated the same and thus committed an offence punishable u/s 406 IPC;

And, if so, what punishment the accused person deserves.

Decision & reasons therefor :

6. PW-1 Shri Ujjal Kumar adhikari is the informant in this case. He deposed to the effect that in the year 2002 he purchased a vehicle on being financed by Tata Finance and plied it for two & half a year. In February, 2005, the Financer took away the vehicle for two/three instalments remaining unpaid and was informed by the Company that he would be allowed to take it back on payment of Rs.1,91,000/-. PW-1 informed the matter to one Binode Burman, his friend, who told him that the accused person used to lend money. PW-1 then approached the accused person and sought for a loan of Rs.1,10,000/-. The accused person agreed and lent the full amount to him on 01.3.05 on condition of its repayment in twenty-four instalments ; she also took signatures of PW-1 & said Binode Burman (as guarantor) on some blank & printed documents (including the Agreement vide. Ext.3). PW-1 got the vehicle released from Tata Finance next day and paid the instalments to the accused person for five months (vide. Ext.4&5). He then defaulted for two/three months for the illness of his father & elder brother. On 21.11.05 PW-1 went to Chennai for the treatment of his elder brother and returned on 22.12.05 only to be informed by his wife that the accused person had taken away the vehicle. PW-1 went to the house of the accused person and sought for time. She agreed for 24 hours. PW-1 approached for further time but the accused person did not consider it. After sometime the accused person lodged an Ejahar with the Gouripur PS alleging theft of the vehicle and in that case PW-1 prayed for zimma of the vehicle. PW-1 added that the accused person sent two notices to him demanding Rs.43,000/- & Rs.2,50,000/-. (Ext.6&8). He replied to the first notice vide. Ext.7. He also proved his Ejahar as Ext.1.

7. PW-1 admitted during cross-examination that he lodged Ext.1 about one year after institution of GR (GPR) Case No.50/06 [i.e. the aforesaid

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Ejahaar lodged by the accused person alleging theft of the vehicle] and that he procured certified copies of Ext.2-5 from the record of that case. He also admitted that he had not mentioned in his Advocate's Notice that the accused person took signature on blank papers and that his prayer for zimma was rejected by the Court in GR (GPR) Case No.50/06. PW-1 disputed his signature in Ext.3. All the documents exhibited by him are photocopies (except Ext.1) and he disclosed that some of the originals are lying with him. PW-1 expressed his ignorance as to whether the accused person demanded money as per the terms of the agreement but he admitted that he still owes to the accused person.

8. PW-2 Shri Binoy Paul testified that five/six years before the date (14.8.12) of his evidence PW-1 purchased a vehicle by borrowing money from the accused person after signing some blank papers. The accused person later took away the vehicle on the basis of those papers. PW-2 admitted during cross-examination that he was not present at the time of the monetary transaction. He disclosed that he also purchased a vehicle on being financed by the accused person and that the latter took away the vehicle for non-payment of the instalments.

9. PW-3 Shri Rupam Roy deposed that in the year 2005 PW-1 purchased a vehicle on being financed by Tata Finance and, for some reason, he borrowed Rs.1,10,000/- from the accused person after signing some blank papers. The accused person later took away the vehicle. PW-3 stated further that he was not present at the time of the borrowing.

10. So far as the charge u/s 406 IPC is concerned, it is the very prosecution-case that the accused person took away the vehicle on her own and was not entrusted with it. In fact, the wife of PW-1 seems to be the sole witness of such taking who has not been examined in this case. PW-1 testified that he delivered some signed papers to the accused person at the time of the alleged borrowing. Even if it can be deemed to have been an entrustment in the sense of Sec.405 IPC, the papers can at the most be treated as valuable securities within the meaning of Sec.30 IPC and not properties as such. One may note here that Sec.405 IPC deals with entrustment of property only and not of any valuable security. I am prompted to make such distinction, because, the legislature has always treated 'property' & 'valuable security' as two different entities and nowhere meant 'property' to include 'valuable security' [vide. the expression "property **or** (emphasis supplied) valuable security" appearing in the provisions u/s 327/329/330/331/348/349/383/467 IPC, u/s 3/19 of the Protection of Women from Domestic Violence Act, u/s 2 of the Dowry Prohibition Act and many more]. There is also nothing on records to show that the accused person was obliged by any law or contract to return the documents instead of keeping them as records even after satisfaction of the debt.

11. As regards the charge u/s 468 IPC, there is absolutely no ocular or expert's evidence of the alleged forgery. The prosecution has not even produced the original documents (which are alleged to have been forged) for comparison by the Court u/s 73 of the Evidence Act. PW-1 alleged that the accused person took his signature on some unfilled printed forms & blank papers including the Agreement and forged the same by entering false amounts etc. into them. He exhibited a photocopy of the said Agreement as Ext.3 but, during cross-examination, doubted his signatures thereon. It follows, therefore, that Ext.3 is may not even be the photocopy of the concerned Agreement.

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12. The accused person has been charged in this case u/s 420 IPC also. Though the original prosecution-case gatherable from the Ejahar (Ext.1) was that the accused person induced PW-1 (informant) to take the loan from her by promising a low rate of interest and, in turn, to deliver the aforesaid blank form & documents signed by him, but PW-1 clearly stated in his examination-in-chief itself that it was actually he who approached the accused person for the loan. Therefore, the very crux of the offence punishable u/s 420 IPC (i.e dishonest inducement) is not proved, rather disproved, in this case.

13. PW-1 admittedly lodged the Ejahar (Ext.1) after about one year of institution of the GR (GPR) Case No.50/06. He also stated that he came to know about the alleged forgery shortly thereafter and even prayed for custody of the vehicle in that case. PW-1 has not explained this inordinate delay in lodging the Ejahar (Ext.1). During cross-examination he shattered the very base of the prosecution case by expressing his ignorance as to whether the accused person demanded money as per the terms of the agreement.

14. Situated thus, I acquit the accused person of the charges u/s 468/420/406 IPC and direct that she be set at liberty forthwith. Her bail-bond shall stand discharged on expiry of six months from today vide. the spirit of the provisions u/s 437-A CrPC. The seized documents shall be returned to the concerned person (from whom seized)

Dictated & corrected by me and given under my hand and seal of the Court on this 21st Day of the Month of August in the Year 2013.

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Addl. Chief Judicial Magistrate,
Dhubri : Assam