

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, DHUBRI

Case no : GR 83 of 2008 [GKJ PS 366/08]

State of Assam  
-Vrs-  
Md. Amzad Hussain  
.....Accused Person

Present : Shri S. Datta, AJS

Learned Advocates appeared :

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

For the defence ----- Md. J. Talukdar, Md. A. Razzak & Md. M. Hassan

Evidence recorded on : 02.02.13 & 23.5.14

Argument heard on : 23.5.14

Judgment delivered on : 06.6.14

Penal law involved : u/s 409 IPC

J U D G M E N T

1. The Ejahar on records Dated 06.8.08 was lodged by Shri Jatindra Lahkar, the then Deputy Commissioner, Dhubri, to the effect that he was intimated in writing by Shri Jibesh Ch. Pradhani, the then President, Golakganj Anchalik Panchayat, that no work was done in respect of the construction of Hume Pipe Culvert of 180 cm diameter (3 rows) over the Alaikuri river near the house of one Bhupendra Roy ; only three Hume Pipes were lying there. The estimated cost of the scheme was Rs.1.8 lac out of which Rs.1.32 lac was the cash-component which had already been released to the above-named accused person who was the Junior Engineer, DRDA, Dhubri, at that time ; the remaining part of the amount was sixty quintals of food-grain out of which 73% was released to the accused too. So, on receipt of the complaint, the informant directed an inquiry to be made by Shri Animesh Talukdar, the then Election Officer, who later reported that the allegations were true.

2. Police, after investigation, submitted Charge-sheet against the accused person and, on his appearance before the Court, copies were supplied to him u/s 207 CrPC. A charge u/s 409 IPC was framed against and read over & explained to him by my learned predecessor (as I gather from the Order Dated 21.6.12 read with the filled-in Form of Charge), after hearing both sides, to which the accused person pleaded not guilty and claimed to be tried.

3. The prosecution, in course of trial, examined four witnesses and, at that stage, I closed further evidence for the prosecution for the reasons stated in the Orders Dated 23.5.14 read with the one Dated 03.5.14. The accused person was then examined u/s 313 CrPC ; he denied the allegations and declined to adduce any evidence. I have heard the argument of both sides.

4. The sole **point for determination** in this case is whether the accused person being entrusted with Rs.1.32 lac in cash & 43.8 quintals (73% of 60 quintals) of food-grain (out of the total construction-cost of Rs.1.8 lac) for the  
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construction of Hume Pipe Culvert of 180 cm diameter (3 rows) over the Alaikuri river near, the house of one Bhupendra Roy, in his (accused's) capacity of a Junior Engineer, DRDA, Dhubri, dishonestly misappropriated the same, except the cost of three Hume Pipes including carriage etc. thereof, and thus committed an offence punishable u/s 409 IPC and, if so, what punishment the accused deserves.

Decision & reasons therefor :

5. PW-1 Mr. Jatintra Lahkar is the informant in this case. He deposed to the effect that on 17.7.08, when he was the Deputy Commissioner, Dhubri, he received a complaint (Ext.2) from one Jibesh Ch. Roy, the erstwhile President of the Golakganj Anchalik Panchayet. PW-1 then directed an inquiry to be made by Shri Animesh Talukdar, the then E.O./E.M., who submitted the inquiry-report Ext.3. PW-1 then lodged the Ejahar (Ext.1).

7. PW-2 Parimal Ch. Biswas & PW-3 Bhambal Kr. Sarkar testified almost in the same manner to the effect that one day in the year 2008 police seized some documents & records from the Office of the Zilla Parishad, Dhubri, in their presence by the Seizure-list Ext.4. PW-4 Akhil Kr. Roy proved the seizure of some other documents vide. Seizure-list Ext.5.

8. It is an admitted position that none of these PWs have any 'direct' (vide. Sec.60 of the Evidence Act) knowledge of the alleged occurrence/facts. Ext.2&3 contains the allegations of misappropriation but the truth of their contents has not been even attempted to be proved by the prosecution by examining the authors thereof. In fact, Ext.2 has not been proved formally to have been written by said Jibesh Ch. Roy and it is well-settled that a mere marking of a document as Exhibit does not dispense with the formal proof thereof. The I.O. seized a Food-grains Issue Register (purportedly showing issuance of food-grain to the accused person in respect of the concerned construction-scheme), a Challan-book (purportedly pertaining to the said issuance of food-grains to the accused), one Receipt-memo (purportedly issued by the accused on receipt of Rs.65,000/-), Sanction-order (purportedly pertaining to the sanction of Rs.1.8 lac for the concerned construction-work), one Requisition-letter (purportedly written by the accused for payment of advance-money), one copy of the Order (purportedly passed by the then Chief Executive Officer, Zilla Parishad, Dhubri, sanctioning Rs.66,000/- as the first instalment for the aforesaid construction-purpose) & another Receipt (purportedly issued by the accused on receipt of said Rs.66,000/-), by the Seizure-lists (Ext.4&5). But none of these documents have been proved in this case. Therefore, no reliance can be placed on any such document, in my considered opinion.

9. The very entrustment being thus not proved, the question of shifting the onus of proving how the accused had dealt with the entrusted money/food-grains does not arise. Hence, I acquit him of the charge u/s 409 IPC and direct that he be set at liberty forthwith. His bail-bond shall stand discharged after six months vide. the spirit of Sec.437-A CrPC. The seized documents shall be returned to the concerned Zilla Parishad in due course.

Dictated & corrected by me and given under my hand and seal of the Court on this 06<sup>th</sup> Day of the Month of June in the Year 2014.

Addl. Chief Judicial Magistrate : Dhubri