

Gauhati High Court  
Crl.A./23/2011 on 16 November, 2021

GAHC010003652011

THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Criminal Appeal 23/2011

The State of Assam

-Versus-

Sri. Bupesh Chandra Biswas  
S/o Late Bharat Chandra Biswas  
R/o Church Road, Silchar,  
P.O. and P.S. Silchar,  
District - Cachar, Assam

Advocates :

For the Appellant : Mr. M.P. Goswami,  
Additional Public Prosecutor, Assam  
For the Respondent : Mr. B.M. Choudhury, Advocate  
Date of judgment & order : 16.11.2021

BEFORE  
HON'BLE MR. JUSTICE MANISH CHOUDHURY  
JUDGEMENT & ORDER

By this appeal under Section 378(1)(b) of the Code of Criminal Procedure 1973 ['the CrPC' and/or 'the Code', for short], the State of Assam as the appellant has assailed a judgment and order dated 31.07.2010 passed by the learned Additional Sessions Judge [FTC], Cachar, Silchar ['the appellate court', for short] in Criminal Appeal no. 27/2009, whereby, the appellate court had allowed Page No. 2/12 the appeal preferred by the respondent-accused and set aside the judgment and order of conviction and sentence passed against the respondent-accused by the trial court of learned Chief Judicial Magistrate, Cachar, Silchar ['the trial court', for short] in G.R. Case no. 569/1998. In G.R. Case no. 569/1998, the learned trial court, vide judgment and order dated 10.11.2009, had convicted the respondent-accused finding him guilty for the offence under Section 468, Indian Penal Code ['IPC' and/or 'the Penal Code', for short] and he was sentenced to suffer simple imprisonment for 2 [two] months and to pay a fine of Rs. 1,000/-, in default of payment of fine, to suffer simple

imprisonment for another 1 month.

2. The investigation of the case was set into motion by a First Information Report [FIR] lodged by one Dinesh Chandra Biswas on 10.03.1998 before the Officer In-Charge, Silchar Police Station, Cachar. In the FIR, the informant had inter alia stated that he was living with his son and daughter-in-law in a house bearing holding no. 248 located in Ward no. 22 of Silchar town. He had inter alia stated that his younger brother, Bhupesh Chandra Biswas i.e. the respondent-accused herein was living in a separate house within the same premises with the permission of the informant. The land, house holding number, water supply connection, electricity supply connection, etc. were in the name of the informant from the beginning. It was alleged that the accused, without the knowledge of the informant and by forging the informant's signature, had submitted a no-objection letter before the Assam State Electricity Board [ASEB] in order to obtain an electricity connection in his name and got one electricity connection in the name of the accused secretly without any notice to the informant. When the matter came to the knowledge of the informant, he submitted a written complaint before the authorities of the ASEB on 10.09.1997 and also met the officials of the ASEB raising his objections. The authorities in the ASEB did not accept his complaint first but later on, due to his repeated requests, they apprised the matter to him and advised him to take legal action. Accordingly, he stated to have filed the FIR.

3. On receipt of the said FIR, the Officer In-Charge, Silchar Police Station registered a case being Silchar Police Station Case no. 300/1998 [G.R. Case no. 569/1999] under Sections 468/420, IPC on 10.03.1998. During the course of investigation carried out after registration of the FIR, the I.O. recorded the statements of the witnesses and seized a number of documents including the no-objection letter. The alleged no-objection letter was forwarded to the Forensic Science Laboratory [FSL], Assam for examination and opinion. After obtaining a report from the FSL and on completion of the investigation, the I.O. submitted a charge sheet under Section 173(2), CrPC against the respondent-accused vide Charge Sheet no. 668/2000 dated 11.12.2000 finding a prima facie case against him under Page No. 3/12 Sections 420/468, IPC. After receipt of the charge sheet, the process was issued to the respondent-accused for his appearance and to stand the trial. On appearance of the accused, the copies were furnished to the accused as per the provisions of Section 207, CrPC by the learned trial court.

4. The learned trial court framed charges against the accused under Section 468, IPC and under Section 420, IPC. During the course of trial, the prosecution side, in order to bring home the charges, examined 4 [four] nos. of witnesses and exhibited a number of documents. The informant viz. Dinesh Chandra Biswas and the I.O. of the case could not be examined due to their deaths in the meantime. After closure of the evidence from the prosecution side, the statement of the accused was recorded under Section 313, CrPC by putting before him the incriminatory materials emerging from the evidence. The defence plea was of total denial of the charges. After hearing the arguments of the learned counsel for the parties and after appreciation of the evidence on record, the learned trial court had found the accused guilty for the offence under Section 468, IPC. The learned trial court had, however, found no material against the accused to hold him guilty for offence under Section 420, IPC. Accordingly, he was acquitted of the charge under Section 420, IPC. After hearing the accused on the quantum of sentence under Section 235(2), CrPC, where, the accused prayed for

leniency on the grounds that he was an old person of 89 years of age and was suffering from old age ailments, the trial court considering those facts, had passed the sentence, as mentioned above.

5. Aggrieved by and dissatisfied with the judgment and order of conviction and sentence, the accused preferred an appeal under Section 374(3), CrPC before the learned Sessions Court, Cachar at Silchar and the said appeal was registered as Criminal Appeal no. 27/2009. The appeal was forwarded to the Court of learned Additional Sessions Judge [FTC], Chachar, Silchar [the appellate court] for disposal. The appellate court, after hearing the learned counsel for the parties, had allowed the appeal by the judgment and order dated 31.07.2010 [supra]. The appellate court was inter alia of the view that one of the ingredients of the offence under Section 468, IPC i.e. inducement which is also common to the offence of cheating under Section 415, IPC, a lesser offence to Section 420, IPC, was absent and as such, the accused could not be convicted for the offence under Section 468, IPC.

6. Heard Mr. M.P. Goswami, learned Additional Public Prosecutor for the appellant-State and Mr. B.M. Choudhury, learned counsel for the respondent-accused.

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7. Mr. Goswami, learned Additional Public Prosecutor has submitted that the report of the FSL clearly indicated that the signature appearing in the no-objection letter did not belong to the informant and in such situation, the signature therein was forged, in all probability, by the accused as it was he who submitted the said no-objection letter to the ASEB. Per contra, Mr. Choudhury, learned counsel for the accused has submitted that the report of the FSL was not exhibited during the course of the trial and as such, neither any reliance can be placed nor any reference could be made to such a report. Even if the said report is considered then also it does not assist the case of the prosecution as it was not opined therein that the signature in the no-objection letter belonged to the accused.

8. It would, at first, be apposite to note the testimonies of the witnesses who adduced evidence on behalf of the prosecution. P.W.1, Debashish Biswas was the son of Late Dinesh Chandra Biswas [the informant], who died on 21.12.1998. The accused being the brother of the informant, is an uncle of P.W.1. In his testimony, P.W.1 stated that both of the families were living in the same house at Church Road, Silchar since his childhood. When the accused migrated to India from the erstwhile Pakistan, his father allowed the accused to live in his house. P.W.1 was examined on 18.01.2007 and he stated that on that date, there were two electricity meters in their house - one in the name of the informant and the other in the name of the accused. Prior to 1990, there was only one electricity meter in the name of his father. Subsequently, for the purpose of renting out, one sub-meter was also installed. The bills of both the meters were used to come in the name of the informant. Subsequently in the year 1997, they discovered that out of the two bills for two meters, one bill was in the name of the accused. On receipt of such a bill, he and his father i.e. the informant went to the office of the ASEB and raised objection. On being persisted, the ASEB sent Ext.-1-letter to the informant. By the Ext.-1-letter, it was informed that the transfer of consumer name was effected in terms of a no-objection letter issued by the informant. Both he and the informant then went to the

office of the ASEB and told the Assistant Executive Engineer, ASEB posted at Silchar that the informant never issued a no-objection letter. The ASEB, on 27.01.1998, wrote a letter to the accused, with a copy to the informant, intimating that the informant had raised an objection that the no-objection letter dated 07.09.1996 which the accused had produced for the purpose of transferring the name of the consumer, was not genuine. The accused was asked to file an affidavit stating that the no-objection letter was typed and signed by the informant and handed over to him for submission. P.W.1 exhibited the FIR as Ext.-2 and a seizure list as Ext.-3. In his cross-examination, P.W.1 stated that from his childhood both his father and the accused resided in the same house at Silchar. He reiterated that the transfer of name was done as per the no-objection letter, Page No. 5/12 mentioned in Ext.-1-letter. He further stated that there were two electricity meters in the house then and there was no sub-meter. Originally, there was one meter and around the year 1980, the second meter came into existence. He denied the suggestion that the informant was compelled to file the case at his instance and the accused did not forge the signature of his father. He also denied the suggestion that he had enmity with the accused over the property at Church Road, Silchar.

9. P.W.2, P.W.3 and P.W.4 were all officials of the ASEB. P.W.2 stated that when on 16.03.1998 he was serving as Junior Engineer in Silchar Electrical Sub-Division-I, Sri S.K. Das, the then Assistant Executive Engineer had handed over some papers to police in connection with the case and the same were seized by police vide Ext.-4 where he signed as a witness. Later on, vide Ext.-5 - seizure list, some other documents were seized. P.W.2 stated that vide Ext.-4, 7 nos. of documents were seized. In cross-examination, P.W.2 stated that he did not know in connection with which case the documents were seized and he had no connection with any matter of transfer of meter from one person to another. He denied about preparing any of the documents, which were seized vide Ext.-4. Both Ext.-4 and Ext.-5 were prepared in the office room of the Sub-Divisional Officer whereafter he was called there to sign and, accordingly, he signed in Ext.-4 and Ext.-5.

10. P.W.3 deposed to the effect that when on 16.03.1998 he was serving as Junior Engineer in Silchar Electrical Sub-Division-I police came to the office in connection with the case. The documents he produced were seized by police vide Ext.-5 where he signed as a witness. The police came to the office again on 12.05.1998 on which date 2 [two] more sets of documents were seized vide Ext.-6 where he signed again as a witness. Vide Ext.-6, 2 [two] applications submitted by Dinesh Chandra Biswas were seized. In cross-examination, P.W.3 feigned ignorance about the police officers who seized the documents vide Ext.-5 and Ext.-6 on 16.03.1998 and 12.05.1998 respectively. He stated that the police personnel did not seize the letter dated 19.09.1997 of the ASEB. P.W.4 was serving as the Assistant Executive Engineer, ASEB on 16.03.1998. On that day, one Sub-Inspector of Police by the name, Sri S.H. Choudhury came to the office in connection with G.R. Case no. 569/1999 and seized some documents vide Ext.-4 where he signed as a witness. Police personnel came to the office also on 12.05.1998 and on that day, some more documents were seized from P.W.3 vide Ext.-6 where also he signed as a witness.

11. I have duly considered the submissions advanced by the learned counsel for the parties. Before Page No. 6/12 making any evaluation of the testimonies of the witnesses and the documentary evidence placed on record, the materials available in the case records of G.R. Case no. 569/1999, in

original are perused.

12. The case was originally registered for the offences under Section 420 [Cheating and dishonestly inducing delivery of property] and Section 468 [Forgery for purpose of cheating] of the Indian Penal Code [IPC]. As per Section 420, whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to 7 [seven] years, and shall also be liable to fine. Section 468 of the Penal Code has provided that whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to 7 [seven] years, and shall also be liable to fine.

13. Section 415 of the IPC has defined cheating and the Section reads as under :-

"415. Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

14. The ingredients to constitute an offence of cheating are as follows : [i] there should be fraudulent or dishonest inducement of a person by deceiving him; [ii] the person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or [iii] the person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived, and [iv] in cases covered by [iii] above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating. The ingredients to constitute an offence under Section 420 Page No. 7/12 are as follows : [i] a person must commit the offence of cheating under Section 415; and [ii] the person cheated must be dishonestly induced to [a] deliver property to any person; or [b] make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Cheating is an essential ingredient for an act to constitute the offence under Section 420. [Ref : Prof. R.K. Vijayasharathy and another vs. Sudha Seetharam and another, (2019) 16 SCC 739].

15. To convict an accused for the offence under Section 468, IPC, the commission of an act of forgery is a condition precedent. The term 'forgery' used in Section 468, IPC is defined in Section 463, IPC and as per Section 463 of the Penal Code, whoever makes any false document or false electronic record or part of 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 implied contract, or with intent to commit fraud or that fraud may be

committed, commits 'forgery'. Section 465, IPC has provided for punishment for the offence of forgery simpliciter.

16. Section 464 of the IPC has defined 'making a false document' and Section 464 reads as under :

"464. Making a false document.- A person is said to make a false document or false electronic record -

First- Who dishonestly or fraudulently -

- [a] makes, signs, seals or executes a document or part of a document;
- [b] makes or transmits any electronic record or part of any electronic record
- [c] affixes any electronic signature on any electronic record;
- [d] makes any mark denoting the execution of a document or the authenticity of electronic signature,

with the intention of causing it to be believed that such document or the document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly- Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time or such Page No. 8/12 alteration; or Thirdly- Who dishonestly or fraudulently causes any person to sign, seal execute or alter a document or an electronic record or to affix his [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration. Explanation 1.- A man's signature of his own name may amount to forgery. Explanation 2.- The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Explanation 3.- For the purposes of this section, the expression "affixing electronic signature" shall have the meaning assigned to it in clause (d) of sub-section (1) of section 2 of the Information Technology Act, 2000.

17. From the above definitions, it is clear that the sine qua non for an offence under Section 468, IPC is forgery, which has been defined in Section 463, IPC. In respect of the offence under Section 468, IPC, forgery is the principal offence with cheating being a consequential offence. If forgery goes, cheating also goes. The sine qua non for the offence of forgery is making of a false document. When a person can be said to have made a false document is delineated in Section 464, IPC. To hold that a person has made a false document or a part thereof it is to be proved that the person concerned has

made, signed, sealed or executed the document or a part of the document, which is to be made dishonestly or fraudulently with the intention of causing it to be believed that such document or the part of the document was inter alia made, signed, sealed or executed by a person by whom he knows that it was not made, signed, sealed or executed. Leaving aside the other essential ingredients, it can be said that one of the ingredients for making of a false document which is sine qua non for the offence of forgery under Section 463, IPC which is punishable under Section 465, IPC which, in turn, is part of the major offence under Section 468, IPC is that the false document or a part of the false document was either made or signed or sealed or executed by the accused person and the standard of proof is proof beyond reasonable doubt.

18. In *Sheila Sebastian vs. R. Jawaharaj and another*, reported in (2018) 7 SCC 581, the Hon'ble Page No. 9/12 Supreme Court of India has observed in the following manner :-

"19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463, IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e. making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and until ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete."

19. Reverting back to the facts of the case in hand, it is found that the entire case of the prosecution was founded upon one 'no objection letter dated 07.09.1996' allegedly submitted by the accused before the ASEB in order to transfer the name of the consumer from his brother i.e. Dinesh Chandra Biswas [the informant] to his name i.e. Bhupesh Chandra Biswas [the accused]. It was the further case of the prosecution that the said 'no objection letter dated 07.09.1996' contained a signature purportedly of the informant which was allegedly forged. It was also the case of the prosecution that by the said 'no objection letter dated 07.09.1996', the ASEB was informed that the informant had no objection for changing his name in respect of an electricity meter connection from his name to the name of the accused and the allegation of the informant was he never signed the said 'no objection letter dated 07.09.1996'.

20. Thus, the case of the prosecution is that the said 'no objection letter dated 07.09.1996' was a false document and the signature contained therein did not belong to the informant. In order to bring home the allegation of making the said false document against the accused herein, the prosecution has to prove that the said false document or a part of the said false document was either made or signed or sealed or executed by the accused, not to speak of dishonestly or fraudulently with the requisite intention. To prove all these against the accused, it is the primary and principal duty of the prosecution Page No. 10/12 to bring the alleged false document on record. It is noticed

that the said 'no objection letter dated 07.09.1996' was seized vide Ext.-4 on 16.03.1998. But the said 'no objection letter dated 07.09.1996' was not exhibited by the prosecution during the course of the trial. It is further noticed that along with the charge sheet, one FSL Report was also submitted. But the prosecution did not exhibit the said FSL Report also during the course of the trial. It transpires that the original copy of the said 'no objection letter dated 07.09.1996' is not available in the case record and only a photo copy of it is found available.

21. The learned trial court having seen a photocopy of the said 'no objection letter dated 07.09.1996' had gone through the contents thereof and took note of the contents thereof in the judgment. Having seen the presence of the FSL Report in the case record, the learned trial court took note of the opinion therein in the judgment. It was observed that to ascertain the genuineness of the signature in the no objection letter issued in the name of the informant, Sri Dinesh Chandra Biswas it was sent as questioned document by marking it as Ext.-A along with one admitted document, marked as Ext.-B, having signatures of the informant to the FSL, Assam and after examination, the Scientific Officer of the FSL, Assam submitted a report that the person who wrote the signatures in the admitted document marked as A [1] to A [4] written in blue ink, did not write the signature, stamped and marked as Q [1]. It can be, thus, inferred that the said questioned document was the no objection letter dated 01.09.1996. It was by taking note of the said aspects, the learned trial court went on to hold that the prosecution had proved beyond all reasonable doubts that the signature in the no objection letter, which was never exhibited during the trial, was not written by the informant, Sri Dinesh Chandra Biswas and the said document was a forged document.

22. The finding of guilty arrived at by the learned trial court is found unsustainable on a number of grounds. The learned trial court had observed that there was no iota of evidence regarding any dishonest inducement by the accused on the informant and the informant was not even aware of the submission of the alleged no objection letter by the accused in the name of the informant. By observing so, the learned trial court had acquitted the accused of the offence under Section 420, IPC. Dishonest inducement is an essential element in respect of both the offences under Section 415, IPC as well as Section 420, IPC. If there was no dishonest inducement on the part of the accused in connection with the alleged no objection letter then there was no offence of cheating. If the offence of cheating was not committed, there could not have been any conviction under Section 468, IPC [Forgery for the purpose Page No. 11/12 of cheating] and in the absence of any element of dishonest inducement, meaning thereby, absence of cheating the accused ought to have been convicted for the offence of forgery simpliciter, provided the other essential ingredients for the offence of forgery are satisfied.

23. It has been held by the Hon'ble Supreme Court of India in Magan Bihari Lal vs. State of Punjab, reported in [1977] 2 SCC 210 that expert opinion must always be received with great caution and it is unsafe to base a conviction solely on expert opinion without substantial corroboration. Thus, it is not safe to base a conviction solely on the evidence of the hand writing expert. It is settled that the opinion of the hand writing expert cannot be relied upon to base a conviction without independent and reliable corroboration. In Shashi Kumar Banerjee vs. Subodh Kumar Banerjee, reported in AIR 1964 SC 529, the Hon'ble Supreme Court has pointed out that expert evidence as to hand writing being opinion evidence can rarely take the place of substantive evidence and before acting on such



evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence.

24. In the case in hand, the opinion of the hand writing expert, that is, the opinion of the Scientific Officer of the FSL, Assam was not exhibited in the trial and not put to the accused by the prosecution during the course of the trial in order to enable the accused to rebut and controvert such opinion, which was not otherwise substantive evidence. No question was put also in that regard to him during the examination under Section 313, CrPC. The hand writing expert who gave the opinion was not examined by the prosecution by calling him as a witness. Had the hand writing expert been examined as a witness the Court would have been in a position to test the acceptability of the reasons given by him and the same would, in turn, have given a basis for the Court to form an independent opinion for its acceptability or otherwise, based on the answers given by the expert in his examination-in-chief and cross-examination. There is another relevant aspect which is found ignored by the learned trial court. The questioned signature on the allegedly forged no objection letter and the admitted signatures sent to the FSL for comparison, were not exhibited during the trial. It is noticed that the admitted signatures were purportedly of the informant. On the other hand, the questioned signature on the alleged no objection letter, as per the case of the prosecution, was that of the accused. The opinion of the hand writing expert had merely reported that the person, who had given the admitted signatures, did not make the questioned signature. Such an opinion would simply go to indicate that the signature appearing in the alleged no objection letter was not of the informant. By no stretch, it goes to indicate Page No. 12/12 that the questioned signature was that of the accused. There was no admitted signature of the accused before the prosecution and no comparison was made by the hand writing expert between any admitted signature of the accused and the questioned signature appearing in the alleged no objection letter.

25. From the above discussion, it is clear that no effort was ever made by the prosecution to lead any evidence to prove that the alleged false document, 'no objection letter dated 07.09.1996' was either made or signed or sealed or executed by the accused to prove the most essential ingredient of Section 464, IPC [Making a false document], which is one of the ingredients for the offence of forgery. Thus, no conviction of the accused is sustainable for even the offence of forgery simpliciter, as prescribed in Section 465 of the Penal Code, not to speak of the offence under Section 468 of the Penal Code.

26. In the above fact situation obtaining in the case, this Court has found no merit in this appeal preferred by the State against the judgment and order of acquittal passed by the learned appellate court in Criminal Appeal no. 27/2009 which had set aside the judgment and order of conviction and sentence passed against the respondent-accused by the learned trial court in G.R. Case no. 569/1998. As a result, this appeal fails and accordingly, the same is dismissed. The office to return the LCR forthwith.

JUDGE Comparing Assistant