GAHC010176252009

2026:GAU-AS:16605

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

Case No. : Crl.Rev.P./333/2009

BHARAT CHANDRA DAS
S/O LT. LALIT CHANDRA DAS R/O VILL- BARNALIKUCHI SUNDARPUR SUBA UNDER PATACHARKUCHI POLICE STATION IN THE DIST. OF BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR

2:SRI SARAT CHANDRA DAS
S/O LT. LALIT CHANDRA DAS R/O VILL- BARNALIKUCHI SUNDARPUR SUBA UNDER PATACHARKUCHI POLICE STATION IN THE DIST. OF BARPETA
ASSAM

Advocate for the Petitioner : MS.N AHMED, MS. P KALITA,MR. S DAS,MR K P PATHAK(Amicus curiae),MR.H THAKURIA,MS.B HAZARIKA,MR.A RAHMAN

Advocate for the Respondent : PP, ASSAM, MR SARFRAZ NAWAZ, AMICUS CURIAE (R-2),,,

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 02.11.2026

Heard Mr. K.P. Pathak, learned Amicus Curiae, appearing for the petitioner. Also heard Mr. B. Sarma, learned Additional Public

Prosecutor, appearing for the respondent no.1 as well as Mr. S. Nawaj, learned Amicus Curiae, appearing for the respondent no.2.

2. The present Criminal Revision Petition has been instituted by the petitioner assailing Judgment & Order dated 19.05.2009, passed by the Court of the learned Sessions Judge, Barpeta, in Criminal Appeal No.6/2008, affirming the Judgment & Order dated 29.03.2008 passed by the Court of the learned Sub-Divisional Judicial Magistrate (M), Bajali, Pathsala, in Complaint Case No.9/2007, convicting the petitioner, herein, under Section 465 IPC and sentencing him to undergo Rigorous Imprisonment for 06 (six) months.

3. The facts in brief requisite for adjudication of the issues, arising in the present Criminal Revision Petition is noticed, as under;

3.1. Sarat Chandra Das, had instituted a complaint petition before the Court of the Learned Sub-Divisional Judicial Magistrate (M), Bajali, Pathsala, against Bharat Chandra Das, Phulen Kalita, Hiren Roy and Promod Das. In the complaint, it was *inter alia*, alleged that the plot of land, over which he had built a house and lived there for around 20 (twenty) years, during the time of the family partition had fallen to his share. However, the Deed of the family partition was kept with the petitioner Bharat Chandra Das for the purpose of mutating their names in respect of the plot of land coming to their respective shares. It was further

projected that the plot of land was mutated in the name of the elder brother of the complainant viz. Uday Das prior to the family partition. It was highlighted that in the month of August 2006, the complainant has gone to the Office of the Circle Officer, Bajali, for the purpose of obtaining loan by mortgaging the scheduled land and then he came to learn that the land possessed by him was transferred by his elder brother Uday Das in favour of the petitioner, herein, by way of executing a Gift Deed. On further enquiry being made, it was revealed that the Gift Deed was so registered on 21.02.2000 and therein, Uday Das was shown as the Donor while the petitioner was shown as the Donee. Phulen Kalita and Hiren Roy, were the witnesses to the said Gift Deed while the scribe of the Deed was Promod Das. It was further highlighted that Uday Das had expired on 22.09.1993.

3.2. In the complaint, it was further highlighted that on the said aspect coming to his notice, the complainant had a altercation with the petitioner, herein, and accordingly, the matter was brought to the notice of the police. The police had thereafter, called both the complainant Sarat Chandra Das and the petitioner, herein, to the police station and therein, a written Deed of Agreement was executed by the petitioner, herein. In terms of the said Agreement executed by the petitioner, he had undertaken to return the plot of land to the complainant and also to

transfer the right, title and possession of the said land to the complainant through a Registered Deed. The said Agreement, as executed, not being implemented, the complainant Sarat Chandra Das had instituted the said complaint case.

3.3. The learned Trial Court had taken cognizance of the said complaint case under Sections 120(B)/468/419/420/34 IPC against the accused persons including the petitioner, herein. On receipt of summons, 02 (two) accused i.e. the petitioner, herein, and one Promod Das appeared before the learned Trial Court and they were allowed to go on bail. The summons upon the other remaining accused not being served, the complainant filed a petition for dropping their names and accordingly, the Trial Court vide order dated 15.05.2007, allowed the said petition by dropping the accused Phulen Kalita and Hiren Roy from the proceedings and thereafter, the complainant was allowed to proceed against Promod Das and the petitioner, herein.

3.4. Basing on the evidences adduced by the complainant, the learned Trial Court vide Order dated 10.07.2007, framed a charge under Section 471 IPC against the petitioner, herein, and under Section 465 IPC against the accused Promod Das. The charges being explained to the petitioner and Promod Das and they having pleaded not guilty and claimed to be tried, accordingly, a Trial ensued.

3.5. On conclusion of the Trial, the learned Trial Court considering the evidences coming on record proceeded vide Judgment & Order dated 29.03.2008, to acquit said Promod Das from the charge framed against him under Section 465 IPC. The learned Trial Court thereafter, proceeded to convict the petitioner, herein, under Section 465 IPC and sentenced him to undergo Rigorous Imprisonment for 06 (six) months.

3.6. The petitioner, herein, being aggrieved by his conviction by the learned Trial Court vide Judgment & Order dated 29.03.2008, assailed the same by way of preferring an appeal before the Court of the learned Sessions Judge, Barpeta. The said appeal was registered as Criminal Appeal no.6/2008. The learned Appellate Court on considering the issues arising in the matter in the light of the evidences coming on record during the Trial, proceeded vide Judgment & Order dated 19.05.2009, affirmed the conviction and sentencing of the petitioner, herein, by the learned Trial Court under Section 465 IPC and held that the petitioner was guilty of the offence under Section 465 IPC read with Section 471 IPC.

Being aggrieved, the petitioner has instituted the present Criminal Revision Petition.

4. Mr. K.P. Pathak, learned Amicus Curiae, appearing for the petitioner, by referring to the evidences adduced by the prosecution witnesses, has submitted that the allegation leveled against the petitioner,

herein, emanates from a Gift Deed executed by Uday Chandra Das on 21.02.2000. He submits that in the said Gift Deed, the petitioner, herein, has been referred to as the Donee of the land so transferred by the Donor Uday Chandra Das. However, from the evidences coming on record, it has not been established that the said Gift Deed was so made by the petitioner, herein. In the absence of evidence, identifying the petitioner, herein, as the person who had made the Gift Deed, Mr. Pathak, submitted that the convictions under Sections 465 IPC and 471 of the IPC are unsustainable.

4.1. Mr. Pathak, submits that making of a document is different from causing it to be made. By referring to Explanation-2 to Section 464 IPC, he submits that for constituting an offence under Section 464 IPC, it is imperative that a false document is made and the accused is identified as its maker; otherwise, the accused person is not liable for the offence of forgery. He submits that in the present case, there is no evidence adduced by the prosecution, to the effect that the petitioner, herein, had made the Gift Deed and accordingly, he submits that the petitioner cannot be held to have made the Gift deed, which was exhibited as Exhibit-2 before the learned Trial Court.

4.2. Mr. Pathak, further submits that it is a settled position of law that, however, strong a suspicion may be, it cannot take the place of

proof; even grave doubts or strong coincidences cannot substitute for concrete evidence. Mr. Pathak, further submits that the learned Trial Court as well as the learned Appellate Court got carried away by the fact that the petitioner, herein, was the sole beneficiary of the deed. However, prosecution had miserably failed to prove the Gift Deed as a fraudulent and forged transaction. In support of his such submissions, Mr. Pathak, has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Sheila Sebastian Vs. R Jawaharaj & Anr**., reported in (**2018) 7 SCC 581**.

4.3. In the above premises, Mr. Pathak, submits that the petitioner, herein, is entitled to the benefit of doubt and would be required to be acquitted of the charges framed against him under Sections 465/471 IPC.

5. Per contra, Mr. S. Nawaj, learned Amicus Curiae, appearing for the respondent no.2, submits that the Gift Deed i.e. Exhibit No.2, was made by the petitioner, herein, is established from the Agreement dated 29.08.2006, made by the petitioner and the complainant, wherein, the petitioner had stated that he had taken a loan by mortgaging the land which was transferred to him by Uday Das vide Exhibit-2 Gift Deed. He submits that the petitioner had undertaken to return the possession of the land along with the right, title and interest, thereon, to the complainant through a Registered Deed which he however, failed to do.

5.1. Mr. Nawaj, submits that the decision of the Hon'ble Supreme Court in the case of **Sheila Sebastian** (supra) relied upon by the learned Amicus Curiae for the petitioner, is distinguishable and in view of the evidences coming on record during the Trial Court including Exhibit No.1, which stands duly proved, it is established beyond reasonable doubt that the petitioner, herein, had committed an offence punishable under Section 465 IPC.

5.2. Mr. Nawaj, after taking this Court through the conclusions drawn by the learned Trial Court as well as the Appellate Court, has submitted that the conclusions so drawn are based on the evidences coming on record and accordingly, the conviction of the petitioner under Section 465 IPC read with Section 471 IPC would not mandate an interference from this Court.

6. I have heard the learned counsel for the parties and also perused the materials available on record.

7. The facts leading to the institution of the complaint petition is not disputed. The Gift Deed which forms the basis of the complaint was admittedly executed on 21.02.2000. From the evidences coming on record, it is established that the donor of the land, Uday Das had expired on 22.09.1993. The fact that the donor of the land, in question, was not alive on the date when the Deed was executed i.e. on 21.02.2000 is not

disputed by the petitioner, herein. The petitioner while cross-examining the prosecution witness No.4 Hari Charan Das, had suggested to him that Uday Das had expired on 16.11.1993. Further, during his examination under Section 313 CrPC, the petitioner, herein, had stated that Uday Chandra Das had died on 16.11.1993. Accordingly, the death of the executor of Exhibit-2 Gift Deed is not in dispute. It can be concluded that on the date when the said Gift Deed was so executed i.e., on 21.02.2000, the donor Uday Das was not alive. On a consideration of the said aspect in the light of Exhibit-1, the Agreement executed by the petitioner, wherein, he had undertaken to return the plot of land, in question, to the complainant, it is apparent that the Gift Deed Exhibit-2 was so made by the petitioner, herein.

8. It is to be noted that while a plea was taken that the petitioner had not executed the said Gift Deed and further, that the Agreement executed in the police station would have no evidentiary value, the petitioner had not taken a plea that the Agreement i.e, Exhibit -1 was not executed by him and/or disputed his signature in the said Agreement. The petitioner had also not urged that he was compelled to execute the said Agreement at the police station under coercion. Further, the petitioner had not filed any suit or other proceedings to get the said Agreement annulled. Accordingly, Exhibit-1 Agreement cannot be doubted and can be relied

upon as a piece of evidence. The said aspects of the matter was considered by the learned Trial Court and had drawn the following conclusions;

> “Keeping in mind the above interpretation of the term 'making of a false document" it is an admitted fact in the present case that the accused, Bharat Das and the donor of the questioned, Gift deed Uday Das are brothers and the accused was well aware of the death of his brother, Uday Das on 16-11-93. Moreover it is also an admitted fact that the accused, Bharat Das is the sole donee of the schedule land under the Gift deed, Exhibit '4' and as such he is the single most beneficiary under that deed. Therefore it is only the accused, Bharat Das whose interest is involved in the execution of the false Gift deed, as no other person stand derive any benefit out of that deed. That apart the accused by entering into an Agreement i.e. Exhibit '1' with the complainant on 29-8-06 had admitted that he had committed a mistake by mortgaging the land under the possession of the complainant to the government and had obtained a loan. In view of the above admission made by the accused, and the fact that the accused was himself a party to the false document; being the 'donee' of the Gift deed, Exhibit '4' hence it has become apparent that the accused in order to derive under gain had made the false document i.e. Gift deed inspite of having knowledge that the donor of that deed Uday Das was not alive on the date of execution of the deed.
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> Thus the accused having dishonest and fraudulent intention had got the false Gift deed i.e. Exhibit '4' signed and executed with the intention of causing it to be believed that such document was signed and executed by Uday Das, inspite of having knowledge that Uday Das had expired and that Uday Das did not sign and execute the said Gift deed and there by had committed the offence of 'Forgery' punishable U/S465 IPC. Although accused, Bharat Das was charged under Section 471 IPC yet then the complainant by adducing cogent and reliable evidence has failed to prove as to how and where the accused, Bharat Das had used Exhibit '4', Gift deed as genuine, hence the offence U/S 471 IPC has not been proved beyond all reasonable doubt and therefore acquit accused Bharat Das from the charge under

Section 471 IPC"

9. Basing on the said conclusions, while the learned Trial Court had acquitted the petitioner from the charge under Section 471 IPC, it proceeded to convict the petitioner under Section 465 IPC by giving justification for the same and accordingly, sentenced the petitioner to undergo Rigorous Imprisonment for 06 (six) months under Section 465 IPC.

10. On a close perusal of the conclusions drawn by the learned Trial Court in the light of the evidences coming on record, including Exhibit-1, this Court is of the considered view that the conclusions so drawn are strictly based on the evidences coming on record and the same would not mandate an interference from this Court.

11. Having drawn the said conclusions, this Court would now examine the conclusions drawn by the learned Appellate Court vide the Judgment & Order dated 19.05.2009. The learned Appellate Court on examining the evidences coming on record had drawn the following conclusions;

> "As regards the allegation of forgery by executing a false deed of gift dated 20.2.2000 registered on 21.2.2000 purported to be executed by Uday Das who died on 22.9.93; The P.W. 1 (The respondent/ complainant) in his evidence categorically mentioned that The Scheduled land had been in his possession since last 30 years and The said land was originally purchased by deceased Uday Das and at the time of partition The Schedule land was given to the respondent/ complainant; and the

appellant/accused was entrusted to get the name of the respondent/ complainant mutated on the Scheduled land. But The appellant/accused instead of getting the name of the respondent mutated in the said land he got the said land mutated in his name. The respondent/ complainant came to know the latest development regarding the mutation of their disputed land while he enquired the office of the circle officer, Patacharkuchi; and subsequently the respondents/complainant on enquiry discovered that Late Uday Das by executing a deed of gift on 20.2.2000 registered on 21.2.2000 bequeathed the land as described in schedule in favour of the appellant/ accused. He has proved The certified copy of the alleged deed of gift marked as Ext.2. In support of his contention The respondent/ complainant has produced one attested copy of death certificate in respect of Uday Das issued by Shillong Municipality and one Photo-copy of death certificate in respect of Uday Das was issued by the Registrar, Birth and Death, Patacharkuchi P.H.C. The PW2, PW3 and PW4 in their evidence Categorically stated that on 22.9.93 The alleged doner Uday Das Died at Shillong. In Course of his cross examination The PW4 denied the Suggestion tendered by the defence that said Uday Das died on 16.11.93. The PW5 Chakradhar Thakuria, The Junior Assistant, office of The Sub- Registrar, Patacharkuchi also appeared before the court and alongwith the original deed of gift and has proved the same marked as Ext. 4. He also produced the volume of Register maintained in the office of The Sub- Registrar, Patacharkuchi and has proved the relevant entry in regard to the alleged deed of gift being No. 133/2000 vide Ext.6 (although The Ext.6 is found not available on record). Besides the appellant/ accused Bharat Ch. Das in course of his examination u/s 313 Cr.P.C. also admitted that the alleged donor Uday Das died on 16.11.93. However although the appellant disputing the exact date of death of the deceased, The Prosecution has been able to prove that the death of alleged donor Uday Das took place in the year 1993 Which is 7 years prior to the date of execution of the alleged deed of gift (Ext.2) i.e. 20.2.2000.

It is also found well established that the alleged deed of gift marked as Ext.4 was executed in collusion on 20.2.2000 i.e. after death of the alleged testator Uday Das with intent to grab the land in possession of the respondent/complainant as described in the schedule; and thereby cheated The respondent/complainant, for his

wrongful gain. As Such it is crystal clear that the prosecution has been able to prove the elements of the offence of forgery as embodied in the provision of Section 463 and 464 IPC.

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The alleged deed of gift marked as Ext. 4 shows that the deceased Bharat ch. Das is the sole donee of the scheduled land and he is the only beneficiary as per the alleged deed of gift. Therefore, The appellant / accused Bharat ch. Das is found involving the execution of the forged deed As such it can safely be held that the appellant/ accused Bharat Ch. Das having dishonest and fraudulent intention got the forged deed of gift signed and executed by the donor Uday Das after his death, with the intention of causing to be believed that such document was signed and executed by late Uday Das in order to grab the scheduled land in possession of the respondent/complainant"

12. Basing on the said conclusions, the learned Appellate Court had passed the following directions;

"In view of my above discussion and having regard to the facts and circumstances of the case and the evidence available on record in its entirety, it is held that the appellant / accused is guilty u/s 465 IPC. read with section 471 IPC and hence he is liable to be punished. Accordingly the appeal is dismissed on contest upholding the impugned judgment and the order of conviction and sentence dated 29.03.2008. passed by learned S.D.J.M(M) Bajali, Pathsala in CR. Case No- 9/2007 convicting and sentencing the appellant / accused u/s 465 IPC read with section 471 IPC to suffer rigorous imprisonment for 6(six) months."

13. I have carefully, perused the conclusion drawn by the learned Appellate Court and find the same to be supported by the evidences

coming on record and accordingly, the same would not mandate any interference from this Court.

14. In view of the above discussion, the conviction of the petitioner, herein, under Section 465 IPC read with Section 471 IPC by the learned Trial Court and affirmed by the learned Appellate Court would not mandate any interference from this Court.

15. Having drawn the said conclusions, this Court notices that the complaint case was instituted in the year 2007 and the learned Trial Court had convicted the petitioner, herein, vide Judgment & Order dated 29.03.2008. Thereafter, the learned Appellate Court had affirmed the said conviction of the petitioner vide Judgment & Order dated 19.05.2009 and thereafter, the present Criminal Revision Petition is pending before this Court since the year 2009.

16. More than 18 (eighteen) years have elapsed since the date of conviction of the petitioner, herein, by the learned Trial Court and accordingly, considering the long lapse of time occasioning in the matter and the provisions of Section 465 IPC also mandating imposition of a fine in lieu of imprisonment, this Court is of the considered view that the present case is a fit one for modifying the sentencing of the petitioner, herein.

17. Accordingly, while upholding the conviction of the petitioner

under Section 465 IPC, the sentencing of the petitioner is modified and for the offence under Section 465 IPC, he is sentenced to pay a fine of Rs.2000/- (Rupees Two Thousand) in lieu of the imprisonment.

18. With the above modification of the sentencing of the petitioner, the present Criminal Revision Petition stands disposed of.

19. Registry to send down the records of the case to the learned Trial Court along with a copy of the present order to the Court of the learned Sub-Divisional Judicial Magistrate (M), Bajali, Pathsala, for further compliance of the directions so passed.

20. Before parting with the records of the case, this Court records its appreciation to the able assistance provided by Mr. K.P. Pathak and Mr. S. Nawaj, as learned Amicus Curiae in the matter, which had facilitated disposal of the present matter.

JUDGE

Comparing Assistant