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GR Case No. : 718/18

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**IN THE COURT OF THE
CHIEF JUDICIAL MAGISTRATE : BAKSA.**

GR Case No. : 718/18

Under Section 14 Assam Game & Betting Act

Present :- Smti. D. Boro, AJS,

Chief Judicial Magistrate, Baksa.

The State of Assam.....Prosecution.

-Vs-

Lokman Ali @ Hussain

Rohit Boro..... Accused Persons.

Evidence recorded on :- 15-05-2018, 12-04-2019,
15-06-2019.

Argument heard on :- 02-06-2022.

Judgment delivered on :- 07-06-2022.

Advocates Appeared :-

Mr. **Ranjit Basumatary**.....A.P.P. for the State of Assam.

Mr. **Nirmal Rajbongshi**

Mr. **Nur Alam**.....Advocate for the accused persons.

J U D G M E N T

1. UBC Rudra Talukdar of Kumarikata OP lodged the FIR on 21/08/2017 against the accused persons to the effect that on the same day at about 3 pm, the I/C of Kumarikata OP along with staff has conducted two operations separately on secret

information. The first operation was conducted at Gopinathpur where accused Lokman Ali was arrested while selling teer ticket along with a sheet of teer ticket number, RS. 2300/- and one LAVA mobile. The second operation was conducted at Ganeshguri where accused Rohit Boro was arrested while selling teer ticket along two teer ticket sheets and Rs. 1950/-. Both accused were brought to Kumarikata OP.

2. The police registered a case against the accused persons u/s 13/14 of the Assam Game and Betting Act and after completion of investigation submitted charge-sheet against the accused persons u/s 13/14 of the Assam Game and Betting Act.
3. Charge u/s 14 of the Assam Game and Betting Act was framed against the accused persons and contents of the charge under the said sections were read over and explained to the accused persons to which the accused persons pleaded not guilty and claimed to be tried.
4. The prosecution examined 5 (five) Nos. of witnesses and defence examined none.
5. The accused persons are examined u/s 313 Cr.P.C. The accused persons have declined to adduce evidence.

6. I have heard argument of the learned A.P.P. as well as the learned defence counsel and perused all the relevant documents available on record.

7. POINTS FOR DETERMINATION:-

1. Whether the accused persons had bet or invited betting or possessed any instrument of betting or records of betting or accepted betting as defined in the Assam Game and Betting Act?

8. DISCUSSION, REASONS AND DECISION:

9. POINT NO. 1:

10. PW1 Gajen Daimary is the seizure witness. He said that one day at around 3.30 pm, police came to the shop of the accused persons and arrested them. Ext.1 is seizure list. In cross-examination, he said that he signed on a blank paper.

11. PW2 is the informant UBC 100 Rudra Talukdar. He said that on 21/08/2017 at around 3.00 pm, he along with a battalion section was conducting patrolling duty at Kumarikata OP area. They received information about ongoing teer gambling. They went to Gopinathpur area and found accused Lokman Ali selling teer gambling ticket in a tyre shop. The accused was apprehended. IC of Kumarikata OP was informed. IC, Kumarikata OP SI Munna Pasani came there and he seized the teer ticket book, cash and a mobile phone. Thereafter they proceeded to Ganeshguri side and at around 4.30 pm they apprehended accused Lohit Boro selling teer

tickets in a tea stall at Ganeshguri. He again informed the IC of Kumarikata OP who came there and seized teer tickets and cash from the accused. After returning to the Outpost with the accused persons, he lodged the FIR. Ext.1 is the FIR.

- 12.** PW4 Abdul Ali, another seizure witness said in his cross-examination that when police took his signature, the paper was blank.
- 13.** PW5 Bhaskar Das, another seizure witness also said the same thing as PW4 Abdul Ali that the paper was blank when police took his signature.
- 14.** The prosecution has examined three seizure witnesses. None of the seizure witnesses could tell about the things which were seized by the police in respect of this case. The prosecution did not produce any seized article during evidence for verification by the Court whether the seized articles are in fact any betting instrument or not.
- 15.** The prosecution has failed to prove that any article has been seized in respect of this case. Ext.2- seizure list vide MR No. 67/17 shows that money, one piece of paper of teer gambling game ticket and one LAVA mobile were seized. Ext.3- seizure list vide MR No. 67/17 shows that cash amount and two loose sheet of paper of teer gambling game ticket were seized. The seized articles were not produced during evidence.

- 16.** S.19 of the Assam Game and Betting Act provides for presumption that “any cloth, writing materials, khatas, books, registers, ledgers, accounts and account books which may indicate to have any relation to betting, if found on or about the person who has been apprehended or taken into custody under any provision of this Act or found and seized in and from the possession of any person shall be evidence at the trial of such person for an offence under this Act and shall be presumed to be records of betting unless the contrary is proved by the accused person”.
- 17.** From perusal of S.19 of the Assam Game and Betting Act, we can see that a burden is cast on the accused to disprove that the articles as mentioned in the section if found from his possession are not records of betting. But in our present case, the seizure witnesses are totally ignorant as to the things seized by the police. Though it is written in the seizure lists that apart from cash, paper showing teer gambling ticket were found from the possession of the accused persons, but mere writing in the seizure list does not itself a proof that any such item which are mentioned in the seizure list is/are in fact seized from the possession of the accused.
- 18.** The fact of seizure of any such item from the possession of the accused is to be proved first. Thereafter only the presumption u/s 19 of the Assam Game and Betting Act can come into play.

- 19.** I find that there is lack of cogent evidence against the accused persons. Hence, I find that it is not proved that the accused persons had bet or invited betting or possessed any instrument of betting or records of betting or accepted betting as defined in the Assam Game and Betting Act. So, the accused cannot be held guilty u/s. 14 of the Assam Game and Betting Act.
- 20.** From the above discussions, I am of the considered opinion that the prosecution has failed to prove the guilt of the accused persons beyond reasonable doubt u/s 14 of the Assam Game and Betting Act. So, I acquit accused persons viz. Lokman Ali @ Hussain and Rohit Boro of the charge u/s 14 of the Assam Game and Betting Act and are set at liberty.
- 21.** The seized article vide MR No.67/17 be disposed of after the expiry of appeal period.
- 22.** The bail-bonds furnished u/s 437(A) Cr.P.C. shall remain in force up to six months from today.
- 23.** Given under my hand and seal of this Court this 7th day of June, 2022.

Typed by me—

D. Boro
CJM, Baksa

D. Boro
CJM, Baksa

APENDIX

PROSECUTION EXHIBITS:

- Ext.1- FIR.
Ext.2- Seizure list.
Ext.3- Seizure list.

DEFENCE EXHIBITS: NIL.

EXHIBITS PRODUCED BY WITNESSES: NIL.

COURT EXHIBITS: NIL.

PROSECUTION WITNESSES :

- PW1- Gajen Daimary.
PW2- UBC100 Rudra Talukdar.
PW3- Surjit Swargiary.
PW4- Abdul Ali.
PW5- Bhaskar Das.

DEFENCE WITNESSES : NIL.

COURT WITNESSES: NIL.