

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE
Baksa, Mushalpur
Case No. : PRC 205/19
Under Section: 67 IT Act.**

**Present: Smt. Dimple Boro, AJS,
Chief Judicial Magistrate, Baksa**

The State of Assam,.....Prosecution

-Vs-

Chanakya Bharali,.....Accused person.

Evidence recorded on : 26-11-2021, 31-03-2022.

Argument heard on : 19-05-2022.

Judgment delivered on : 19-05-2022.

Advocate appeared:-

Mr. Ranjit Basumatary.....APP for the state of Assam.

Mr. Tridip Sarma

Mr. Amrit Boro.....Advocate for the accused person.

J U D G M E N T

1. The gist of the case is that on 17/08/2017 informant SI Purna Kumar Nath lodged FIR that during the celebration of Independence Day, the accused gave some posts on FACEBOOK in support of banned ULFA extremist organization through his

mobile phone. He wrote in those posts—(1) "Bharat Mata ki jai nohoi, (No glory of Bharat mother) (2) Amak ULFA...i bisorar dore swadhin Asom lage (we want free Assam as ULFA has wanted) and (3) Jai Hind ULFA".

2. Police registered a case against the accused person u/s 67 IT Act and after completion of investigation submitted charge-sheet only against the accused u/s 67 IT Act.
3. Charge u/s 67 IT Act was framed against the accused and contents of the charge under the said section were read over and explained to the accused person to which the accused person pleaded not guilty and claimed to be tried.
4. The prosecution examined 3 (three) nos. of witnesses and the defence examined none.
5. The accused person is examined u/s 313 Cr.P.C. The accused person has 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 person had published obscene information in social media FACEBOOK?

8. DISCUSSION, REASONS AND DECISION:

9. POINT NO. 1:

10. The prosecution has examined Nabin Bharali a seizure witness as PW1, the informant as PW2 and another seizure witness Kanak Sarma as PW3.
11. PW1 Nabin Bharali has said that the accused is son of his paternal uncle. The incident is of 2017. He heard that the accused sent some message as "Bharat Mata ki jai nohoi" in mobile for which police had arrested him. Ext.1 is seizure list. He said in his cross-examination that he had not seen the message. He signed a blank sheet of paper.
12. The informant/PW2 SI Purna Kt. Nath said that the accused posted two messages on FACEBOOK in 2017 that Bharat Mata ki jai nohoi and some other things. After learning the same, he lodged FIR. He called the accused and examined his mobile and finding the incident as true, he lodged FIR. Ext.2 is FIR. In cross-examination, PW2 said that he does not know if somebody else posted the alleged messages instead of the accused.
13. PW3 Kanak Sarma said that Chanakya was booked in some mobile case. He does not know the incident.
14. The Ext.1 shows that one SAMSUNG mobile phone was seized in this case from the possession of the accused. There is another seizure list in the case record vide MR No. 83/2017 which shows that three nos. of objectionable post in hard copy had been seized on being produced by cyber cell of the SP Office, Baksa.

15. From the perusal of the FIR as well as evidence, we can see that the accused is alleged to have posted some messages in his FACEBOOK account which are anti-national and in support of the banned extremist organization ULFA. The IO has seized the mobile phone of the accused by which it is alleged to have posted the messages. The IO has also seized the hardcopy of the messages which are alleged to have posted by the accused.
16. Neither the mobile phone nor the hardcopy of the messages were produced by the prosecution during evidence.
17. We can understand that the accused is alleged to have committed an offence through electronic media. S. 67 IT Act is not at all applicable in our case at hand. Moreover, S.65B of the Indian Evidence Act provides how the electronic records are admissible in evidence. The conditions laid down in S.65B of the Indian Evidence Act has not been complied in this case.
18. There is no evidence that the accused had published any material which is lascivious or appeals to the prurient interest or its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.
19. Under such circumstance, I find that the evidence is not sufficient. Hence, I find that it is not proved that the accused person had published obscene information in social media

FACEBOOK. So, the accused person cannot be held guilty u/s. 67 IT Act.

20. From the above discussions, I am of the considered opinion that the prosecution has failed to prove the guilt of the accused person beyond reasonable doubt u/s 67 IT Act. So, I acquit accused Chanakya Bharali of the charges u/s 67 IT Act and is set at liberty.

21. Given under my hand and seal of this Court this 19th day of May, 2022.

Typed by me—

D. Boro
CJM, Baksa

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