

**1 SCOB [2015] AD 35****APPELLATE DIVISION****PRESENT:****Mr. Justice Surendra Kumar Sinha,  
Chief Justice****Mr. Justice Syed Mahmud Hossain****Mr. Justice Hasan Foez Siddique**For the Appellant: Ms. Madhumaloti  
Chowdhury on behalf of  
Mr. Chowdhury Barua,  
Advocate-on-Record on  
behalf of Mr.Md.  
Zahangir, Advocate-on-  
Record.CRIMINAL APPEAL NO.27 OF 2002  
(From the judgment and order dated 18.07.2001  
passed by the High Court Division in Criminal  
Miscellaneous Case No.4662 of 1999.)**Sree Gopal Chandra Barman:** Appellant.

Respondent: Ex-parte.

=Versus=

Date of hearing : 22-04-2015

**Md. Nasirul Hoque :** Respondent.**Penal Code, 1860****Section 406/420:**

**It appears from the petition of complaint that the respondent sent taka 6,00,000/- to the appellant through Bank with an understanding that he would supply the cloths at a reduced rate during Eid period. Though the appellant admitted that he had received the said amount but without supplying clothes he had repaid his loan by the said money, thereby, misappropriated the same. Lastly, he denied repaying the said money to the complainant. From the aforesaid facts and circumstances, it is difficult to accept that prima-facie ingredients of section 406/420 of the Penal Code had not been established against the appellant. ...(Para 5)**

**JUDGMENT****Hasan Foez Siddique, J:**

1. This appeal is directed against the judgment and order dated 18.07.2001 passed by the High Court Division in Criminal Miscellaneous Case No.4662 of 1999 discharging the Rule.

2. The appellant filed aforesaid Criminal Miscellaneous Case in the High Court Division under Section 561A of the Code of Criminal Procedure seeking quashment of the proceeding of C.R. Case No.70 of 1999 pending in the Court of Magistrate, First Class, Nowabgonj stating that the complainant respondent and the accused appellant were close to each other in course of their business. On 27.12.1998, the appellant gave proposal to the respondent for purchasing cloths at a reduced price during the period of Eid. On good faith, the complainant respondent paid a sum of taka 600000/- through bank in the account of accused Sahadev on 28.12.1998 for payment of the same to the accused appellant. On quarry, Shahadev disclosed that the entire amount was made over to the accused appellant. The appellant also admitted that he had received taka 6,00,000/- from Sahadev and said that he had repaid his loan to the bank by the said amount. Lastly, he denied to repay the said amount on 03.01.1999.

3. The Magistrate, examining the complainant, took cognizance of offence against the appellant under Section 406/420 of the Penal Code and issued warrant of arrest against him. The appellant appearing before the court obtained bail. Thereafter, he filed application under Section 561A of the Code of the Criminal Procedure in the High Court Division and obtained Rule but finally the same was discharged. The High Court Division held that prima-facie ingredients of section 406/420 had been established against the accused appellant from the petition of complaint and other materials on record. Then, the appellant preferred this appeal after getting leave.

4. Mrs. Madhumaloti Chowdhury Barua, learned Advocate-on-Record appearing on behalf of the appellant, submits that the High Court Division committed an error of law in discharging the Rule inasmuch as

prima-facie ingredients of Section 406/420 of the Penal Code had not been established against the appellant from the facts and circumstances of the case and that dispute between parties is civil in nature.

5. It appears from the petition of complaint that the respondent sent taka 6,00,000/- to the appellant through Bank with an understanding that he would supply the cloths at a reduced rate during Eid period. Though the appellant admitted that he had received the said amount but without supplying clothes he had repaid his loan by the said money, thereby, misappropriated the same. Lastly, he denied repaying the said money to the complainant. From the aforesaid facts and circumstances, it is difficult to accept the submissions made by Ms. Madumaloti Chowdhury that prima-facie ingredients of section 406/420 of the Penal Code had not been established against the appellant.

6. Facts and circumstances, prima-facie, establish that the appellant had no intention to purchase clothes to supply the same to the complainant respondent since receiving the said amount he used the same for his own purpose.

7. In view of the nature of allegations disclosed from prosecution papers, we do not find any wrong in the judgment and order of the High Court Division.

8. Accordingly, the appeal is dismissed.

9. The trial Court is directed to proceed with the case in accordance with law.