



IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, BONGAIGAON

Present : Sri. S. Garg, AJS, Chief Judicial Magistrate, Bongaigaon.

Date of Judgment: 11.08.26

PRC Case No. 129/23

[FIR No. 289/22, u/s 420/379/511 IPC, Bongaigaon P.S.]

Complainant : Naba Kumar Bora

Represented by : Smt. P. Chatterjee (Prosecution)

**Accused : 1. Binod Pradhan (A1),
S/O- Krishna Bahadur Pradhan
R/O- Chitkagaon, Hirapara
P.S & Dist- Bongaigaon,**

Represented by : Mr. Kaushik Das

Date of FIR	:	20.06.2022
Date of Charge-Sheet	:	30.01.2023
Date of framing charge	:	13.12.2023
Date of commencement of evidence	:	03.07.2024
Date of argument	:	29.07.2026
Date of Judgment	:	11.08.2026

Accused details:

Rank of the Accused	Name of Accused	Date of Arrest	Date Release on Bail	Offences Charged With	Whether Acquitted or Convicted	Sentence Imposed	Period of Detention Undergone during Trial for Purpose of Section 428 Cr.P.C.
1.	Binod Pradhan	Notice issued u/s 41A Cr.P.C	Granted regular court bail on his appearance after receipt of summons on 21.06.23	379/511/411 IPC	Acquitted	Nil	NIL

J U D G M E N T

1. The prosecution case in brief is that on 20.06.22 informant Naba Kumar Bora, Inspector, FCS &CA, Bongaigaon in his official capacity after getting permission from I/C Deputy Director, Food, Civil Supplies and Consumer Affairs, Bongaigaon vide letter No. BNS.39/Seizer/2022/04 dated 20.06.2022, lodged a written FIR before the Officer-in-Charge, Bongaigaon Police Station, stating inter alia that 686 full bags and 32 loose bags of unauthorized rice are found by police from the residence of Krishna Bahadur Pradhan and Binod Pradhan of vill- Chitkagaon (Hirapara) and the said persons are not PDS licensee holder. Hence this case.
2. After receiving the aforesaid FIR, the O/C, Bongaigaon P.S. registered a case vide Bongaigaon P.S. Case no. 289/22 u/s 420/379/511 IPC R/W Section 7 of Essential Commodities Act, 1955. Investigating Officer investigated the case, the accused Binod Pradhan did not appear before the I/O. The samples of the seized rice are sent to the concerned authorities for examination, the seized rice are auctioned by the competent authorities and the bid amount of Rs. 5,31,300/- was deposited in the Government Treasury, Bongaigaon. After completing

the investigation, the charge-sheet was submitted against the accused person namely, Binod Pradhan u/s 420/379/511 IPC vide CS No. 06/23

3. dated 31.01.23 and the other FIR named accused person namely, Krishna Bahadur Pradhan was not named in the charge sheet and not sent up for trial due to lack of materials against him.
4. Necessary processes were issued for causing appearance of the accused person before the Court. Accordingly, the accused person namely Binod Pradhan appeared on 21.06.23 and was allowed to go on bail. Copy of the relevant documents were furnished to him on 27.09.23 and on 13.12.23 after hearing both the sides, formal charge u/s 379/511/411 IPC was framed against the accused person namely Binod Pradhan which was then read over and explained to him to which he pleaded not guilty and claimed to be tried.
5. During the trial, the prosecution has examined as many as five witnesses which are as follows:-
 - i. PW 1 Naren Ch. Das (Seizure Witness),
 - ii. PW 2 Naba Kumar Bora (Informant),
 - iii. PW 3 Karuna Bahadur Lama (Seizure Witness),
 - iv. PW 4 Bipul Das (Seizure Witness),
 - v. PW 5 SI Aditya Bora (Investigating Officer).
6. Statement of defence of the accused was recorded u/s 313 Cr.P.C on 17.06.26. Defence case is of denial regarding the allegation that the seized rice is PDS rice but admitted about the seizure of the seized articles from his residence. Defence side did not adduce any evidence on their behalf. Then arguments of both the sides are heard on 29.07.26.
7. I have considered the evidence on record, the statement under Section 313 Cr.P.C. and the arguments advanced. For the purpose of clarity, the following points for determination is hereby framed:

8. POINTS FOR DETERMINATION:-

- (i) Whether the accused Binod Pradhan has stolen 686 full bags and 32 loose bags of rice?*
- (ii) Whether the accused Binod Pradhan also had attempted to commit theft of 686 full bags and 32 loose bags of rice?*
- (iii) Whether the accused Binod Pradhan dishonestly received the stolen rice of 686 full bags and 32 loose bags knowing or having reason to believe the same to be stolen rice?*

9. DISCUSSIONS, DECISIONS AND REASONS THEREOF:-

- 10.** Before appreciating the evidence on record, I want to re-produce the provision of Section 378 and 379 IPC.

Section 378 IPC reads as under:

“Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person’s consent, moves that property in order to such taking, is said to commit theft.....”

Section 379 IPC reads as under:

“Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

- 11.** So the basic ingredients to attract the offence of theft are:
- i.** The accused removed the movable property
 - ii.** He removed it out of the possession of another person without his consent
 - iii.** He did so with a dishonest intention
- 12.** Let us now appreciate the evidence on record on the light of the above mentioned ingredients.

- 13.** PW 1 Naren Ch. Das in his evidence stated that he know the accused person Binod Pradhan the accused is his neighbour. He further stated that he was the secretary, VDP of Chitkagaon Hirapara. On 20.06.22 at about 4 am in the morning police came to his house and took him to the house of the accused and told him that 702 bags of rice are recovered from the house of the accused and as he is the VDP Secretary he was told to look after the said bags of rice as they need to go for fresh up as they were in that place since night. Thereafter, he stayed there till 1 pm, after which the police came and took over the possession of the rice. During the period when he was in there the supply officer along with the police seized the rice and prepared document in front of him. Later on, he was informed by the police that the seized rice was kept in the custody of police for one month after which the supply officer took the possession of the seized rice. Also there were half filled and empty bags along with the 702 bags of rice. He identified the seizure list as Ext.P1 and his signature on it as Ext.P1(1).

During cross-examination PW1 stated that the accused has a business where he deals with purchasing and selling of rice and the accused also stock rice at his house for selling. He stated that he did not know from where the accused purchased the seized rice. He stated that the seized rice were kept in the house of the accused for another one months after its seizure. He did not know why police came to the house of the accused and seized the 702 bags of rice.

- 14.** PW 2 Naba Kumar Bora who is informant of this case in his evidence deposed that on 20.06.22 he was posted as Inspector, FCS &CA at Bongaigaon, on that day, his superior officer, Paramesh Bhattacharjee, Deputy Director (I/C) cum Superintendent FCS, Bongaigaon told him that he got an information from the police that near Birjhora Garden in the Hirapara locality the police seized some rice from the house of the accused and they were asked to verify the seized articles whether it is PDS category or not. Thereafter, on that day, at about 10.30 am, he along with two of his colleagues namely Inspector, FCS, Kishore

Basumatary and Inspector, FCS, Ujjal Talukdar went to the place of incident. On reaching the spot, they saw that the police was already present there and on counting they found 686 full bags of Rice and 32 nos. of loose bags of Rice from the house of the accused. When they reached the spot they had first met the mother and the wife of the accused and later on, father of the accused also arrived at the spot. Thereafter, the Rice which are found in the house of the accused were seized by the police. On asking the father of the accused they were informed that the accused is dealing with the business of selling rice and he do not know where was the accused at that relevant point of time. They recorded the statement of the father of the accused. Then they returned back to their office and briefed about the matter to his superior authority in written. Thereafter, his superior authority gave a written order to him to lodge an ejahar and on the basis of that order he lodged the ejahar. The seized rice was brought by the police and kept in the police station compound and the I.O gave a requisition for examination of the sample of the seized rice to Deputy Commissioner, Bongaigaon, which was forwarded to them. On the same day, they went to the police station and collected the samples of the seized Rice and send the samples along with empty gunny bag to FCI, Laboratory at Bongaigaon for testing as the PDS rice are provided from FCI. On 22.06.22 the FCI Laboratory submitted a report through Deputy Director I/C FCS, Bongaigaon which was forwarded to the O/C, Bongigaion P.S. He identified Ext.P2 as the ejahar, Ext.P2(1) as his signature, Ext.P3 as FIR form Ext.P3(1) as his signature, Ext.P4 which was the official order vide memo No. BNS.39/Seizer/2022/04 dated 20/06/2022, identified Ext.P4(1) as the signature of Paramesh Bhattacharjee, In charge Deputy Director FCS and CA, Bongaigaon.

During cross-examination PW2 stated that he went to the place of occurrence only once and also to the police station once on 20.06.2022 and also he collected the sample of the seized Rice on 20.06.2022 itself. He denied that he has not collected the samples of

the seized Rice from the police station. He stated that the PDS rice are firstly kept in the godown of FCI where stock register are maintain and from there it is distributed, and from the stock register of the godown of the FCI it can be ascertained to whom and to where the PDS Rice are distributed. He stated that only by laboratory test it can be ascertained whether the rice is PDS category rice or not. His signature was taken as a witness at the time of seizure and his statement was recorded by the police when he went to the police station for lodging the FIR. He mentioned that he do not remember whether the police took his signature in the seizure list or not. He denied the suggestions of the defence about not mentioning the facts which he deposed in his evidence before the police.

- 15.** PW 3 Karuna Bahadur Lama in his evidence deposed that he know the accused as the accused is his co-villager. He stated that on 20.06.22 at about 9/10 am, the police called him to the house of the accused where they have asked him to put his signature as a witness to the seizure of rice that has been recovered from the house of the accused. He identified Ext.P1 as the seizure list and Ext. P1(2) as his signature.

During cross-examination PW3 stated that after the seizure the police kept those seized rice in the house of the accused for one month. He stated that he do not know whether the accused runs a business of selling rice or not.

- 16.** PW 4 Bipul Das in his evidence deposed that he know the accused as they are from the same village. He stated that on 20.06.22 at about 1:30 pm, while he was returning to his home from his work and reached in front of the house of the accused, at that time he was called by the police who were present in the house of the accused and they told him that 700 bags of rice and 50/60 empty gunny bags were found from the house of the accused and he was asked to put his signature as a seizure witness of those articles. He stated that he saw the bags of rice which were inside the house of the accused. He identified the seizure list as Ext.P1 and Ext. P1(3) as his signature.

During cross-examination PW4 admitted that he knew that the accused runs a business of selling rice. He stated that he could not say from where the seized rice bags were brought in the house of the accused. He deposed that as the seized rice was not up to the mark for that reason it was seized. He mentioned that he has not seen the seized rice. Apart from the villagers and the police he has not seen any other official persons at the spot. He stated that on that day, the seized articles were not brought by the police and were kept there for few days.

17. PW 5 SI Aditya Bora in his evidence deposed that on 20.06.2022 at about 11.40 am, Officer in Charge, Bongaigaon Police Station informed him that some stolen rice was found in the house of accused Binod Pradhan situated at Chitkagaon, Hirapara under Bongaigaon PS and asked him to take necessary steps by visiting the place. Then on the basis of the GD Entry vide No. 598 dated 20.06.2022, he along with his team went to the place of incident. At the place of incident, the accused was not found however, his father was present and on inspection inside the house of the accused they saw 600/700 bags of rice. Thereafter, he prepared a rough sketch map and in presence of the witnesses, he seized the 151 gunny bags containing rice 50 Kg each, 535 plastic bags containing rice 50kg per bag, 32 loose bags containing rice 20/25 kgs each and 100 nos. of empty jute bags. He stated that as they were not having the necessary transportation to bring the seized huge quantity of rice, therefore, they sealed the rooms and gave direction to the VDP of the said village to take care of the same. He stated that the complainant of this case was also present during the said seizure and he collected samples from the seized rice. After that he returned to the police station and gave a requisition to Deputy Commissioner, Bongaigaon for collection of sample from the seized rice. On that day, the complainant Naba Kumar Bora lodged a written ejahar and he examined the complainant and recorded his statement. On 22.06.2022, one Sohikul Islam came to the police station and gave scan copies of tax invoice of

700 bags of rice. On 24.06.2022, he received a report from I/C DDFCS & CA Bongaigaon regarding the seized rice sample report. On perusal of the report it was found that the report was not conclusive. On 08.07.2022, he gave another prayer for sample re-verification to I/C DDFCS & CA and on 01.09.2022, he collected the said report of sample re-verification from the Divisional Manager FCI, Bongaigaon. On 03.09.2022, he gave a written prayer to D.C. Bongaigaon for disposal of the seized rice. On 08.09.2022, an intimation regarding the prayer to D.C. Bongaigaon for disposal of the seized rice is given to the Court. On 08.12.2022, he again went to the house of the accused to trace him out, but he was not found available. On 10.01.2023, he again went to the house of the accused to trace him out, but he was not found available. During investigation, it is found that the seized rice are PDS rice which is also supported by the report of the re-verification submitted by Divisional Manager, FCI, Bongaigaon. Thereafter, on 31.01.2022, he submitted the charge-sheet against the accused Binod Pradhan u/s 420/379/511 IPC by showing him as an absconder. He stated that during his investigation, the seized rice was auction and the amount collected from that auction was deposited in the Government Treasury, in the proper heads of account. He exhibited the following documents Ext. P.5 extract copy of the GD entry No. 598 dated 20.06.22 and Ext. P.5(1) as his signature. Ext.P6 as Sketch map, Ext.P6(1) as his signature. Ext.P2(2) signature of Inspector Upen Kalita in the ejahar, Ext.P1(4) as his signature in the seizure list, identified Ext. P1(5) as the signature of Krishna Bahadur Pradhan, Ext. P7 as the prayer for requisition to D.C. Bongaigoan for collection of sample, Ext. P.7(1) as his signature, Ext.P8 as the FCL report collected by him from the Divisional Manager, FCI Bongaigaon, through DDFCS & CA, Ext.P9 as the Prayer for re-verification of seized rice, Ext. P9(1) as his signature, Ext.P10 as the 2nd report of sample verification dated 01.09.2022, Ext.P11 as the prayer for disposal of seized rice u/s 6A(2)/3 of the Essential commodities Act, Ext.P12 as the Duplicate Deposit challan of Deposited Bid amount of Auction relating to seized suspected 728 bags of PDS perishable rice

lying at Bongaigon PS, Ext.P13 as the Charge-sheet, Ext.P13(1), Ext.P13(2) and Ext.P13(3) are his signatures.

During cross-examination PW5 admitted that no any written complaint has been received from FCI, Bongaigaon authorities regarding the theft of any PDS rice. He stated that the seized rice in connection to this case was not claimed zimma by authorities of FCI, Bongaigaon. He admitted that he has not recorded the statements of the authorized person who prepared Ext.P8 and Ext.P10. He also admitted that he has not collected and seized any stock register from FCI, Bongaigaon authorities in connection to this case. He stated that the seized rice was brought to the police station on 20.06.2022. The sample of the seized article was collected only once. He stated that the seized articles were directly taken to the police station after the seizure procedure and was not kept in the house of the accused in presence of any VDP personnel. He stated that the FCI, authorities did not make any document at the time of collecting the sample for which no document in that regard has been seized by him in connection to this case. He stated that the official sealed FCI gunny bags are not available in the open market for sale. He mentioned that in the seizure list there is no mentioned about seizure of empty gunny bags. He stated that in Ext.P8 and Ext.P10 there is no specific mention that the seized rice is PDS rice stocks. He denied that the Ext.P10 is not a genuine report. He stated that he has not recorded the statement of Sohikul Islam and also did not verify the scan copy of the tax invoice of 700 bags of rice which was given to him during his investigation. In the seizure list no person from FCI, Bongaigaon has been made as a witness.

- 18.** As all the points formulated in this case are interrelated and for proper appreciation of evidence on record, the said points are decided together.
- 19. Firstly** and most importantly to prove the offence of theft or attempt to theft, the vital ingredient is that the accused removed or tried to remove a movable property from the possession of another person

without that persons consent and with dishonest intention. But in this case, the prosecution failed to prove from whose possession the accused committed the theft or tried to commit theft of the seized articles which are seized vide Seizure list i.e., Exhibit-P1. Also none of the prosecution witnesses including the informant mentioned that they saw the accused committing or tried to commit theft of PDS rice from anyone or FCI authorized depots and PW 5 investigating officer himself admitted that no written complaint has been received from FCI authorities, Bongaigaon regarding theft of PDS rice. Furthermore, in Exhibit-P8 and Exhibit-P10 which was issued by the Divisional Manager, Food Corporation of India, Divisional Office, Bongaigaon and exhibited by the prosecution, there is specifically mentioned that as per their official records, there is no any incident of pilferage, theft or missing of rice stock reported in the depots under Divisional Office, Bongaigaon during that period. Further, there is also mentioned in that reports i.e., Exhibit-P8 and Exhibit-P10, that the samples send for examination cannot be conclude as PDS rice and were issued by FCI or not. Also in their evidence the PW 1 Naren Ch. Das and PW 3 Karuna Bahadur Lama who are seizure witnesses mentioned that the accused runs a business of purchasing and selling of rice and stocks the rice in the house of the accused. There is no evidence on record produced by the prosecution to prove the fact that there is any kind of theft of PDS rice or any theft of rice from anywhere at Bongaigaon or nearby districts at that relevant period of time.

- 20. Secondly,** the prosecution raised the plea that in the Exhibit-P10, i.e., report vide no. FCI/DO-BNGN/QC/GENL CORRES/2020-21 dated 01.09.22 given by Divisional Manager, FCI, DO, Bongaigaon, there is mention that on re-examination of the rexin slip of the empty gunny bag it is concluded that those bags are generally used in bagging of rice in FCI and same were issued for PDS and other scheme, therefore, the prosecution claim that a presumption can be drawn that the seized articles i.e., rice are PDS rice. But in this regard, it is pertinent to

mention that the prosecution did not mentioned the other part of that report in which there is mention that once the stocks are issued from the depots, the FCI does not claim for its belonging and do not have any tracking system and also there is mention that at that relevant time there is no incident of theft of PDS rice in any of the depots under Bongaigaon Divisional Office. Further, it is also seen that in the seizure list i.e., Exhibit-P1 there is no mention of gunny bag with rexin slip, the prosecution as well as the investigating officer as PW 5 could not explain from where that gunny bag with rexin slip was seized or recovered which was send for re-examination and also PW 2 who is the informant did not mention about any gunny bag being seized with rexin slip on it from the house of the accused.

- 21. Thirdly,** the prosecution raised the plea that the seizure of the seized articles from the house of the accused vide seizure list i.e., Exhibit-P1 has not been disputed by the defence but the accused could not show any valid documents about the purchase of those seized articles by him for which a presumption can be drawn against the accused.
- 22.** In regards to this plea, Hon'ble Supreme Court held in the case of ***Sujit Biswas v/s State of Assam, AIR 2013 SC 3817***, suspicion however grave may be, cannot take the place of proof and there is a large difference between something that may be proved and something that will be proved. The principle laid down herein is a well settled principle of law.
- 23.** In a criminal case, the burden of proving the allegations is on the prosecution and the same is beyond reasonable doubt. Moreover, there is a presumption of innocence in favour of the accused. Hence, the prosecution has to lead clear and cogent evidence which proves the act of theft or tried to commit theft by the accused, knowledge that the article kept by him is a stolen property and got the possession of those articles dishonestly and the fact that the seized articles are stolen property to attract the offence u/s 379/411/511 IPC, which in this case is found not to be proved by the prosecution, as in this case, the

prosecution by cogent oral as well as documentary evidence failed to prove that the seized articles of this case are stolen property or PDS articles and those were stolen from someone or from FCI, Depots in and around Bongaigaon and nearby districts.

- 24.** In view of the above discussion, I hold that the prosecution has miserably failed to prove the charge against the accused person beyond all reasonable doubts for which all the three points formulated in this case are decided in negative and in favor of the accused person. Hence, the accused person namely Binod Pradhan deserves acquitted from the charge u/s 379/411/511 IPC.

ORDER

- 25.** As the prosecution has failed to prove the case with cogent and substantive evidence against the accused person namely Binod Pradhan u/s 379/411/511 IPC beyond reasonable doubt, for which the accused person namely Binod Pradhan is hereby acquitted and set at liberty forthwith.
- 26.** Bail bond and surety furnished by the accused person are extended for next 6 months or till furnishing of fresh surety u/s 437 (A) Cr.P.C.
- 27.** The amount which is collected from the auction of the seized articles of this case and deposited in the government treasury through challan i.e., Exhibit-P12, be given to the person who produce valid, authentic and proper documents regarding the ownership of the said seized articles before P.S.I, Bongaigaon District Court, and if no claimant with proper and authentic documents appear to claim the zimma of the said seized articles within 06 months from the date of this order, then the amount which was collected by bidding in the auction and was deposited in the treasury will be at the disposal of the state government.

- 28.** If any claimant of the seized articles with documents appears before the P.S.I, Bongaigaon District Judicial Court, he shall verify those documents with the assistance of Officer-in-charge, Bongaigaon P.S. and shall do the needful.
- 29.** The Judgment is pronounced in open court. The case is disposed of on contest.

The judgment is given under the hand and seal of this Court on this the
11th day of August, 2026.

(Sri. S. Garg)
Chief Judicial Magistrate,
Bongaigaon

APPENDIX

A. Prosecution Witnesses:

- i. PW 1 Naren Ch. Das (Seizure Witness),
- ii. PW 2 Naba Kumar Bora (Informant),
- iii. PW 3 Karuna Bahadur Lama (Seizure Witness),
- iv. PW 4 Bipul Das (Seizure Witness),
- v. PW 5 SI Aditya Bora (Investigating Officer).

B. Defence Witnesses:

NONE

C. Documents exhibited by prosecution:

Exhibit P-1: Seizure list

Exhibit P-1(1) Signature of PW1

Exhibit P-1(2) Signature of PW3

Exhibit P-1(3) Signature of PW4

Exhibit P-1(4) Signature of PW5 (I/O)

Exhibit P-1(5) Signature of Krishna Bahadur Pradhan

Exhibit P-2: Ejahar

Exhibit P-2(1) Signature of PW2

Exhibit P-2(2) Signature of Inspector Upen Kalita

Exhibit P-3: FIR Form

Exhibit P-3(1) Signature of PW2

Exhibit P-4: Official order vide memo No. BNS.39/Seizer/2022/04 dated 20/06/2022.

Exhibit P-4(1) signature of Paramesh Bhattacharjee, In charge Deputy Director FCS and CA, Bongaigaon.

Exhibit P-5: GD entry copy

Exhibit P-5(1) Signature of PW5 (I/O)

Exhibit P-6: Sketch map

Exhibit P-6(1) Signature of PW5 (I/O)

Exhibit P-7: Prayer for requisition to D.C. Bongaigaon for collection of sample

Exhibit P-7(1) Signature of PW5 (I/O)

Exhibit P-8: FCL report collected by me from the Divisional Manager, FCI Bongaigaon, through DDFCS & CA

Exhibit P-9: Prayer for re-verification of seized rice

Exhibit P-9(1) Signature of PW5 (I/O)

Exhibit P-10: 2nd report of sample verification dated 01.09.2022

Exhibit P-11: Prayer for disposal of seized rice u/s 6A(2)/3 of the Essential commodities Act.

Exhibit P-12: Duplicate Deposit challan of Deposited Bid amount of Auction relating to seized suspected 728 bags of rice.

Exhibit P-13: Charge sheet

Exhibit P-13(1), 13(2) & 13(3) Signatures of PW5 (I/O)

D. Materials exhibited :

NONE

(Sri S. Garg)
Chief Judicial Magistrate,
Bongaigaon