

Present :
Mr. Justice Md. Salim

CRIMINAL REVISION NO.1554 OF 2018.

Md. Fazal Hasan
..... Convict-Petitioner.

-VERSUS-
The State and another
..... Opposite Parties.

No one appears
..... For the Petitioner.

Ms. Shakila Sultana, Advocate
..... For the respondent No 2.

Ms. Syeda Shajia Sharmin, D.A.G. with
Mr. Md. Rejaul Islam, A.A.G.
Mr. Khan Mahfuzun Noor, A.A.G.
.....For the State.

Heard on: 24.02.2026 and 02.03.2026.

Judgment on: 02.03.2026.

This Rule at the instance of convict-petitioner was issued on a revisional application against the judgment and order dated 01.02.2017 passed by the learned Additional Sessions Judge, 1st Court, Jhenaidah in Criminal Appeal No.169 of 2011 disallowed the appeal and affirming the judgment and order of conviction and sentence dated 22.11.2011 passed by the learned Senior Judicial Magistrate, 2nd Court, Jhenaidah in C.R. Case

No.284 of 2021 convicting the petitioner under Sections 420 of the Penal Code and sentencing him to suffer rigorous imprisonment for 2(two) years and to pay a fine of taka 5,000/- in default to suffer simple imprisonment for a period of 1(one) year more.

The prosecution case, in brief, are that, the opposite party No.2 herein, as complainant, filed a petition of complaint before the Chief Judicial Magistrate, Jhenaidah, against the convict-petitioner and another under Sections 406/420 of the Penal Code, alleging interalia that on 13.03.2007, the convict-petitioner borrowed Tk.2,25,000/- from the complainant for repairing his bus by executing an agreement on condition that the petitioner would give 20% of profit from the total incum of the bus, and promised to return all the money by 03.03.2008. But the accused petitioner did not repay the money to the complainant within the three months fixed by him. After several requests, the petitioner, in the presence of his wife, issued two cheques in favor of the complainant. Accordingly, both cheques were presented to the concerned branch of Agrony Bank for encashment; however, both were returned unpaid due to insufficient

funds and difference of signature. Moreover, although the accused, Fazal Hasan, issued cheques by signing, the accounts were maintained by his wife and another accused, No. 2, Jafreen Ara Lela. The accused, Fazal Hasan, signed those cheques to deprive the complainant. Thereafter, the complainant along with witnesses, on 14.05.2010 at about 04.00 P.M., approached the accused person to return the loan amount, but the accused person refused to pay the same.

Upon receipt of the petition of complaint, the learned Judicial Magistrate examined the complainant under Section 200 of the Code of Criminal Procedure and took cognizance under Section 420 of the Penal Code against the convict-petitioner. Subsequently, the case was registered as C.R. Case No.284 of 2021.

The case being ready for trial, was sent to the learned Chief Judicial Magistrate, Jhenaidah. Subsequently, the learned Senior Judicial Magistrate, 2nd Court, Jhenaidah framed the charge against the convict-petitioner under section 420 of the Penal Code. The charge was read over and explained to him, who then pleaded not guilty and claimed to be tried.

In order to prove the charge, the prosecution examined as many as three witnesses; on the contrary, the defense examined none.

After the conclusion of the taking of evidence, the petitioner was examined under Section 342 of the Code of Criminal Procedure, during which he again claimed himself not guilty.

However, after conclusion of the trial, the learned Senior Judicial Magistrate, 2nd Court, Jhenaidah by the judgment and order dated 22.11.2011 convicted the accused petitioner under Sections 420 of the Penal Code and sentenced him to suffer rigorous imprisonment for 2(two) years and to pay a fine of Tk.5,000/- in default to suffer simple imprisonment for 1(one) year more.

It is worth noting that the petitioner was absent from the court when the judgment was pronounced.

Being aggrieved by and dissatisfied with the above judgment and order, the accused petitioner, as appellant preferred Criminal Appeal No.169 of 2011 before the Sessions Judge, Jhenaidah.

Eventually, the learned Additional Sessions Judge, 1st court, Jhenaidah, by the judgment and order dated 01.02.2017, disallowed the appeal and affirmed the judgment and order of conviction and sentence passed by the trial Court below.

Being aggrieved by and dissatisfied with the said judgment and order of conviction and order, the convict, as petitioner, herein came before this court and obtained the instant Rule and order of bail.

Despite the matter appearing in the cause list for hearing with the name of the learned advocate for the petitioner on consecutive dates, no one appears on behalf of the petitioner to press the Rule. However, in the presence of

Ms. Syeda Shajia Sharmin, the learned Deputy Attorney General, appearing for the State, submits that the allegations made in the petition of complaint clearly show that the accused petitioner had the initial intention to deceive the complainant and thereby cheat with the complainant, the prosecution rightly proved the charge brought against the convict-petitioner by adducing and producing the evidence on records, complying with all

formalities as required under Section 420 of the Penal Code.

Ms. Shakila Sultana, the learned advocate appearing on behalf of the complainant-opposite party No. 2, adopts the submission of Ms. Syeda Shajia Sharmin, the learned Deputy Attorney General, and prays for the discharge of the Rule.

We have eagerly considered the submission of the accused petitioner inserted in the Criminal Revisional Application and the learned Deputy Attorney General, and have perused the impugned judgment, evidence, and other materials on record.

In a criminal case, the conviction and sentence must be based on evidence beyond a reasonable doubt, and the prosecution must stand on its own legs throughout without taking advantage of any flaws in the defense. In the present case, the admitted position is that at the trial, the complainant, appearing as P.W.1, stated, in line with the petition of complaint, and P.W.2 and P.W.3 supported the evidence of P.W.1, who were cross-examined by the defense, but nothing was devastated. The P.W.1-Anwara Sumi, the complainant, deposed in her examination in

chief that on 13.03.2007, the convict-petitioner borrowed Tk. 2,25,000/- from the complainant for repairing his bus, by executing an agreement on the condition that the petitioner would give 20% of the profit from the total income of the bus, and promised to return all the money by 03.03.2008. But the accused petitioner did not repay the money to her within the three months fixed by him. After several requests, the petitioner, in the presence of his wife, issued two cheques in her favor. Accordingly, both cheques were presented to the Bank for encashment; however, they were returned unpaid due to insufficient funds, and as the accused is not the account holder. The accused issued the cheques, although he is not an account holder. Actually, his wife and another accused, No. 2, Jafreen Ara Lela, are the account holders. Thereafter, she, along with witnesses, on 14.05.2010 at about 04.00 P.M., asked the accused person to return the loan amount, but he refused to pay.

P.W.2-Arif Hossain, in his examination-in-chief, deposed that, on 13.03.2007, the convict-petitioner borrowed Tk. 2,25,000/- from the complainant for repairing his bus, by executing an agreement on the

condition that the petitioner would give 20% of the profit from the total income of the bus, and promised to return all the money by 03.03.2008. To pay the loan amount, the accused issued two cheques in favor of the complainant. Accordingly, both cheques were presented to the Bank for encashment; however, they were returned unpaid due to insufficient funds, and cheques were issued in his wife's accounts to deprive the complainant. Thereafter, she, along with witnesses, on 14.05.2010 at about 04.00 P.M., asked the accused person to return the loan amount, but he refused to pay and threatened her for the demand.

P.W.3-Biddut, in his deposition, stated that, to pay the loan amount, the accused himself issued two cheques in favor of the complainant, even though he knew that his wife maintained the accounts. The accused, Fazal Hasan, signed those cheques to deprive the complainant. On 14.05.2010 at about 04.00 P.M., the accused person refused to pay the amount.

In order to attack the provision of Section 420 of the Penal Code, it must be proved that (I) the accused has cheated the complainant, and (II) the accused has, by

such cheating, induced the complainant to deliver any property to any purpose.

In order to attack the provision of Section 420 of the Penal Code, it must be proved (i) that the accused has cheated the complainant; and (ii) that the accused has, by such cheating, induced the complainant to deliver any property to any purpose.

The word "cheating" has been defined in Section 415 of the Penal Code, which is quoted below:-

"Whoever, by deiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person (or any other person) in body, mind, reputation or property, is said to "cheat".

From the evidence on record, it appears that the convict-petitioner has deliberately cheated the complainant. Because the accused petitioner promised to repay the loan by 03.03.008, but did not. Moreover, to fulfill the promise, accused petitioner knowingly issued two cheques in favor of the complainant, although he was not the account holder. Therefore, admittedly, the accused petitioner, while issuing such defunct cheques, had the dishonest and fraudulent intention that they would not be paid in the future as was promised.

Considering the above facts and circumstances, it appears that the learned Judicial Magistrate, very judiciously considered the evidence on record and justifiedly convicted the accused petitioner, and the learned Additional Sessions Judge, with consent reasons, affirmed the judgment of the trial court below in dismissing the appeal.

On assessing evidence, materials on record and rummaging fact and circumstances of the case and embarking a survey on the legal debate involved in the case, we are of this considered view that the prosecution has able to connect the convict-appellant in commission of

offence under section 420 of the Penal Code with a reasonably considered the evidence, facts and circumstances of the case found the accused petitioner guilty of the charge staged against him. Thus, the Rule has no substance.

Resultantly, the Rule is discharged.

Send down the lower court records with a copy of this judgment.

(Md. Salim,J:)