IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Bashir Ullah

CRIMINAL REVISION NO. 1987 OF 2023

A.T.M. Abdul Baten
...Convict-Appellant-Petitioner.
-Versus-
The State
.....Respondent-Opposite Party.

Mr. Md. Muhibbur Rahman, Advocate
.....For the petitioner.

Mr. S. M. Aminul Islam Sanu, DAG with
Mr. Md. Nasimul Hasan, AAG with
Mr. Md. Golamun Nabi, AAG and
Ms. Farhana Abedin, AAG
..... For the State.

Heard on 06.01.2026
Judgment on 08.01.2026.

This Rule was issued at the instance of the petitioner calling upon the opposite party to show cause as to why the judgment and order dated 08.09.2021 passed by the learned Special Judge (District and Sessions Judge), Court No. 9, Dhaka in Special Criminal Appeal No. 18 of 2020 (arising out of Metropolitan Criminal Appeal No. 58 of 2006) affirming the judgment and order dated 19.02.2004, passed by the learned Metropolitan Magistrate, Dhaka in Ramna Police Station Case No. 5(11) 99 corresponding to G.R. No. 4150 of 99

convicting the petitioner under Section 420 of the Penal Code and sentencing him to suffer simple imprisonment for a period of 03(three) months and to pay a fine of Taka 1,000/- (one thousand) in default to suffer simple imprisonment for 15(fifteen) days, should not be set-aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

Facts relevant for disposal of the Rule, in brief, are that one Md. Abu Nayem as informant lodged an First Information Report (FIR) on 02.11.1999 with Ramna Police Station, Dhaka alleging *inter alia* that the accused Md. Abdul Baten came to his office on 22.09.1998 at about 5:00 p.m. and took a loan of Taka 25,000/- (Twenty Five thousand) upon executing a written undertaking to refund the said amount within 02 (two) months. It was further alleged that the accused failed to refund the money and thereby, by deception, induced the informant to part with the said amount, committing an offence punishable under Section 420 of the Penal Code.

On closure of investigation, the Investigating Officer submitted police report No. 85, dated 15.02.2000 recommending prosecution under Sections 406 and 420 of the Penal Code. Thereafter, on taking cognizance of offence alleged charge was

framed against the accused under Section 420 of the Penal Code on 14.05.2000 and thus trial commenced. In course of trial, the prosecution examined in all 4 witnesses out of 7 cited witnesses and produced documentary evidence which have been marked as Exhibit Nos. 1 and 2 to prove the indictment.

Upon conclusion of the trial, the learned Metropolitan Magistrate, Dhaka, by judgment and order dated 19.02.2004 found the charge proved and convicted the accused-petitioner under Section 420 of the Penal Code and sentenced him to suffer simple imprisonment for a period of 03 (three) months and to pay a fine of Taka 1,000/- (One thousand) in default to suffer simple imprisonment for 15 days.

Challenging the said judgment and order, the convict-petitioner preferred Metropolitan Criminal Appeal No. 58 of 2006 before the Court of the learned Metropolitan Sessions Judge, Dhaka. Subsequently, the appeal was transferred to the learned Special Judge (District and Sessions Judge), Special Judge Court No. 9, Dhaka and renumbered as Special Criminal Appeal No. 18 of 2020. Upon hearing the parties, the learned Special Judge dismissed the appeal by judgment and order dated 08.09.2021, affirming the conviction and sentence passed by the trial Court.

Being aggrieved by and dissatisfied with the judgment of conviction and sentence, the convict-petitioner preferred this revisional application before this Court. This Court, by order dated 31.05.2023 issued the Rule and enlarged the petitioner on bail for a period of 06(six) months.

Mr. Md. Muhibbur Rahman, learned Advocate appearing on behalf of the petitioner submits that the prosecution miserably failed to prove the charge beyond reasonable doubt. He contends that there was no independent or neutral witness to the alleged transaction and that only 4 out of 7 prosecution witnesses were examined, which casts serious doubt on the prosecution case.

He further submits that the petitioner has already suffered 02 (two) months of imprisonment out of the total sentence of 03 (three) months, has no previous criminal antecedent, and that the alleged occurrence took place long ago.

He further submits that the prosecution story is inherently doubtful and that the informant, having demanded illegal gratification, forcibly obtained the petitioner’s signature on a piece of paper upon refusal to pay bribe, and subsequently lodged the false case.

Per contra, Mr. Md. Golamun Nabi, learned Assistant Attorney General appearing for the State opposes the Rule and submits that the prosecution successfully proved the charge and that both the Courts below, upon proper appreciation of evidence, rightly convicted and sentenced the petitioner, warranting no interference by this Court.

I have considered the submissions advance by the learned Advocates for the respective parties and perused the impugned judgments and orders, Annexure and other materials on records.

On scrutiny of the record, it appears that the petitioner was neither a relative nor a close acquaintance of the informant. The petitioner was a contractor of the Department of Public Health Engineering, whereas the informant was a clerk of the same office. PW2 was the cashier and PW3 was the Assistant Accountant of the said department. The alleged monetary transaction between a contractor and office staff within the premises of a government office is, in itself, a circumstance which raises serious doubt regarding the genuineness of the transaction.

It further appears that during cross-examination of PW1 (the informant), a suggestion was put that the case was lodged due to non payment of bribe, which was also suggested to PW4. Although the

witnesses denied the suggestion, such defence version cannot be brushed aside lightly in view of the surrounding circumstances.

From exhibit-2, it transpires that the alleged written undertaking was made on a small slip of paper, not on a full sheet, nor on stamped paper. More importantly, PW1, the informant in cross-examination categorically admitted that the handwriting of Exhbit-2 was not that of the petitioner. He stated that 'প্রদর্শনী-২ এর হাতের লিখা আসামী আব্দুল বাতেনের নয়।' This admission strikes at the very root of the prosecution case.

Further, PW4, the investigating officer, deposed that he had no case docket and that although he claimed to have seized an *alamat,* the same was not found in the record, which seriously undermines the credibility of the investigation.

It also appears that although the informant claimed to have advanced a loan of Taka 25,000/-(Twenty Five thousand), he did not file any money suit for recovery of the alleged amount, nor did he issue any legal notice or demand notice to the petitioner prior to lodging the criminal case. Such conduct is inconsistent with normal human behaviour and further casts doubt upon the veracity of the prosecution story.

It is to be noted that in a case involving the offence of cheating punishable under Section 420 of the Penal Code it is to be seen whether the accused committed any deceitful act of cheating coupled with inducement. But it patently appears that the evidence adduced on part of prosecution does not tend to deduce that there was any act to defraud and deception on part of the accused. Thus, the Court below arrived at erroneous decision convicting and sentencing the petitioner-accused, ignoring settled proposition of law.

In view of the facts and circumstances discussed above, I am of the considered view that prosecution failed to prove the charge against the petitioner beyond reasonable doubt and that both the Courts below committed an error of law in convicting the petitioner under Section 420 of the Penal Code.

In the result, the Rule is made absolute.

The judgments and orders of conviction and sentence passed by the Courts below are hereby set aside.

The petitioner is acquitted of the charge.

Since the petitioner was enlarged on bail he may be discharged from his bail bond immediately.

Let a copy of this judgment along with lower Court's record be communicated to the concerned Court forthwith.

(*Md. Bashir Ullah, J:*)

Md. Sabuj Akan/
Assistant Bench Officer.