

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 967 of 2007

Md. Abdul Karim

...Convict-petitioner

-Versus-

The State

...Opposite party

Mr. Arobinda Kumar Roy (Ananda), Advocate with

Mr. Sajal Ahmed, Advocate

...For the convict-petitioner

Mr. Md. Anichur Rahman Khan, D.A.G with

Mr. Mir Moniruzzaman, A.A.G with

Mr. Md. Sarwar Alam Khan, A.A.G with

Ms. Nargis Parvin (Alija), A.A.G

...For the State

Heard on 20.01.2026

Judgment delivered on 28.01.2026

On an application under section 439 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 10.05.2007 passed by the Metropolitan Additional Sessions Judge, Court No. 2, Dhaka in Metropolitan Criminal Appeal No. 899 of 2006 affirming the judgment and order of conviction and sentence dated 05.02.2006 passed by the Metropolitan Magistrate, Court No. 22, Dhaka in G.R. No. 37 of 2004 convicting the petitioner under section 408 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for one and a half year and fine of Tk. 2,000, in default, to suffer imprisonment for 2(two) months.

The prosecution's case, in short, is that the convict-petitioner was the Sales Representative of Prottashi Traders, and he collected 2(two) cheques amounting to Tk. 3,10,000 from the Daily Bhorer Kagoj and Tk. 38,000 from the Daily Sangbad, respectively, for payment of the outstanding dues, and after encashment, he did not deposit the said amount in the account of the Prottashi Traders. He also received Tk. 55,000 in cash from the Bangladesh Observer, and issued the money receipt, but he did not deposit the said amount.

Thus, the accused Md. Abdul Karim misappropriated total Tk. 4,03,000 and absconded along with a mobile phone of the Company.

Police took up Investigation of the case and during investigation, the Investigating Officer visited the place of occurrence, recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898 and after completing investigation found the prima facie truth of the allegation made against the accused and submitted charge sheet on 02.08.2004 under section 408 of the Penal Code, 1860 against the accused.

During trial, Metropolitan Magistrate, Court No. 22, Dhaka framed charge against the accused under section 408 of the Penal Code, 1860, and at the time of framing charge, he was absconding. During trial, the prosecution examined 11(eleven) witnesses to prove the charge against the accused. Since the accused was absconding, he did not cross-examine the prosecution witnesses, and the trial Court also could not examine him under section 342 of the Code of Criminal Procedure, 1898.

After concluding the trial, the Metropolitan Magistrate, Court No. 22, Dhaka, by judgment and order dated 05.02.2006, convicted the accused under section 408 of the Penal Code, 1860, and sentenced him thereunder to suffer rigorous imprisonment for one and a half years and a fine of Tk. 2,000, in default, to suffer imprisonment for 2(two) months, against which he filed Criminal Appeal No. 899 of 2006 before the Metropolitan Sessions Judge, Dhaka. The appeal was heard by the Metropolitan Additional Sessions Judge, Court No. 2, Dhaka, who, after hearing the appeal by impugned judgment and order dated 10.05.2007, affirmed the judgment and order passed by the trial Court against which the convict-petitioner obtained the Rule.

P.W. 1 Md. Mizanur Rahman is the informant. He stated that on 12.01.2004 at 10.30 am, the accused Abdul Karim received Cheque No. 0175359 maintained in the name of Daily Bhorer Kagoj with Mutual Trust Bank, Panthapath Branch for payment of Tk.

3,10,000. He received Cheque No. 0133041399 dated 12.01.2004 drawn on the Account maintained in the name of Daily Sangbad with IFIC Bank Limited, Mojijheel Branch, and he also received Tk. 55,000 in cash from Bangladesh Observer for payment of the dues of Prottashi Traders. He received total Tk. 4,03,000, thereafter absconded. He proved the FIR as exhibit 1 and his signature on the FIR as exhibit 1/1. The defence did not cross-examine P.W. 1.

P.W. 2 Shahjahan Kabir is the Proprietor of Prottashi Traders. He stated that the accused Abdul Karim was the Sales Representative of the Prottashi Traders. On 12.01.2004, he received a cheque from Daily Bhorer Kagoj for payment of Tk. 3,10,000 and another cheque for payment of Tk. 38,000 from Daily Sangbad. He received Tk. 55,000 from the Bangladesh Observer. He received total Tk. 4,03,000 and thereafter absconded. On 12.01.2004, his manager lodged a GD. He proved the application for employment as exhibit ka (photocopy), photocopy of two cheques as exhibit kha, and a money receipt as exhibit ga (photocopy).

P.W. 3 Md. Hasan is the Cashier of Prottashi Traders. He stated that the accused Abdul Karim was the Sales Representative of the Prottashi Traders. On 12.01.2004, he received Cheque No. 0175359 issued in favour of the Prottashi Traders for payment of Tk. 3,10,000 by Bhorer Kagoj and Cheque No. 0133041399 for payment of Tk. 38,000 issued by Daily Sangbad in favour of the Prottashi Traders and received the amount from the bank. He also received Tk. 55,000 in cash from Observer. The accused Abdul Karim received total Tk. 4,03,000, thereafter absconded. He lodged a GD on 12.01.2004.

P.W. 4 Shamol Kumer is the Manager, (Sales), Prottashi Traders. He stated that the accused Abdul Karim was the Sales Representative of the Prottashi Traders. On 12.01.2004, the accused received two cheques from the office. One cheque for payment of Tk. 3,10,000 from Bhorer Kagoj and another cheque for payment of Tk.

38,0000 from Sangbad. He encashed the cheques. He also received Tk. 55,000 in cash from Observer. He received total Tk. 4,03,000, thereafter absconded.

P.W. 5 Md. Pappu is the Manager (Purchase) of Prottashi Traders. He stated that the accused Md. Abdul Karim was the Sales Representative. On 12.01.2004, he received a cheque for payment of Tk. 3,10,000 from Daily Bhorer Kagoj and another cheque for payment of Tk. 38,000 from Sangbad. He also received Tk. 55,000 in cash from Observer. He received total Tk. 4,03,000. Thereafter, he did not deposit the money with the Prottashi Traders. A GD was lodged.

P.W. 6 Md. Wasiur Rahman is the Commercial Manager, Bangladesh Observer. He stated that Prottashi Traders used to supply the printing paper. He used to receive the money through money receipts. He is not aware of the date and time of the occurrence. He paid the money through money receipts, but he could not say the exact amount he paid. He is not aware whether the accused Abdul Karim deposited the amount with the Prottashi Traders. G.M Mizanur Rahman of Prottashi Traders informed him that the accused Abdul Karim did not deposit the amount.

P.W. 7 Md. Jamil Hossain is the Chief Accountant of Naya Diganta. He stated that on 12.01.2004, the accused Abdul Karim received a cheque from the Bhorer Kagoj for payment of the dues of Prottashi Traders. It was a bearer cheque. He encashed the cheque from the bank. The bearer cheque number is 0175359 dated 12.01.2004 for payment of Tk. 3,10,000.

P.W. 8 Mintu Bhuson Roy is the Secretary, Daily Sangbad. He stated that Daily Sangbad used to purchase papers from Prottashi Traders both in cash and on credit. On 12.01.2004, he issued a cheque for payment of Tk. 38,000. He could not remember the cheque number. The accused Abdul Karim received the cheque on 11.01.2004. At night, the informant informed him that the accused

Karim is not available. He said that Karim received the cheque and signed the voucher. Thereafter, Karim did not communicate with him.

P.W. 9 Md. Golam Rasul is the Investigating Officer. He stated that earlier, SI Anowarul Haque and SI Nur Hossain investigated the case. He visited the place of occurrence. He perused the sketch map and index prepared by previous Investigating Officer. He recorded the statement of five witnesses. After completing the investigation, he found the prima facie truth of the allegation against the accused and submitted charge sheet on 02.08.2004 against the accused Abdul Karim under section 408 of the Penal Code, 1860.

P.W. 10 S.I. Md. Anowarul Haque stated that he is the Investigating Officer. He visited the place of occurrence, prepared the sketch map, and an index. He proved the index as exhibit 2 and his signature as exhibit 2/1. He recorded the statement of one witness. On 10.03.2004, he was transferred from Kotwali Thana.

P.W. 11 S.I Alinur Hossain stated that on 14.03.2004, he was appointed Investigating Officer. He visited the place of occurrence and recorded the statement of one witness. On 19.05.2004, he was transferred and handed over the docket to the Officer-in-Charge.

Learned Advocate Mr. Arobinda Kumar Roy (Ananda), appearing along with learned Advocate Mr. Sajal Ahmed on behalf of the convict-petitioner, submits that two cheques regarding the withdrawal of Tk. 3,10,000 and Tk. 38,000 by the convict-petitioner from the bank, and money receipt regarding the payment of Tk. 55,000 from Observer were not proved by the prosecution. He further submits that none of the bank officials was examined in the case to prove that the convict-petitioner encashed the two cheques amount issued by the Bhorer Kagoj and Sangbad. The prosecution failed to prove the charge by adducing legal evidence against the accused beyond all reasonable doubt, and both the Courts below, without correct assessment and evaluation of the evidence, illegally passed the

impugned judgment and order. He prayed for setting aside the impugned judgments and orders passed by the Courts below.

Learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, appearing along with learned Assistant Attorney General Mr. Mir Moniruzzaman on behalf of the State, submits that P.W. 2 Shahjahan Kabir, Proprietor of Prottashi Traders, proved the two cheques encashed by the convict-petitioner as exhibit 2 and the money receipt received by the petitioner regarding payment of Tk. 55,000 in cash was also proved in the case, and P.Ws 2 to 8 corroborated the evidence of P.W. 1 regarding receipt of two cheques amounting to Tk. 3,10,000 and Tk. 38,000 respectively and Tk. 55,000 in cash from the Bangladesh Observer. During trial, the prosecution proved the charge against the accused, beyond all reasonable doubt and both the Courts below, on correct assessment and evaluation of the evidence of the prosecution witnesses, legally passed the impugned judgments and orders. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Arobinda Kumar Roy (Ananda) who appeared along with learned Advocate Mr. Sajal Ahmed on behalf of the convict-petitioner and the learned Deputy Attorney General Mr. Md. Anichur Rahman Khan who appeared along with learned Assistant Attorney General Mr. Mir Moniruzzaman on behalf of the State, perused the evidence, impugned judgments and orders passed by the Courts below and the records.

On perusal of the evidence, it reveals that the convict-petitioner Md. Abdul Karim was the Sales Representative of the Prottashi Traders, which supplied the printing papers to Daily Bhorer Kagoj, Bangladesh Observer, and Sangbad. P.W. 1 stated that the accused Md. Abdul Karim received Cheque No. 0175359 dated 12.01.2004 drawn on Mutual Trust Bank Limited for payment of Tk. 3,10,000 in favour of the Prottashi Traders from Bhorer Kagoj. He

also received Cheque No. 0133041399 dated 12.01.2004 for payment of Tk. 38,000 from Daily Sangbad and encashed the said cheques. The accused also received Tk. 55,000 in cash from the Bangladesh Observer for payment of the dues of Prottashi Traders. P.W. 2 proved the photocopy of two cheques as exhibit kha and photocopy of the money receipt as exhibit ga. The original said cheques and money receipt were not proved in the case. The Investigating Officer also did not seize those cheques and the money receipt.

It has been alleged that the convict-petitioner received two bearer cheques. None of the bank officials deposed in the case. In the absence of original cheques, it cannot be said that the accused Md. Abdul Karim encashed those cheques from the bank. The original money receipt was also not proved in the case. The alleged signatures of the accused on the opposite sides of the cheques and money receipts were not sent to the handwriting expert to ascertain that the accused Md. Abdul Karim encashed the cheques and received the money in cash accepting the money receipt. No reason has been assigned by the prosecution as to why the original cheques and the money receipt were not proved in the case. In the absence of any documentary evidence regarding the encashment of the two cheque amounts and the money receipt, it cannot be held that the accused received Tk. 4,03,000 from the said newspapers.

In view of the above evidence, findings, observation, and the proposition, I am of the view that the prosecution failed to prove the charge against the accused beyond all reasonable doubt and both the Courts below illegally convicted the petitioner under section 408 of the Penal Code, 1860.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgments and orders passed by the Courts below against the convict-petitioner Md. Abdul Karim is hereby set aside.

Send down the lower Court's records at once.