

Present:

Mr. Justice Md. Shohrowardi

Criminal Revisional No. 1088 of 2007
Haroon or Rashid

...Convict-petitioner

-Versus-

The State

...Opposite party

No one appears.

...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 27.01.2026 and 01.02.2026

Judgment delivered on 03.02.2026

On an application under section 439 read with section 435 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 13.08.2007 passed by Additional Sessions Judge, Court No. 1, Barisal, in Criminal Appeal No. 14(2) of 2007 modifying those dated 13.5.2007 passed by Magistrate, First Class, Barisal in Kotwali P.S. Case No. 35 dated 19.11.2001 corresponding G.R. No. 596 of 2001 (Sadar) convicting the petitioner under sections 406 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 2(two) years and fine of Tk. 3,000 in default to suffer imprisonment for 1(one) month, and convicting him under section 420 of the Penal Code, 1898, and sentencing him thereunder to suffer rigorous imprisonment for 2(two) years and a fine of Tk. 5,000 in default to suffer rigorous imprisonment for 2(two) months should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The prosecution's case, in short, is that the accused Haroon or Rashid deals with the manpower business, and he received Tk. 2,40,000 on 21.06.2000 and a cheque for payment of Tk. 20,000 in

the presence of witnesses to send the informant Tipu Negaban and witness Faruk Sheikh to Saudi Arabia and requested them to give the passport. The accused encashed the said cheque. At the time of handing over money and the cheque, the accused also received their passport and undertook to send them to Saudi Arabia within the next month, but the accused did not take any steps to send them to Saudi Arabia. Lastly, on 18.11.2001 at 9 am, the informant, along with the witnesses, went to the house of the accused and requested him to send them to Saudi Arabia, but he denied to send them to Saudi Arabia and refused to refund Tk. 2,60,000. The accused fraudulently received Tk. 2,60,000 and committed a breach of trust.

During investigation, the Investigating Officer SI Sheikh Abul Hossain visited the place of occurrence, prepared the sketch map and index, recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898, seized documents and after completing investigation, he found the prima-facie truth of the allegation made against the accused and submitted charge sheet on 22.04.2002 against him under sections 406/420 of the Penal Code, 1860.

During trial, charge was framed against the accused under sections 406 and 420 of the Penal Code, 1860. At the time of framing charge, the accused was absconding. During trial, the prosecution examined eight witnesses to prove the charge against the accused. At the time of the examination of prosecution witnesses, the accused was absconding, for which he was not examined under section 342 of the Code of Criminal Procedure, 1898. After concluding trial, the Magistrate, First Class, Barisal, by judgment and order dated 13.5.2007, convicted the accused under sections 420/406 of the Penal Code, 1860, and sentenced him to suffer rigorous imprisonment for 3(three) years.

Against the said judgment and order passed by the trial Court, the convict-petitioner filed Criminal Appeal No. 14(2) of 2007 before

the Sessions Judge, Barisal. The appeal was heard by the Additional Sessions Judge, Court No. 1, Barisal, who by impugned judgment and order partly allowed the appeal and convicted the petitioner under section 406 of the Penal Code, 1860, and sentenced him thereunder to suffer rigorous imprisonment for 2(two) years and a fine of Tk. 3,000, in default, to suffer rigorous imprisonment for 1(one) month, and also convicted him under section 420 of the Penal Code, 1860, and sentenced him to suffer rigorous imprisonment for 2(two) years and a fine of Tk. 5,000, in default, to suffer rigorous imprisonment for 2(two) months, which will run consecutively against which the convict-petitioner obtained the Rule.

P.W. 1 Tipu Negaban is the informant. He stated that the accused Haroon or Rashid is previously known to him and Faruk Sheikh. The accused Haroon or Rashid received Tk. 2,60,000 to send them to Saudi Arabia. On 21.04.2000, the accused undertook to send them to Saudi Arabia, sitting in the Office of the Hatkhola Small Businessman Association. The accused received Tk. 2,40,000 in cash and 20,000 by a cheque drawn on Janata Bank Limited, Hatkhola Bazar Branch. The cheque number is 9438494, but ultimately, he did not send them to Saudi Arabia and refused to return the money. On 18.11.2001 at 9.30 am, P.W. 1 went to the house of the accused, and he refused to send them to Saudi Arabia. When they demanded money, the accused refused to refund Tk. 2,60,000 received by him from the P.W. 1. He proved the FIR as exhibit 1 and his signature on the FIR as exhibit 1/1.

P.W. 2 Md. Kalam stated that the accused Haroon or Rashid is known to him, and he received Tk. 2,40,000 in cash and Tk. 20,000 by cheque to send P.W. 1 and another person to Saudi Arabia, but he did not send them to Saudi Arabia, and he also did not refund the money.

P.W. 3 Md. Nuruzzaman stated that on 21.04.2000 at 5 pm, sitting in the Office of the Hatkhola Small Businessman Association,

the accused received Tk. 2,40,000 in cash and a cheque for payment of Tk. 20,000 from P.W. 1 to send him and another person to Saudi Arabia, but he did not send them to Saudi Arabia. Lastly, on 18.11.2001, he, along with the informant and others, went to the house of the accused, and at that time, he refused to send the informant and another to Saudi Arabia, and he also refused to refund the money received by him, and committed fraud.

P.W. 4 Motiar Rahman stated that the accused and the informant are known to him. The accused received Tk. 2,40,000 on 21.04.2000 at 5 pm, sitting in the Office of the Hatkhola Small Businessman Association. He also received a cheque for payment of Tk. 20,000 to send P.W. 1 and Faroque Sheikh to Saudi Arabia, but he did not send them to Saudi Arabia, and he also did not refund the money received by him.

P.W. 5 Faruk Sheikh stated that the informant and the accused are known to him. On 21.04.2000 at 5 pm, sitting in the Office of the Hatkhola Small Businessman Association, the accused received Tk. 2,40,000 in cash and a cheque for payment of Tk. 20,000 to send P.W. 1 and him to Saudi Arabia. Subsequently, the accused did not send them to Saudi Arabia, and he also did not refund the said amount received by him.

P.W. 6 Sahabuddin Nantu stated that on 21.04.2000 at 5 pm, sitting in the Office of the Hatkhola Small Businessman Association, the accused received Tk. 2,40,000 in cash and a cheque for payment of Tk. 20,000 to send P.Ws 1 and 5 to Saudi Arabia, but he did not send them to Saudi Arabia, and he also did not refund the money received by him, thereby committed fraud and breach of trust.

P.W. 7 Md. Chan Miah stated that on 21.04.2000 at 5 pm, sitting in the Office of the Hatkhola Small Businessman Association, the accused received Tk. 2,40,000 in cash and a cheque for payment of Tk. 20,000, but he did not send them to Saudi Arabia, and he also did not refund the money, and committed fraud and forgery.

P.W. 8 Golam Mostafa stated that the accused and the informant are known to him. The accused Haroon or Rashid received Tk. 2,40,000 in cash on 21.04.2000 at 5 pm, sitting in the Office of the Hatkhola Small Businessman Association. He also received a cheque for payment of Tk. 20,000 to send P.Ws 1 and 5 to Saudi Arabia, but ultimately, he did not send them. He also did not refund the money received by him.

No one appears on behalf of the convict-petitioner.

Learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, appearing on behalf of the State, submits that the accused received Tk. 2,40,000 in cash and Tk. 20,000 by a cheque on 21.06.2000 to send P.Ws 1 and 5 to Saudi Arabia, but he did not send them to Saudi Arabia, and he also did not refund the said amount to the informant. The accused Haroon or Rashid fraudulently received Tk. 2,60,000 to send them to Saudi Arabia and committed a breach of trust, and during the 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 judgment and order. He prayed for discharging the Rule.

I have considered the submission of the learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, who appeared 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 evidence of P.W. 1 regarding the payment of Tk. 2,40,000 in cash and Tk. 20,000 by a cheque to the convict-petitioner Haroon or Rashid on 21.06.2000 at 5 pm, sitting in the Office of the Hatkhola Small Businessman Association, to send P.W. 1 and 5 to Saudi Arabia is corroborated by P.Ws 2 to 7. During the trial, the accused was absconding and did not cross-examine the prosecution witnesses. In the instant case, no documentary evidence has been proved regarding the payment of Tk.

2,60,000 to the accused. Although it has been alleged that the accused received Tk. 20,000 by a cheque drawn on Janata Bank, but the prosecution also did not prove the said cheque. In the absence of any documentary evidence regarding payment of money to the accused, it is not safe to convict a person.

Furthermore, it is found that the trial was held in absentia. Before framing charge, the notice under section 339(B) of the Code of Criminal Procedure, 1898 was published on 09.09.2003 in the Daily Ajker Barta and Ajker Paribartan, published from Barishal, which are local newspapers, not national daily newspaper having wide circulation. Consequently, the trial was held in the absence of the accused. I am of the view that before holding trial, the accused was not notified about the charge framed against him and mandatory provision made in section 339B of the Code of Criminal Procedure, 1898 was not complied with for which the convict-petitioner is seriously prejudiced.

It is found that the alleged occurrence took place in 2000, and the prosecution failed to prove any document regarding the payment of Tk. 2,60,000. Therefore, no purpose will be served if the case is sent back on remand to the trial Court.

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. Both the Courts below, in the absence of documentary evidence regarding the payment of Tk. 2,60,000 to the convict-petitioner illegally convicted him.

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 Haroon or Rashid are hereby set aside.

Send down the lower Court's records at once.