

Present:

Mr. Justice Md. Salim

CRIMINAL REVISION NO.2309 of 2016

Mst. Rotna Khatun

..... Convict-Petitioner.

-Versus-

The State

..... Opposite party.

Mr. Md. Elius Ahmed, Advocate

.....For the Petitioner.

Mr. Monzurul Alam Sujan, DAG

Mr. Towhidul Islam, AAG

Mr. Syed Akhtarul Islam, AAG

..... For the State.

Heard on 06.07.2026, 13.07.2026

and 19.07.2026.

Judgment on 19.07.2026

By this Rule, the opposite party was called upon to show cause as to why the judgment and order dated 13.04.2014 passed by the learned Additional Sessions Judge, 2nd Court, Kushtia in Criminal Appeal No.14 of 2011 dismissing the appeal and affirming the judgment and order of conviction of sentence dated 11.01.2011 passed by the learned Joint Sessions Judge 3rd Court, Kushtia in Sessions Case No. 293 of 2008 arising out of G.R. No.132 of 2008 corresponding to Varamara Police Station Case No.14 dated 25.08.2008 convicting the convict appellant under

Table 1(ka) of Section 19(1) of the Madok Drobbo Niyantaran Ain and sentencing her to suffer rigorous imprisonment for a period of 2(two) years and to pay Tk.5,000/- in default to suffer rigorous imprisonment for 6 (six) months more should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The prosecution case, in brief, is that on 25.08.2008, the informant, Md. Faruk Sultan, Inspector of the Department of Narcotics Control, Sadar Circle, Kushtia, accompanied by departmental staff and four police personnel, conducted a raid at the residence of the accused, Rotna Khatun, situated at Kacharipara village under Bheramara Police Station. During the operation, the accused was apprehended, and upon a search conducted by Constable Papiya Sultana in the presence of witnesses, 25 purias of heroin weighing approximately 3 grams, wrapped in paper and kept inside a plastic container, were recovered from the possession of the accused. Thereafter, a seizure list was prepared at the place of occurrence, and the seized contraband was taken into custody in the presence of the witnesses. One puria of heroin was separated as a sample for chemical examination, and both the sample and the remaining

seized heroin were duly sealed and labeled. Thereafter, the informant brought the accused, along with the seized contraband and the sample, to the police station and lodged the First Information Report (FIR) on the allegation that the accused had illegally possessed and preserved heroin, thereby committing an offense punishable under Table 1(ka) of Section 19(1) of the Madok Drobbo Nyantran Ain.

After investigation, the Police submitted the charge sheet against the accused petitioner under Table 1(ka) of Section 19(1) of the Madok Drobbo Nyantran Ain, 1990, before the Magistrate, Cognizance Court, Kushtia. Thereafter, the Magistrate took cognizance of the case against the accused petitioner under Table 1(ka) of Section 19(1) of the Madok Drobbo Nyantran Ain, 1990.

As the case was ready for trial, it was transferred to the Sessions Judge, Kushtia, where it was registered as Sessions Case No. 293 of 2008.

Subsequently, the learned Joint Sessions Judge, 3rd Court, Kushtia, framed the charge against the convict petitioner under Tablet 1(ka) of Section 19(1) of the Madok Drobbo Nyantran

Ain, 1990, which was read over and explained to her, who pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined five witnesses, while the defense examined none.

After the witnesses were deposed, the accused petitioner was examined under Section 342 of the Code of Criminal Procedure, to which she pleaded not guilty.

After the conclusion of the trial, the learned Joint Sessions Judge, 3rd Court, Kushtia, by the impugned judgment and order dated 11.01.2011, convicted the accused appellant under Table 1(ka) of Section 19(1) of the Madok Drobbo Niyantaran Ain, 1990 and sentencing her to suffer rigorous imprisonment for a period of 2(two) years and to pay Tk.5,000/- in default to suffer rigorous imprisonment for 6 (six) months.

Being aggrieved by and dissatisfied with the above judgment and order of conviction and sentence, the convict-petitioner, as appellant, preferred the appeal, which has been registered as Criminal Appeal No.14 of 2011 before the Sessions Judge, Kushtia.

Eventually, the learned Additional Sessions Judge, 2nd Court, Kushtia, by the judgment and order dated 13.04.2014,

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 concurrent Judgment and order of conviction and sentence, the convict, as petitioner, then filed the instant Criminal Revision.

Mr. Md. Elius Ahmed, learned counsel for the convict petitioner, submits that the conviction and sentence of the convict petitioner were passed on no evidence, since it appears from the FIR and the evidence of the prosecution witnesses that nothing has been actually recovered from her or her knowledge. The whole trial is vitiated, as the informant himself investigated the case; moreover, the seizure list witnesses do not support the prosecution case. The trial court below committed a grave error and illegally convicted the convict petitioner. On the contrary, the appellate court below, as the last court of fact, did not at all controvert the findings of the trial court below; it simply affirmed the same, and those suffer from illegality and irregularity.

On the contrary, Mr. Syed Akhtarul Islam, the learned Assistant Attorney General appearing for the State, vehemently opposes the contention so made by the learned counsel for the

accused appellant and contends that the trial court has very exhaustively considered the whole evidence on record and found the appellant guilty under Table 1(ka) of Section 19(1) of the Madok Drobbo Niyantaran Ain, 1990, and the appellate court below very judiciously considered the findings of the trial court below and affirmed the findings of the trial court below.

We have carefully considered the submissions advanced by the learned counsel from the Bar and the learned Assistant Attorney General, and have perused the impugned judgment, evidence, and other materials available on record.

In order to prove the charge, the prosecution examined as many as five witnesses. Of them-

P.W. 1 Md. Faruk Sultan, Inspector of the Department of Narcotics Control, deposed that on 25.08.2008, on secret information, a raid was conducted at Kacharipara under Bheramara Police Station with the assistance of departmental staff and police personnel. During the raid, the accused, Rotna Khatun, was apprehended. Thereafter, in the presence of local witnesses, a personal search of the accused was conducted by a female constable, during which 25 purias of heroin, weighing approximately 3 grams and kept inside a plastic container, were

recovered from her possession. Thereafter, they prepared a seizure list at the place of occurrence and obtained the witnesses' signatures thereon. One puria of heroin was separated from the seized contraband as a sample for chemical examination and was duly sealed and labeled in the presence of the witnesses.

P.W. 2- Md. Faruk Sultan, the investigating officer, deposed that upon being entrusted with the investigation of the case on 25.08.2008, he examined the relevant records. The sample of the seized contraband was forwarded to the Chemical Examiner for forensic analysis, and the place of occurrence was inspected, whereupon a sketch map and an index thereof were prepared. The statements of the seizure-list witnesses were recorded under section 161 of the Code of Criminal Procedure, and the report of the Chemical Examiner was duly examined. Upon completion of the investigation, the allegation brought against the accused, Ratna Khatun, was found to have prima facie substance. Accordingly, Charge Sheet No. 124 dated 14.09.2008 was submitted against the accused petitioner under section 19(1)(a) of the Narcotics Control Act, 1990. During his deposition, the sketch map, the index thereto, and the Chemical

Examiner's report were proved and marked as exhibits, and the accused was also identified by him in the dock.

P.W.3- Md. Saifur Rahman, a constable of the Department of Narcotics Control, deposed that on 25.08.2008, while serving as a member of the departmental force, he accompanied the informant, Inspector Md. Faruk Sultan, in conducting a raid at Kacharipara village under Bheramara Police Station. During the raid, the accused, Rotna Khatun, was apprehended, and a female constable conducted a personal search of the accused in the presence of local witnesses. In the course of the search, 25 purias of heroin, weighing approximately 3 grams and kept inside a plastic container, were recovered from the possession of the accused. A seizure list was prepared at the place of occurrence, the witnesses' signatures were obtained thereon, and the sample and the remaining seized contraband were separately sealed and preserved in accordance with law.

P.W.4. Mazharul Islam Mintu, a seizure-list witness, deposed that he was employed as a microbus driver. On the date of the occurrence, at about 9:45 a.m., he arrived near the place of occurrence and noticed police personnel and members of the Department of Narcotics Control. Upon their request, he signed

the seizure list, and he identified the same before the court. He further stated that he had no direct knowledge regarding the alleged recovery of the contraband.

Subsequently, the prosecution declared the witness hostile.

P.W.5- Md. Nazrul Islam, the other seizure-list witness, deposed that he was a truck driver by profession. He stated that on the date of the occurrence, at about 9:00 to 10:00 a.m., he had been sitting at the Bheramara Motor Workers' Office. At that time, members of the Department of Narcotics Control came to the office and obtained his signature. During his deposition before the court, he identified the signature appearing on the seizure list as his own.

Analyzing the above evidence on record, it appears the informant (P.W.1) is an inspector of the Narcotics Control Department, who went to the place of occurrence for recovery of the alleged heroin without making any G.D. Moreover, he himself is the IO in the case and examined as D.W.2. P.W.-3 is a constable of the Narcotics Control Department who did not say anything about the recovery of the alleged heroin. P.W.-4 and P.W.-5 are independent seizure-list witnesses who did not support the prosecution case.

Notably, it is admitted that P.W. 1 and P.W. 2, as officers of the Narcotics Control Department and the legal officers of the raiding party, would naturally be interested in the conviction of the accused petitioner and, as such, are interested witnesses. Moreover, save and except the P.W.-1, none of the prosecution witnesses supported the prosecution story of recovery of the alleged heroin.

Further, the relevant law has referred to section 103 of the Code of Criminal Procedure which reads as follows:

"103 (1) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do.

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person

witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(3)

(4)

(5)

From a plain reading of sub-section (1) of section 103 of the Code of Criminal Procedure it is abundantly clear that the search by the Police must be conducted in the presence of at least two respectable inhabitants of the locality and the things which are to be seized in connection with any case are to be seized during the course of such search conducted in presence of at least two respectable local inhabitants. The requirements of sub-section (2) of section 103 read with sub-section (1) of section 103 are that the entire search from the beginning to the end must be conducted in the presence of two respectable local inhabitants and the requirements are not fulfilled if the search and the seizure have taken place either preceding the arrival of the local inhabitants or take place after they departed from the place of search. The provision relating to search and seizure provided in sub-section (1) and sub-section (2) of section 103 of the Code of

Criminal Procedure are mandatory, and any search and seizure without strictly complying with the aforesaid provisions must be deemed to be illegal and as such, must be left out of consideration in a criminal trial.

From the evidence of P.Ws. 4 and 5, it is clear that the search had taken place and the seizure of the alleged heroin had been recovered before their arrival at the place of occurrence and in their absence. As such, the search as well as the seizure of the heroin, including the preparation of the seizure list by P.W. 1, marked Ext. 2, before the trial court. Consequently, we are of the firm view that the learned Judge of the Trial Court and the Appellate Court could not have considered the evidence relating to the search and seizure of the alleged heroin as well as the seizure list Ext. 2 for arriving at the finding regarding the possession of the said alleged heroin. If the seizure list Ext. 2 and the evidence relating to the recovery of the alleged heroin from the possession of the convict petitioner were left out of consideration, there was no material before the Judge of the trial court that the prosecution was able to prove that the incriminating heroin was found in possession of the petitioner on the date of occurrence. Accordingly, the convict petitioner is

entitled to acquittal, as the prosecution had not proved the charge beyond all reasonable doubt.

On the contrary, it was incumbent upon the learned Judge of the appellate Court to examine and determine whether the learned trial Court had convicted the accused upon proper and judicious consideration of the evidence and materials on record. However, in the instant case, it appears from the record that the learned appellate court merely affirmed the findings and decision of the learned trial Court in a mechanical manner, without making an independent assessment of the evidence on record. In view of the above, we are of the considered view that the Rule has merit.

Resultantly, the Rule is made absolute.

The impugned judgment and order dated 13.04.2014 passed by the learned Additional Sessions Judge, 2nd Court, Kushtia in Criminal Appeal No.14 of 2011 dismissing the appeal and affirming the judgment and order of conviction of sentence dated 11.01.2011 passed by the learned Joint Sessions Judge 3rd Court, Kushtia in Sessions Case No. 293 of 2008 arising out of G.R. No.132 of 2008 corresponding to Varamara Police Station Case No.14 dated 25.08.2008, are hereby set aside.

The accused-petitioner is acquitted of the charges leveled against her and discharged from her bail bonds.

Send down the lower court records at once, along with a copy of the judgment.

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(Md. Salim, J).

Rakib(ABO)