

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No.2141 of 2017

Mst. Rawshon Ara Khanom

.....convict-petitioner

-Versus-

The State and another

..... opposite-parties

Mr. Ashraf Ali Mollah, Advocate

.....For the convict-petitioner

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

No one appears

.....For the complainant-respondent No.2

Heard on 17.08.2023 and 21.08.2023
and Judgment on: 22.08.2023

Md. Kamrul Hossain Mollah.J:

This is an application under Section 439 read with section 435 of the Code of Criminal Procedure. This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 07.08.2017 passed by the learned District and Sessions Judge, Gazipur in Criminal Appeal No.171 of 2017 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 18.03.2015 passed by the learned Judicial Magistrate, Court No.4, Gazipur, in Complaint Registrar (C.R.) Case No.1276 of 2012 (Joydevpur) convicting the petitioner

under section 420 of the Penal Code and sentencing her to suffer rigorous imprisonment for a period of 02(two) years and also to pay a fine of Tk.5,000/- (five thousand) in default to suffer simple imprisonment for a period of 01(one) month more, should not be set-aside and or pass such other order or further order or orders as to this court may seem fit and proper.

At the time of issuance of the Rule this Court granted bail to the convict-petitioner for a period of 01(one) year.

The relevant facts necessary for disposal of the Rule are as follows:-

The prosecution case, in short is that one Md. Abdul Hakim, son of Hurmat Ali, village: Bagerhat, Post Office: Rayed Dorga Bazar, Police Station:Kapasi, District: Gazipur being complainant filed this complaint petition before the Court of learned Chief Judicial Magistrate, Gazipur under sections 420/406/506(II) of the Penal Code, 1860 on 03.10.2012 against the convict-appellant alleging inter alia that the convict-petitioner want loan Tk.1,00,000/-to the complainant with request in present of the witnesses. According to the request of the convict-petitioner, the innocent complainant lend her loan amounting of Tk.1,00,000/- at evening about 5:00 hours on

01.02.2012 in presence of the witnesses with a condition that she will be returned the same within 06(six) months and also put her signature on two cartage papers. The convict-petitioner did not pay the said amount as condition of 06(six) months later of received money. On 20.09.2012 the complainant along with witnesses requested to the convict-petitioner to pay the said amount, but the convict-petitioner refuse the same and after failing recover the same compelled to file this petition of complaint before the learned Court. The convict-petitioner committed an offence after refuse to pay the said amount to the complainant under section 420/406/506(II) of the Penal Code and hence the case.

The learned Chief Judicial Magistrate, Gazipur upon receiving the petition of complaint examined the complainant under section 200 of the Code of Criminal Procedure took cognizance against the petitioner under section 420/406/506(II) of the Penal Code and issued summon against him. Thereafter, the case was ready for trial. The learned Judge of the trial Court framed charge against the accused-petitioner under sections 406/420 of the Penal Code, 1860, but which was not possible to read over to her due to her absence.

The prosecution adduced as many as 05(five) witnesses in support of the defence case.

After closing the prosecution witnesses by the learned trial Court, the petitioner was not examined by the trial Court under section 342 of the Code of Criminal Procedure due to her absence.

The learned Judge of the trial Court after hearing the parties and perusing the evidence on record found guilty under section 420 of the Penal Code and convicted the petitioner under said section and sentenced her to suffer rigorous imprisonment for a period of 02(two) years and also to pay a fine of Tk.5,000/- (five thousand) in default to suffer simple imprisonment for 01(one) month more.

Thereafter, the learned Advocate for the convict-petitioner filed an appeal under section 408 of the Code of Criminal Procedure before the Court of learned District and Sessions Judge, Gazipur on 02.08.2017 with a prayer for condonation of delay, which was registered as Criminal Appeal No.171 of 2017.

The learned District and Sessions Judge, Gazipur upon hearing the parties disallowed the said appeal along with condonation of delay vide his judgment and order dated 07.08.2017 in Criminal Appeal No.171 of 2017 and uphold the judgment and order of conviction and sentenced dated 18.03.2015 passed by the learned Judicial Magistrate, Court No.4, Gazipur in Complaint Register (C.R.) Case No.1276 of 2012 (Joydevpur).

Being aggrieved by and dissatisfied with the impugned judgment and order dated 07.08.2017 passed by the learned District and Sessions Judge, Gazipur in Criminal Appeal No.171 of 2017, the convict-petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

Mr. Ashraf Ali Mollah, the learned Advocate appearing for the convict-petitioner submits that the learned trial Court as well as the appellate Court below misread and misconstrued the judgment an order of conviction and sentence and evidence on record and committed error of law in disallowing the appeal upholding the judgment and order conviction and sentence passed by the trial Court.

He further submits that the learned Courts below failed to realize the actual fact whereas the convict-petitioner has been made victim of circumstances. The actual fact is that the complainant is an Advocate clerk of learned Court below, Gazipur and the convict-petitioner filed a Civil Revision through the learned Advocate being Civil Revision No.224 of 2011 and for that purpose the complainant taken signature from the convict-petitioner and out of ill motive and bad intention the complainant used those signatures against her by making fraud practice. The materials brought by the prosecution during trial do not at all make out a case under section 420 of the Penal Code against the petitioner.

He next submits that no independent witness has corroborated the case rather all are partisan and interested in the case, witnesses have deviated in Court from their earlier statement, which makes the prosecution case doubtful and the prosecution has failed to prove the case beyond all reasonable doubt and admittedly the case has been filed after a pretty long time by the informant, which is also after thought and motivated to harass and humiliate the petitioner.

The learned Advocate lastly submits that there is no ingredient of section 420 of the Penal Code in this case and the impugned judgment and order dated 07.08.2017 is illegal, unjust and improper and as such the impugned judgment and orders are liable to be set-aside for ends of justice. Accordingly, he prays for making the Rule absolute.

On the other hand, Mrs. Umme Masumun Nesa, the learned Assistant Attorney General appearing on behalf of the opposite parties submits that the convict-petitioner want loan Tk.1,00,000/-to the complainant with request in present of the witnesses. According to the request of the convict-petitioner, the innocent complainant lend her loan amounting of Tk.1,00,000/- at evening about 5:00 hours on 01.02.2012 in presence of the witnesses with a condition that she will be returned the same within 06(six) months and also put her signature on two cartage papers. The convict-petitioner did not pay the said amount as condition of 06(six) months later of received money. On 20.09.2012 the complainant along with witnesses requested to the convict-petitioner to pay the said amount, but the convict-petitioner refuse the same and after failing recover the same compelled to file this petition of

complaint before the learned Court. The convict-petitioner committed an offence by refusing to pay the said amount to the complainant under section 420/406/506(II) of the Penal Code.

I have perused the revisional application, the impugned judgment and order of the Court's below, the submissions of the learned Advocates for the parties, the papers and documents as available on the record.

It appears from the records and submissions of the learned Advocates for the parties that the convict-petitioner want loan Tk.1,00,000/-to the complainant with request in present of the witnesses. According to the request of the convict-petitioner, the innocent complainant lend her loan amounting of Tk.1,00,000/- at evening about 5:00 hours on 01.02.2012 in presence of the witnesses with a condition that she will be returned the same within 06(six) months and also put her signature on two cartage papers. The convict-petitioner did not pay the said amount as condition of 06(six) months later of received money. On 20.09.2012 the complainant along with witnesses requested to the convict-petitioner to pay the said amount, but the convict-petitioner refuse the same and after failing recovery the same compelled to file this petition of

complaint before the learned Court under section 420/406/506(II) of the Penal Code.

The complainant to prove his case adduces 5 witnesses and submitted an undertaking which is written on two cartage paper and that is marks as exhibit-2. Considering the 5 witnesses and exhibit No.-2, it is found that CW I is the complainant and CW V is his son as well as the writer of the exhibit No. 2. But signature of the writer of the exhibit No.2, which is marks as exhibit No.2(1) and signature of the CW.V is not same rather it differs from each other which easily can identified by the normal eyes. Moreover it is found from the exhibit No. 2 that Md. Rehan uddin, Md. Abdul latif and Mossamot Nasrin are the witnesses of this exhibit No. 2 amongst them Md. Rehan uddin was examined as C W- II Md. Abdul latif was examined as CW-III and Mosamot Nasrin was examined as CW-IV. But none of them mentioned in their evidences that they are the witnesses of Exhibit No.-2 and also none of them identified their signature from the exhibit No.2 and not mark their signature as exhibit which creates doubt about Exhibit – 2. Moreover it is also found that the son of the complaint that is CW-V was the tenant of accused person. It is

also found that all the witnesses are relatives and partisan and complainant failed to produce any independent witness and complainant failed to prove the case brought against the accused petitioner beyond reasonable doubt.

Considering above all I think that the complainant failed to prove the allegation against the accused person under section 420 of the Penal Code.

In the light of the above discussion, it is clear before me that the judgment and order dated 07.08.2017 passed by the learned District and Sessions Judge, Gazipur in Criminal Appeal No.171 of 2017 is not maintainable in the eye of law and it will be fair to interference there.

Accordingly, I find cogent and legal ground in the submissions of the learned Advocate for the petitioner and to interfere with the impugned judgment and order dated 07.08.2017. Therefore, the instant Rule has merit.

In the result, the Rule is made absolute.

The impugned judgment and order dated 07.08.2017 passed by the learned District and Sessions Judge, Gazipur

in Criminal Appeal No.171 of 2017 is hereby set-aside and the convict-petitioner be acquitted.

The order of bail granted earlier by this Court is hereby cancelled and recalled.

Send down the lower Court records and communicate a copy of the judgment and order to the concerned Court below at once.

Md. Anamul Hoque Parvej
Bench Officer