

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Revision No. 365 of 2019

A.K. Golam Mostafa

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

Mr. Md. Sagir Hossain, Advocate

...For the convict-petitioner

Mr. Md. Emran Khan, D.A.G with

Ms. Nasrin Hena, A.A.G with

Mr. Md. Uzzal Hossain, A.A.G with

Mr. Md. Abu Saleh Apel Mahamud, A.A.G

...For the State

Heard on 08.07.2024, 30.07.2024, 03.09.2024 and  
04.09.2024**Judgment delivered on 05.09.2024**

On an application filed under Section 439 read with Section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order of conviction and sentence dated 04.05.2017 passed by the Additional Metropolitan Sessions Judge, Court No.8, Dhaka in Criminal Appeal No. 784 of 2016 arising out of C.R. Case No. 572 of 2012 allowing the appeal and convicting the petitioner under Section 420 of the Penal Code, 1860 and sentencing him to suffer rigorous imprisonment for 2(two) years and fine of Tk. 10,000(ten thousand), in default, to suffer imprisonment for 3(three) months by setting aside the judgment and order of acquittal dated 05.06.2016 passed by the Metropolitan Magistrate, Court No. 31, Dhaka acquitting the petitioner from the charge framed against him under Sections 420/406/506 of the Penal Code, 1860 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 short, is that the complainant Md. Harunor Rashid is the Proprietor of NAF Consultants Firm. He was

known to late Md. Badrul Alam Chowdhury who requested him to get a no objection from RAJUK regarding his land of dag Nos. 281, 282 and 283 under Samair Mouza possessed by the Badrul Alam Chowdhury. Accordingly, the accused A.K. Golam Mostafa was entrusted to do the job. The accused received total Tk. 43,96,400 on 02.09.2008, 14.09.2008, 17.11.2008, 02.12.2008, 07.01.2009, 04.09.2008, 25.11.2008, 25.12.2008, 17.02.2009, 23.04.2009 and 25.04.2009 from the complainant and signed the vouchers issued by the NAF Consultants Firm. The accused did not complete the work for which he received the money. Subsequently, on demand made by the complainant, he paid total Tk. 1,70,000 through S.A Paribahon, Mohakhali Branch and Tk. 58,000 through the bank account and Tk. 2,000 in cash but he did not pay the remaining amount Tk. 42,26,400. Lastly, on 25.11.2012 the complainant demanded the said amount to the accused but he refused to pay the said amount. Consequently, the complainant filed the case on 12.12.2012.

After filing the complaint petition, the complainant was examined under Section 200 of the Code of Criminal Procedure, 1898 and the Chief Metropolitan Magistrate, Dhaka was pleased to take cognizance of the offence under Sections 420/406/506 of the Penal Code, 1860 against the accused. During the trial, charge was framed under Sections 420/406/506 of the Penal Code, 1860 against the accused and at that time of the framing charge, the convict-petitioner was absconding for which the charge framed against him could not be read over and explained to him. During the trial, the prosecution examined 2(two) witnesses to prove the charge against the accused. Since the convict-petitioner was absconding, the defence did not cross-examine the prosecution witnesses.

After concluding the trial, the Metropolitan Magistrate, Court No. 31, Dhaka by judgment and order dated 05.06.2016 acquitted the accused from the charge framed against him under

Sections 420/406/506 of the Penal Code, 1860 against which the complainant filed Criminal Appeal No. 784 of 2016 before the Metropolitan Sessions Judge, Dhaka. The appeal was heard by the Additional Metropolitan Sessions Judge, Court No. 8, Dhaka who after hearing the appeal by judgment and order dated 04.05.2017 allowed the appeal and convicted the accused under Section 420 of the Penal Code, 1860 and sentenced him to suffer rigorous imprisonment for 2(two) years and fine of Tk. 10,000, in default, to suffer imprisonment for 3(three) months against which the convict-petitioner obtained the instant Rule.

P.W. 1 Md. Harunur Rashid is the complainant. He stated that the accused was previously known to him. He is the proprietor of the consultancy firm and the accused wanted job to him. He entrusted the accused to get a no objection from the Ministry of Works and RAJUK. From 02.09.2008 to 07.01.2009 on different dates the accused received Tk. 37,62,000 from him. On 25.04.2009 he also received Tk. 6,34,400 for the above purpose but he did not do the work. Since the accused did not do the work, he demanded money from him and the accused repaid Tk. 1,70,000 to the complainant but he did not pay the remaining amount. On 25.11.2012 the accused refused to pay the money and threatened him. Consequently, he filed the case. He proved the complaint petition as exhibit 1 and his signature as exhibit 1/1. He proved the 14 debit vouchers as exhibit 2 series.

P.W. 2 Md. Mamun Hossain is an employee of P.W. 1. He stated that from 2006-2013 he served in the firm of the complainant. The accused used to come to the complainant. He entrusted a job to the accused. The accused received Tk. 44 lakh from the complainant. He did not do the work. When the complainant demanded money, he refused to pay and the complainant filed the case.

Learned Advocate Mr. Md. Sagir Hossain appearing on behalf of the convict-petitioner submits that no document was executed between the accused and the complainant regarding the work to be done by the accused for getting the no objection certificate from the Ministry of Works and the RAJUK. P.W. 1 did not say that the accused signed the disputed money receipts and debit vouchers (exhibit 2 series). The trial Court on proper assessment and evaluation of the evidence of the prosecution witnesses acquitted the accused. He further submits that unless the evidence adduced by the prosecution is found unimpeachable, the appellate Court should not interfere with the findings of acquittal. He also submits that the mere failure of the trial Court to assess the evidence is not sufficient ground to interfere with the order of acquittal. Therefore, he prayed to make the Rule absolute.

Learned Deputy Attorney General Mr. Md. Emran Khan appearing on behalf of the State submits that the convict-petitioner received total Tk. 43,96,400 and signed the debit vouchers (exhibit 14 series) issued by the NAF Consultants Firm. Since the accused was absconding during the trial, the evidence of P.W. 1 as regards acceptance of the total Tk. 43,96,400 by the accused signing the vouchers (exhibit 2 series) remained uncontroverted by the defence and the prosecution proved the charge by adducing documentary evidence against the accused and the appellate Court below on proper assessment and evaluation of the evidence legally passed the impugned judgment. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Md. Sagir Hossain who appeared on behalf of the convict-petitioner and the learned Deputy Attorney General Mr. Md. Emran 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 judgment and order passed by the trial Court, it appears that the trial Court acquitted the accused holding the view that no agreement was executed between the accused and the complainant as regards the work to be done by the accused and the money allegedly received by the accused and that the prosecution failed to prove the charge against the accused beyond all reasonable doubt. The appellate Court below convicted the accused by setting aside the order of acquittal holding that the accused signed the debit vouchers and received Tk. 43,96,400 and that the prosecution by adducing documentary evidence proved the charge against the accused.

On perusal of the evidence of P.W. 1, it reveals that the accused allegedly received Tk. 43,96,400 but no agreement was executed between the complainant and the convict-petitioner regarding the work to be done by the accused. In the complaint petition, it has been alleged that the accused received the said amount from the complainant to get a no-objection certificate from the Ministry of Works and the RAJUK in respect of the land of Dag Nos. 281, 282 and 283 of Samair Mouza possessed by Badrul Alam Chowdhury. No statement is made in the complaint petition that Badrul Alam Chowdhury was the owner of the said land. No statement was made as to why the complainant paid said money to the accused as regards the no objection certificate to be issued by the Ministry of Works and RAJUK in favour of said Badrul Alam Chowdhury. No money is required for getting a no-objection certificate from the RAJUK and the Ministry of Works. The alleged transaction appears as illegal transaction.

On perusal of the evidence of P.W. 1, it further reveals that no statement is made by him that the accused received the money by signing the money receipts (exhibit 2 series). On perusal of the 14 money receipts (exhibit 2 series), it appears that the money receipt dated 02.09.2008 for payment of Tk. 4,40,000 was proved as exhibit

2(Ka), money receipt dated 02.09.2008 for payment of Tk. 4,00,000 was proved as exhibit 2(Kha), money receipts dated 14.09.2008 for payment of Tk. 4,00,000 was proved as exhibit 2(Ga), money receipt dated 14.09.2008 for payment of Tk. 1,00,000 was proved as exhibit 2(Gha), money receipt dated 17.11.2008 for payment of Tk. 19,00,000 was proved as exhibit 2(Uma), money receipt dated 02.12.2008 for payment of Tk. 4,22,000 was proved as exhibit 2(Cha), money receipt dated 07.01.2009 for payment of Tk. 1,00,000 was proved as exhibit 2(Chha), money receipt dated 04.09.2008 for payment of Tk. 50,000 was proved as exhibit 2(Ja), money receipt dated 04.09.2008 for payment of Tk. 50,000 was proved as exhibit 2(Jha), money receipt dated 25.11.2008 for payment of Tk. 2,60,000 was proved as exhibit 2(Nio), money receipt dated 23.04.2009 for payment of Tk. 2,00,000 was proved as exhibit 2(Ta), money receipt dated 17.02.2009 for payment of Tk. 5,000 was proved as exhibit 2(Tha), money receipt dated 25.12.2008 for payment of Tk. 9,400 was proved as exhibit 2(Da) and money receipt dated 25.04.2009 for payment of Tk. 60,000 was proved as exhibit 2(3).

On scrutiny of those exhibits, it transpires that the money receipts (exhibits 2 series) were signed by different persons and the alleged signatures of the accused on those exhibits are not identical. The alleged signatures of the accused on exhibit 2 series were not sent to the expert to ascertain the signature of the accused on those debit vouchers.

Under Section 73 of the Evidence Act, 1872, the Court is empowered to compare the admitted signature of any person. The vokatnama signed by the accused and attested by the jail authority is available with the records. The signature of the accused on the vokatnama attested by the jail authority is not identical to the alleged signatures of the accused in exhibit 2 series. Furthermore, the alleged signatures of the accused in the exhibit 2 series are also

not identical to each other. Therefore, I am of the view that the accused did not sign the money receipts (exhibit 2 series) and he did not receive Tk. 43,96,400 from the complainant.

The appellate Court shall interfere with the order of acquittal passed by the trial Court if the evidence adduced by the prosecution is found trustworthy, credible and unimpeachable. No reason has been assigned by the appellate Court below that the reason assigned by the trial Court is perverse and the material evidence has been overlooked by the trial Court occasioning a failure of justice. Therefore, I am of the view that the appellate Court below committed serious illegality in convicting the accused by setting aside the order of acquittal passed by the trial Court.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgment and order of conviction and sentence dated 04.05.2017 passed by the appellate Court against convict-petitioner A.K. Golam Mostafa are hereby set aside.

The convict-petitioner A.K. Golam Mostafa is acquitted from the charge framed against him.

However, there will be no order as to costs.

Send down the lower Court's records at once.