

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

Present

**Mr. Justice Ashish Ranjan Das**

**And**

**Mr. Justice Md. Riaz Uddin Khan**

**Criminal Miscellaneous Case No. 23489 of 2019**

In the matter of:

An application under Section 561A of the Code  
of Criminal Procedure

**In the matter of:**

Nurun Nabi alias Ayub

...Convict- Petitioner

Versus

The State

...Opposite Party

Ms. Shaila Jahan, with  
Mr. Ariful Alam, Advocates

...For the Petitioner

Mr. S.M. Asraful Hoque, D.A.G and  
Mr. Sheikh Serajul Islam Seraj, D.A.G with  
Ms. Fatema Rashid, A.A.G  
Mr. Md. Shafiquzzaman, A.A.G. and  
Mr. Md. Akber Hossain, A.A.G

...For the State

**Judgment on: 05.12.2023**

**Md. Riaz Uddin Khan, J:**

Rule was issued calling upon the opposite party-State to show cause as to why the judgment and order of conviction and sentence dated 29.11.2018 passed by the Additional Sessions Judge, Feni in Criminal Revision No. 111 of 2016 allowing the revision and

convicting and sentencing the petitioner to suffer simple imprisonment for a period of 3(three) months and to pay a fine of Tk. 3000/- (three thousand) only and in default to suffer 1(one) day simple imprisonment upon reversing the judgment and order of acquittal dated 19.01.2016 passed by the Senior Judicial Magistrate, 1<sup>st</sup> Court, Feni in G.R. No. 345 of 2014 corresponding to Feni Model P.S. Case No. 25 dated 09.07.2014 under section 406/417 of the Penal Code should not be quashed and or such other or further order or orders should not be passed as to this court may seem fit and proper.

Succinct facts are that one Firoz Ahmed Babul on 10.07.2014 filed a C.R. Case in Senior Judicial Magistrate Cognizance Court No. 01, Feni alleging inter-alia that in order to send his son to Saudi Arabia the complainant and his wife agreed to transfer 06 decimals of land from his wife's 15.50 decimals through heba to accused petitioner and accordingly, a registered Heba deed dated 15.04.02008 was executed and the accused persons sent the complainant's son to Saudi Arabia; thereafter, the complainant collected the certified copy of the said deed and found

that the accused persons fraudulently grabbed all the land measuring 15.50 decimals beyond the knowledge of the complainant; then on asking accused petitioner promised to return back the land and took further Tk. 8,00,000/- (eight lac) from the complainant as visa fees of his son; since the accused failed to return back the land a local shalish was held on 22.06.2012 wherein the accused promised to return the land in writing on stamp papers but went to Saudi Arabia next day; However, the accused No. 1 came back from abroad and demanded Tk. 12,00,000/- (Twelve lac) as extortion from the complainant with a promise to return the land; then the complainant lodged a complaint to the police station and the additional superintendent of police Mr. Saiful Haq asked the thana police to take necessary steps and the police brought the accused No. 1 before the Police Station and the accused promised to take necessary steps to transfer the said land but did not do so hence the case.

By order of the Court the case was registered as Feni Model Police Station Case No. 25 dated 09.07.2014 under section 417/ 406/ 385/ 506 of the Penal Code. After

investigation police submitted charge sheet under sections 417/406/506 of the Penal Code against the accused-petitioner and another and the trial Court framed charge against only the accused-petitioner under sections 406/417 of the Penal Code. During trial, the prosecution examined 6(six) P.Ws. and the defence examined none.

After conclusion of trial, the learned Magistrate considering the evidence on record by her judgment and order dated 19.01.2016 was pleased to acquit the petitioner from the charge on the finding that the prosecution failed to produce relevant documents before the trial court and ultimately failed to prove the case beyond reasonable doubt.

Against the aforesaid judgment and order of acquittal the informant filed Criminal Revision No.111 of 2016 under section 435/436/439A of the Code of Criminal Procedure before the Sessions Judge, Feni which was ultimately heard by the Additional Sessions Judge, Feni who by his impugned judgment and order set aside the judgment of the trial court in part and convicted the petitioner under section 406 of the Penal Code and sentenced him to suffer 3 (three) months

simple imprisonment with a fine of taka 3000/- in default to suffer I (one) day simple imprisonment more.

Being aggrieved by and dissatisfied with the aforesaid judgment and order of conviction and sentence the petitioner moved this Court and obtained the Rule under section 561A of the Code of Criminal Procedure.

Ms. Shaila Jahan with Mr. Ariful Alam, the learned Advocate appearing on behalf of the petitioner submits that the prosecution has failed to prove the case beyond reasonable doubt and as such the judgment and order of conviction is illegal and bad in law. The prosecution failed to produce the original documents of alleged undertaking. The impugned judgment and order of conviction passed by the revisional court relying on a document, not exhibited either in trial court or in revisional court, the petitioner has been deprived of justice by the impugned judgment and order of conviction. There is no ingredient of section 406 of the Penal Code even if the petitioner failed to comply with the condition of so-called undertaking. In support of her submission the learned advocate

cited the decision of Ashraf Miah Vs. the State reported in 55 DLR 509.

The learned advocate lastly submits that the findings arrived at by the impugned judgment and order of conviction and sentence are vague and contradictory with the depositions of the witnesses and as such the same is liable to be quashed for ends of justice.

It appears from record that the informant through his learned advocate Ms. Buddrun Nahar filed an application for addition of party and this Court by order dated 06.03.2023 allowed her to assist the State. The learned Assistant Attorney General, Mr. Md. Akber Hossain appearing for the State supporting the impugned judgment and order of conviction and sentence submits that the revisional court based on proper assessment of evidence on record passed the impugned judgment.

We have heard the learned advocates, perused the lower court record including the depositions, the application filed under section 561A along with the annexure and the impugned judgment and order.

The prosecution case is that in order to send the son of the informant to Saudi Arabia

the informant and his wife agreed to transfer 06 decimals of land from his wife's 15.50 decimals through heba to accused petitioner and accordingly, a registered Heba deed dated 15.04.02008 was executed and the accused persons sent the complainant's son to Saudi Arabia but subsequently after collecting the certified copy of the said heba deed it was found that the petitioner fraudulently registered all the land measuring 15.50 decimals instead of 06 decimals; on asking the petitioner promised to return back the same land but the accused failed to do so for which a local shalish was held on 22.06.2012 wherein the accused promised to return the land in writing on stamp papers but went to Saudi Arabia and even coming back from abroad he refused to return back the land. The prosecution examined 6 PWs and defence examined none. The trial court after considering the evidence on record came to the conclusion that though all the PWs claimed that the accused executed an under taking in two stamp papers of tk-100/- and tk-50/- respectively with a promise to return back the excess land he registered but the prosecution did not file the original copy of those stamp

papers for which the prosecution failed to prove the case.

It appears from the impugned judgment that the informant submitted the original copy of the stamp papers of tk-100/- and tk-50 and considering the same the revisional court came to the conclusion that the revision should be allowed and also convicted and sentenced the accused. The Court sitting in revisional jurisdiction must bear in mind that where the State does not file any appeal against the order of acquittal, the informant is competent to prefer revision and the revisional Court look into the legality or propriety of the order of acquittal but cannot convert a finding of acquittal into one of conviction. However, the Court of revision yet can interfere with the order of acquittal in another way, so as to ensure that justice is done. The line of approach in such a case is to see that the case in its detail and the supporting evidence, had been fairly and fully appreciated by the trial Court, and its conclusion was reached in accordance with the basic principle governing the formation of a verdict adverse to an accused person. This



view was expressed in the case of Abdur Rashid Vs Chandu Master reported in 16 DLR (SC) 605.

In the case of Khairdi Khan Vs Crown reported in 5 DLR (FC) 185 the Federal Court clearly observed that revisional Court cannot convert a finding of acquittal into one of conviction, but it can under section 423 order the accused to be retried. This view is being consistently followed by the superior courts of this subcontinent including Bangladesh. The revisional jurisdiction conferred on the Court is not to be lightly exercised when it is invoked by a private party against an order of acquittal against which the state has a right of appeal and it can be exercised only in exceptional cases when the interest of public justice requires interference for the prevention of gross miscarriage of justice. The jurisdiction is not ordinarily invoked or used merely because the trial Court had taken a wrong view of the law or misappreciated the evidence on record. In the case of Jamshed Bakth (20 DLR 55) this Court opined that in exercise of its revisional jurisdiction court can disturb the findings of facts; where the trial court has wrongly applied the law and procedure of not applying the correct

principles relating to the appraisalment of evidence or ignored the important pieces of evidence altogether. Normally though a revisional court should not take upon itself the task of weighing the evidence afresh, but its power is not confined to the question of law alone and in a fit case the Court can also deal with question of facts where the findings of trial court is unreasonable, perverse and absolutely against the weight of evidence.

In the case of Fazlul Qader Chowdhury Vs Crown reported in 4 DLR 104 it was held that the conviction must be based only on the evidence that was recorded in the trial Court. If any other material is sought to be used against the accused person, such material should be placed on the record after complying with the provision of section 428 of the Code of Criminal Procedure. Keeping the long settled above principle in mind our Appellate Division in the case of Kashem Ali Vs State reported in 40 DLR (AD) 294 opined that with the change of time and the circumstances attending the administration of criminal justice time has come and experience also demand that the High Court Division will have to be little more scrutinizing even in a case

of acquittal because in the ultimate analysis it is the interest of public justice and/or prevention of miscarriage of justice which prompt the court of revision to interfere in a particular case. Nonetheless, the Appellate Division in the case of Abdul Hamid Mollah Vs Ali Mollah reported in 44 DLR (AD) 223 refused to interfere with an order of acquittal merely because a different view is possible of the evidence would not be justified. In the case of Bangladesh Vs Mohammad Ali reported in 1991 BLD (AD) 142 the Appellate Division clearly opined that unless the power of conversion of acquittal into conviction is specifically provided in a statute such power cannot be read into it and exercised.

It may be mentioned here that most of the above mentioned decisions have been passed while dealing with the revisional power and jurisdiction of the High Court Division conferred under section 439 of the Code of Criminal Procedure. Section 439A of the Code of Criminal Procedure provides that the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court Division under section 439. So, the Sessions Judge is neither empowered with any

additional jurisdiction nor lesser jurisdiction than the High Court Division while dealing with revisional power under section 439A. In that view, the decisions cited above are squarely applicable in the present case dealt with revision case under Section 439A of the Code of Criminal Procedure. Now, the question is, if the revisional Court found that the judgment passed by the trial court is perverse or not correct analysis of evidence on record or law and devoid of justice, then what should be the course of the revisional court. The answer is, in that case the revisional court by setting aside the judgment of the trial court should sent the case for retrial as the revisional court has no power to convert a finding of acquittal into one of conviction. Because, unless the power of conversion of acquittal into conviction is specifically provided in a statute such power cannot be read into it and exercised by Court of Revision.

Now, in the present case we have already noticed that the trial court acquitted the petitioner on the ground that since the prosecution did not submit original copy of the alleged undertaking of the accused there

is no evidence that the accused committed any offence under section 406 or 417 of the Penal Code. The revisional Court while reversing the judgment of acquittal considered the said original document of undertaking submitted by the learned advocate of the informant to the revisional court as evidence and also convicted the accused under section 406 while acquitted under section 417 of the Penal Code. Firstly, as we have already discussed that revisional court has no jurisdiction to convert a finding of acquittal into one of conviction but it can under section 423 of the Code of Criminal Procedure order the accused to be retried. Secondly, the revisional court took into consideration of a document submitted by the learned advocate of the informant to the revisional court without following the procedure of section 428 of the Code of Criminal Procedure and was not marked and exhibited. In that view, the judgment of conviction is passed without any evidence on record. Now, in such a position whether we should send the case to the trial court for retrial. Even if the allegation that the accused petitioner failed to fulfill the condition of undertaking is taken as true, it

does not disclose any criminal offence under section 406 of the Penal Code. However, it does not preclude the informant party to take recourse of civil Court. Reliance may be placed on the decision of Ashraf Miah Vs. the State reported in 55 DLR 509. On analysis of evidence on record, we are of the view that this is not a fit case for sending it for retrial.

In that view of the facts and circumstances of the case, analysis of evidence on record and the position of law we are constrained to interfere with the impugned judgment and order of conviction and sentence which is not sustainable in law.

In the result the Rule is made **absolute**.

The judgment and order of conviction and sentence dated 29.11.2018 passed by the Additional Sessions Judge, Feni in Criminal Revision No. 111 of 2016 allowing the revision and convicting and sentencing the petitioner to suffer simple imprisonment for a period of 3(three) months and to pay a fine of Tk. 3000/- (three thousand) only and in default to suffer 1(one) day simple imprisonment upon reversing the judgment and order of acquittal dated 19.01.2016 passed by the Senior Judicial

Magistrate, 1<sup>st</sup> Court, Feni in G.R. No. 345 of 2014 corresponding to Feni Model P.S. Case No. 25 dated 09.07.2014 under section 406/417 of the Penal Code is hereby set aside and quashed.

Send down the lower court's record along with a copy of this judgment at once.

**Ashish Ranjan Das, J:**

I agree.

Ziaul Karim  
Bench Officer