

In the Supreme Court of Bangladesh  
High Court Division  
(Criminal Revisional Jurisdiction)

**Present:**

**Mr. Justice Md. Khairul Alam**

**Criminal Revision No. 1221 of 1991.**

In the matter of:

Burzuk Ali and others.

..... Accused-petitioners.

-Versus-

The State and another.

..... Opposite parties.

None appears.

..... For the petitioners.

Ms. Shiuli Khanom, D.A.G along with

Mr. S.M. Emamul Musfiqur, A.A.G

Mr. Md. Humayun Karim Siddique, A.A.G

..... For the state

**Heard On: 23.10.2024 &**

**Judgment on: 24.10.2024**

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 31.12.1986 passed by the learned Assistant Sessions Judge, Patuakhali in Criminal Appeal No. 09 of 1985 dismissing the said appeal and thereby affirming the order of conviction dated 27.01.1985 passed by the learned Munsif and Magistrate 1<sup>st</sup> Class, Mirjagonj, Patuakhali in C.R. Case No. 1497 of 1983 convicting and

sentencing the petitioners under section 420 of the Penal Code should not be set aside and/or pass such other or further order or order as to this court may seem fit and proper.

Relevant facts for disposal of the Rule are that the present opposite party No. 1 as complainant filed a petitioner of complaint before the Court of Munsif and Magistrate 1<sup>st</sup> Class, Mirjagonj, Patuakhali implicating the present convict petitioners and another alleging, inter alia, that the complainant, his two brothers and one sister were the owners of the case land. For want of money, they mortgaged the land to petitioner No. 1 for an amount of Taka 2000/-, but on 06.03.1983, while the deed was executed, petitioner No. 1 in collusion with others fraudulently executed and registered a kabala deed instead of a mortgage deed. Subsequently, while the complainant demanded the redemption of the case land, petitioner No.1 refused to reconvey the land and disclosed that the impugned deed was a kabala deed. On query, the complainant discovered the fraud. Hence, the complainant filed the petition of complaint implicating the petitioners and another.

Upon considering the record, the learned Magistrate was of the opinion that there were grounds for presuming that the accused persons had committed the offence, hence framed the charge

against the petitioners under sections 420 and 109 of the Penal Code. To substantiate the charge, the prosecution examined as many as 4 (four) witnesses who were cross-examined by the defence. After the prosecution witnesses, the accused persons were examined under section 342 of the Code of Criminal Procedure. At the time of examination, they also pleaded not guilty and adduced 5 defence witnesses.

During the trial, on 17.09.1984, accused Absar Sikder, the alleged deed writer was discharged on the ground of death.

After conclusion of the trial, the learned Magistrate found the petitioners guilty under section 420 of the Penal Code and sentenced petitioner No. 1 to suffer rigorous imprisonment for 25 (twenty five) days and also to pay a fine of Tk. 2,000/- (two hundred) in default to suffer rigorous imprisonment for 10 (ten) days more and sentenced petitioners No. 2 and 3 to suffer rigorous imprisonment for 15 (fifteen) days and also to pay a fine of Tk. 100/- (one hundred) each in default to suffer rigorous imprisonment for 05 (five) days more.

Against the said judgment and order of conviction and sentence the petitioners preferred an appeal which was heard by the learned Assistant Sessions Judge, Patuakhali. The learned

Assistant Sessions Judge, Patuakhali, after hearing the appeal by the judgment and order dated 27.01.1985 dismissed the appeal and thereby affirmed the judgment and order of conviction and sentence passed by the trial Court against the petitioner No. 1, but only maintained the fine of petitioners No. 2 and 3.

Being aggrieved thereby the petitioners moved before this Hon'ble Court and obtained the Rule.

No one appears to contest the Rule.

Ms. Shiuli Khanom, the learned Deputy Attorney General appearing for the state supports the impugned judgment and order and submits that as the petitioners cheated, the courts below rightly found the petitioners guilty under section 420 of the Penal Code, and rightly awarded the sentence.

Hence, the question to be adjudication is whether the impugned judgment and order is maintainable in law or not.

P.W. 1 deposed that they executed the impugned deed on receipt of Taka 2,000/- for 44 decimals of land knowing the impugned deed as a deed of mortgage, but subsequently found that accused No. 1 in collusion with others executed and registered the deed as a deed of sale. He further deposed that he filed a kabala deed dated 17.04.82 for 6 decimals of the land of the same

khatian. Consideration for the said 6 decimals of land was Taka 2000/- but consideration for 44 decimals of land of impugned deed is Taka 2,000/- which proved that the accused have altered the nature of the deed by forgery. P.W. 2 is the brother of P.W. 1 and one of the executants of the impugned deed. He deposed in support of the contention of P.W.1. Kadam Gazi, P.W.3 deposed that P.W.1 mortgaged the case land. P.W.4, Sadem Ali Sikder, the brother-in-law of P.W.1 deposed that his wife executed the impugned deed knowing the same as a mortgage deed. He also deposed that he was present at the time of execution of the impugned deed. He further deposed that actual consideration of the disputed land was much higher than Taka 2,000/- at that relevant time.

On the other hand, D.W. 1, Shohid Ullah deposed that the impugned deed was out and out a sale deed. Other D.Ws also support the contention of the D.W. 1.

From the evidence on record, it appears that the impugned deed is a registered sale deed in the name of the petitioner which was executed by the complainant, his two brothers, and one sister in respect of 44 decimals of land. The consideration for the sale

deed was Taka 2,000/-. The sale deed was executed and registered on the same date i.e. on 06.03.82. The complainant claimed that at the time of execution and registration, the accused had altered the nature of the deed from mortgage to sale by forgery, taking the advantage of illiteracy and innocence of the complainant's party. On the other hand, all the D.W.s claimed that the impugned deed out and out was a sale deed. The claim and counter-claim between the parties made the dispute civil, in nature, which was required to be adjudicated in Civil Court, but the courts below failed to consider the said aspect of the case and passed the impugned judgment and order of conviction and sentence which requires to interfere by this Court.

In view of the discussion made above and considering the facts and circumstances of the case, I find merit in this Rule.

In the result, the Rule is made absolute.

The impugned judgment and order dated 31.12.1986 passed by the learned Assistant Sessions Judge, Patuakhali in Criminal Appeal No. 09 of 1985 affirming the judgment and order dated 27.01.1985 passed by the learned Munsif and Magistrate 1<sup>st</sup> Class,

Mirjagonj, Patuakhali in C.R. Case No. 1497 of 1983 is hereby set-aside.

The petitioners are acquitted from the charge and they are released from the bail bond.

Send down the L.C.R. along with a copy of this judgment to the concerned Courts at once for information and necessary action.