

**Present:**  
**Mr. Justice Md. Ataur Rahman Khan**

**Criminal Revision No. 1481 of 2021.**

Md. Azizul Haque  
...Complainant-petitioner.

-Versus-

The State and others  
.... Opposite parties.

Mr. Zaman Akter, Advocate  
.... For the complainant petitioner.

Ms. Anjuman Ara Begum, AAG  
Mr. Miah Sirajul Islam, AAGs  
..... For the State.

**Heard on: 02.08.2023, 24.08.2023,**  
**28.08.2023, 09.10.2023, 29.10.2023,**  
**05.11.2023.**

**And**

**Judgment on: 15.11.2023.**

This Rule under Section 439 read with section 435 of the Code Criminal Procedure is directed against the impugned Judgment and order dated 17.02.2021 passed by the Additional Session Judge, 2<sup>nd</sup> Court, Kushtia, in Criminal Appeal No. 278 of 2019, allowed the Appeal setting aside the judgment and order of conviction and sentence dated 17.07.2019 passed by the Additional Chief Judicial Magistrate, Kushtia, in C.R Case No. 33 of 2017 convicted the opposite

party Nos. 2 and 3 under section 420 of the Penal Code and sentenced them thereunder to suffer simple imprisonment for 01 (one) year and also to pay a fine of Tk. 5,000/- (five thousand) in default to suffer 01 (one) month more simple imprisonment.

The complaint case, in brief, is that, the convict petitioner taking advantage of the simplicity of the complainant took loan of Tk.3,00,000/- (three lac) for meet their urgent need. Accordingly, the accused persons took Tk. 3,00,000/- (three lac) on condition that they will refund the money within 01.09.2016 and they signed on the non-judicial stamp where they made promise to refund the money in presence of witnesses but after expire of the stipulated date they did not refund the money and they took time on this or that pretext. Then being realized the intention of the accused petitioner. The complainant sent legal notice to the convict petitioners requesting them to refund the money but they did not pay any heed to the matter.

The learned Magistrate, Kushtia after examination of the complainant under section 200 of the Code of Criminal

Procedure took cognizance against the convict petitioners under section 138 of the Negotiable Instrument Act, 1881.

Eventually, the C.R Case No. 33 of 2017 was transmitted in the court of the Additional Chief Judicial Magistrate, Kushtia, who framed charge against the convict petitioner under section 138 of the Negotiable Instruments Act, 1881.

The prosecution examined 03 witnesses as P.Ws. to prove the case and defence did not examined any witness to prove the case.

The learned Additional Chief Judicial Magistrate, Kushtia, after hearing on consideration of the evidence on record sentenced the convict petitioner No. 1 and 2 under section 420 and sentenced them to suffer simple imprisonment for 01 (one) year each and also to pay a fine of Tk. 5,000/- (five thousand) each, in default to suffer 01 (one) month simple imprisonment more each in absentia.

Being aggrieved by and dissatisfied with the Judgment and order of conviction and sentence dated 17.07.2019 passed

by the Additional Chief Judicial Magistrate, Kushtia, in C.R Case No. 33 of 2017, the convict petitioners preferred Criminal Appeal No. 278 of 2019 in the court of Sessions Judge, Kushtia, which was heard by the Additional Session Judge, 2<sup>nd</sup> Court, Kushtia, who after hearing allowed the appeal setting aside the Judgment and order of conviction and sentence passed by the Additional Chief Judicial Magistrate, Kushtia.

Being aggrieved by and dissatisfied with the Judgment and order dated 17.02.2021 passed by the Additional Session Judge, 2<sup>nd</sup> Court, Kushtia, in Criminal Appeal No. 278 of 2019, the convict petitioner filed this Revision before this court and obtained Rule.

Mr. Mr. Zaman Akter, the learned Advocate appearing on behalf of the complainant petitioner submits that the Additional Chief Judicial Magistrate, Kushtia after hearing on consideration of the evidence on record rightly convicted the accused petitioner Nos. 1 and 2 under section 420 of the Penal Code. He further submits that the prosecution examined 03 witnessed as P.Ws to prove the case and all the P.Ws to support the prosecution case and the prosecution has been

able to prove the case beyond reasonable doubt. He further submits that the defence could not denial signature of stamp paper of Tk. 300/-. He further submits that the Additional Session Judge, 2<sup>nd</sup> Court, Kushtia after hearing without considering the evidence on record wrongly allowed the Criminal appeal setting aside the judgment and order of conviction and sentenced dated 17.07.2019 passed by the Additional Chief Judicial Magistrate, Kushtia, in C.R Case No. 33 of 2017. He further submits that the trial court examined the complaint petition which was marked as exhibit Nos. 1 and 2 the complaint petition is vital evidence where the complaint stated that “ আসামীগণ বাদীর মধ্যে বিশ্বাস স্থাপন করিয়া গ্রহণকৃত অর্থ আত্মসৎ করিয়া দঃ বিঃ ৪০৬ ও ৪২০ ধারায় অপরাধ করিয়াছে” so this is sufficient evidence for believe that the initial intention of deception of money but the appellate court below over looked the evidence on record and acquitted the accused petitioners from the charge so the judgment and order passed by the learned Additional Sessions Judge, 2<sup>nd</sup> Court, Kushtia is liable to be set aside. He further submits that the appellate court did not discuss the evidence on record particularly exhibit No. 1 and 2

and the evidence of P.W 2 and PW. 4 of the case who supported the prosecution case. He further submits that the prosecution has been able to prove its case by giving evidence exhibit Nos. 1 and 2 and in support of evidence of P.W 2 and 4. The Additional Chief Judicial Magistrate rightly convicted the accused persons. Accordingly, he submits that the Rule issued earlier may be absolute for ends of justice.

Mrs. Anjuman Ara Begum along with Mr. Miah Sirajul Islam, the learned Assistant Attorney Generals appearing on behalf of the opposite party –State submit that the Additional Chief Judicial Magistrate, Kushtia after hearing on consideration of the evidence on record rightly convicted the accused petitioner Nos. 1 and 2 under section 420 of the Penal Code. They further submit that the Additional Session Judge, 2<sup>nd</sup> Court, Kushtia after hearing without considering the evidence on record wrongly allowed the Criminal appeal setting aside the judgment and order of conviction and sentenced dated 17.07.2019 passed by the Additional Chief Judicial Magistrate, Kushtia. They further submit that the prosecution successfully proved the case by oral and

documentary evidences. Accordingly, they submit that the Rule issued earlier may be absolute for ends of justice.

Heard the learned Advocates for both sides, perused the revisional application, impugned Judgment and order dated 17.02.2021 passed by the Additional Session Judge, 2<sup>nd</sup> Court, Kushtia, in Criminal Appeal No. 278 of 2019, allowed the Appeal setting aside the judgment and order of conviction and sentence dated 17.07.2019 passed by the Additional Chief Judicial Magistrate, Kushtia, in C.R Case No. 33 of 2017 and other necessary papers which are available in records. It appears from the records that the accused Nos. 1 and 2 took Tk.3,00,000/- (three lac) on condition that they refund the money within 01.09.2016 and they signed on the non-judicial stamp papers and they promise to refund the money in presence of witnesses but after expire of the stipulated date they did not refund the money. The complainant sent legal notice to the convict petitioners requesting them to refund the money but they did not pay any heed to the matter. The complainant filed a complaint petition before the court of Chief Judicial Magistrate, Kushtia and examining the

complainant and took cognizance. It also appears that the prosecution examined 03 witnesses as P.Ws and all the PWs supported the complainant case. The learned Additional Chief Judicial Magistrate, Kushtia, after hearing on consideration of the evidence on record rightly sentenced the convict petitioner No. 1 and 2 under section 420 and sentenced them to suffer simple imprisonment for 01 (one) year each and also to pay a fine of Tk. 5,000/- (five thousand) each, in default to suffer 01 (one) month simple imprisonment more each. The Additional Session Judge, 2<sup>nd</sup> Court, Kushtia after hearing without considering the evidence on record wrongly allowed the Criminal appeal setting aside the judgment and order of conviction and sentenced dated 17.07.2019 passed by the Additional Chief Judicial Magistrate, Kushtia which is wrong. The Additional Sessions Judge, 2<sup>nd</sup> Court, Kustia wrongly held that the accused Nos. 1 and 2 did not get punishment under section 420 of the Penal Code which is wrong. In this case the accused Nos. 1 and 2 took loan Tk. 3,00,000/- from the complainant and they agreed to pay the loan money within 01.09.2016 and committed to refund the money in presence of



witnesses and they also signed on the non-judicial stamp as Tk.300/- where the accused Nos. 1 and 2 commits refund the money within 01.09.2016. The complainant sent legal notice to the accused petitioner Nos. 1 and 2. The accused Nos. 1 and 2 did not pay the agreement money as Tk. 3,00,000/- in favour of the complainant. The P.W 1 Azizul Haque as the complainant in this case and he also proved the agreement signed by the accused Nos. 1 and 2 and other witnesses Nos. 2 and 3 proved the prosecution case stated that the accused Nos. 1 and 2 took loan in presence of them. The defence did not examine any witnesses to prove the case only denial they did not deny take loan from the complainant but they did not deny the signature of the agreement and they did not compare the signature by the hand writing expert opinion. The case of the defence the complaint about the loan of Tk.3,00,000/- and they have been falsely implicated in this out enmity of grudge.

On critical analysis of the aforesaid evidence on record, It transpires that the accused No. 1 and 2 took loan of Tk. 3,00,000/- from the complainant and the accused Nos. 1 and 2 signed an argument of Tk.300/- non-judicial stamp paper and

promise to pay loan amount of TK. 3,00,000/- within 01.09.2016 but they did not pay the same. The complainant sent a legal notice to the convict petitioners but they did not pay the loan money in favour of the complainant. The Additional Chief Judicial Magistrate, Kushtia after hearing on consideration of the evidence on record rightly convicted the accused petitioner Nos. 1 and 2 under section 420 of the Penal Code and sentenced them thereunder to suffer simple imprisonment for 01 (one) year and also to pay a fine of Tk. 5,000/- (five thousand) in default to suffer 01 (one) month simple imprisonment more. The Additional Session Judge, 2<sup>nd</sup> Court, Kushtia after hearing without considering the prosecution case and written agreement signed by the accused Nos. 1 and 2 wrongly allowed the appeal setting aside the judgment and order of conviction passed by the Additional Chief Judicial Magistrate, Kushtia which is not tenable in the eye of law.

So, in all fairness, the complainant has been able to prove the case beyond reasonable doubt. The Additional Chief Judicial Magistrate, Kushtia after hearing on consideration of

the evidence on record rightly convicted the convict petitioner Nos. 1 and 2 for charged as mentioned above. The findings and decisions arrived by the Additional Chief Judicial Magistrate, Kushtia is just and sustainable in law and deserves no interference by this court. The Additional Session Judge, 2<sup>nd</sup> Court, Kushtia after hearing without considering the prosecution case and written agreement signed by the accused Nos. 1 and 2 wrongly allowed the appeal setting aside the judgment and order of conviction and sentence passed by the Additional Chief Judicial Magistrate, Kushtia which is wrong.

I have gone through the privilege that the impugned judgment and order dated 17.02.2021 passed by the Additional Session Judge, 2<sup>nd</sup> Court, Kushtia and I have reason to believe the Additional Session Judge, 2<sup>nd</sup> Court, Kushtia wrongly allowed the appeal setting aside the judgment and order of conviction and sentence passed by the Additional Chief Judicial Magistrate, Kushtia. I have reason to believe that the Additional Chief Judicial Magistrate, Kushtia after hearing rightly discuss the evidence of witnesses and also rightly apply its judicial mind.

Considering the above facts and circumstances of the case as well as evidence on record I hold and find that the Additional Chief Judicial Magistrate, Kushtia after hearing on consideration of the evidence on record rightly convicted the convict petitioner Nos. 1 and 2 under section 420 of the Penal Code and sentenced them thereunder to suffer simple imprisonment for 01 (one) year and also to pay a fine of Tk. 5,000/- (five thousand) in default to suffer 01 (one) month simple imprisonment more is hereby maintained. The Judgment and order dated 17.02.2021 passed by the Additional Sessions Judge, Kushtia in Criminal Appeal No. 278 of 2019 is hereby set aside.

In the result, the Rule issued earlier is hereby made absolute.

The impugned Judgment and order dated 17.02.2021 passed by the Additional Session Judge, 2<sup>nd</sup> Court, Kushtia, in Criminal Appeal No. 278 of 2019 is hereby set-aside. The judgment and order of conviction and sentence dated 17.07.2019 passed by the Additional Chief Judicial Magistrate, Kushtia, in C.R Case No. 33 of 2017 convicted the accused

opposite party Nos. 2 and 3 under section 420 of the Penal Code sentenced them thereunder to suffer simple imprisonment for 01 (one) year and also to pay a fine of Tk. 5,000/- (five thousand) in default to suffer 01 (one) month simple imprisonment more is hereby affirmed.

Accordingly, the accused opposite party No.2 Md. Shukkur Ali son of late Sadek Ali and the accused opposite party No. 3 Summon son of Md. Sukkur Ali are directed to surrender in the court of the Additional Chief Judicial Magistrate, Kushtia, within 01 (one) month from the date of receipts of this judgment, failing which, the law enforcing agency to take them in custody in accordance with law.

Send down the L.C. records along with a copy of this Judgment to the Courts concerned immediately for information and necessary action.