

Present

MR. JUSTICE MD. JAHANGIR HOSSAIN

and

MR. JUSTICE MD. BAZLUR RAHMAN

CRIMINAL REVISION CASE No.347 of 2021

In the matter of:

Md. Nazmul Islam

-----Accused Petitioner

Versus

The State and another

----- Opposite-parties.

Mr. Md. Lutfor Rahman, Advocate

----- For the petitioner

Mrs. Yesmin Begum Bithi, D.A. G with

Mrs.Mst. Asma Khatun, A.A.G with

Mr. A.T.M. Aminur Rahman, A.A.G

-----For the opposite-party-State

Heard on 15th December 2022

Judgment on 05th January, 2023

MD. JAHANGIR HOSSAIN;J

This Criminal Revision has been filed under Sections 439 read with 435 of the Code of Criminal Procedure.

Upon the revisional application a Rule was issued calling upon the opposite-parties to show cause as to why the impugned judgment and order dated 29.11.2020 passed by the learned Session Judge, Dhaka in Criminal Appeal No.302 of 2020 allowing the appeal

summarily and reversing the order of acquittal dated 19.11.2020 passed by the Senior Judicial Magistrate, 5th Court, Dhaka in connection with Complainant Case No.1071of 2019 under section 500 of the Penal Code and directing the Senior Judicial Magistrate Court, Dhaka to allow the complaint opposite party only one fair chance for charge hearing against the accused petitioner and then proceed with the case according to law should not be set-aside and/or passed such other or further order or orders as to this court may seem fit and proper.

Pending hearing of the Rule, all further proceedings in connection with Complainant Case No.1071of 2019, now pending before the Senior Judicial Magistrate, 5th Court, Dhaka was stayed for a period of 6 (six) months from date.

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

The complainant Fabrica Knit Composite Limited filed a complaint under section 500 of the Penal Code before the Chief Judicial Magistrate, Dhaka against the accused petitioner Md. Nazmul Islam stating that the accused-petitioner was always trying to harass the petitioner company and besides, the accused also issued several letter to the different authorities against the complainant company. He also filed an application to the Jamuna Bank mentioning the sale collusive and illegal. The accused also issued different e-mails to different buyers not to issue order since the purchase was collusive

and illegal. The letters to different authorities and e-mails to different buyers caused huge reputation loss of the complainant. The activities of the accused petitioner thus resulted against him the commission of the offence under section 500 of the Penal Code. Hence the case.

The case was investigated by the Police Bureau of Investigation (PBI) and report was submitted on 18.01.2020 against that petitioner. Thereafter after observing the all formalities learned Magistrate fixed the date for framing charge. But the complainant did not appear before the Trial Court. It appears from the record the learned Magistrate refused the time prayer of the complainant on 19.11.2020 and the dismissed the complaint under section 247 of the Code of Criminal Procedure and acquitted the accused-petitioner. Thereafter the complainant filed appeal against the order of the learned Magistrate passed on 19.11.2020. It appears from the record that the learned Sessions Judge, Dhaka allowed the appeal on 29.11.2020 without any notice being issued upon the accused-petitioner.

Mr. Md. Lutfor Rahman, learned Advocate for the accused-petitioner at the time of hearing, submits that this is a clear violation of section 422 of the Code of Criminal Procedure. That without any notice being given upon the acquitted accused the appeal should not be allowed without any opportunity to the accused-petitioner as because he was acquitted by the Trial Court. In favour of his submission he referred 7 BLC wherein it was held that:

“The High Court Division by its impugned judgment set- aside the order of acquittal passed in respect of Hazera Khatun and directed the trial Court to write a fresh judgment. Learned Advocate for respondent No.2 having admitted that the impugned judgment and order of the High Court Division was not proper and legal as being passed without notice to Hazera Khatun, the appeal was allowed, setting aside the impugned judgment passed by the High Court Division directing to hear the criminal revision afresh after serving proper notice upon Hazera Khatun.”

On the other hand, Mr. M.M. Sohrab Hossain, learned Advocate for the respondent No.2, submits that it will be proper if order of the learned Sessions Judge is set aside and to pass an order upon the appellate court to issue notice upon the accused-petitioner and to dispose of the matter. He frankly admits that the order passed by the appellate Court was not proper as because there is a prayer as per section 422 of the Code of Criminal Procedure.

Considering the all fact and circumstances and the submissions of the learned Advocates we have meticulously perused section 422 of the Code of Criminal Procedure. There are clear direction if the accused is acquitted by the Trial Court the appeal Court must give him chance to give his submission before the Court at time of disposal of the appeal. It appears from the impugned order that the learned Sessions Judge committed wrong and overlooked the

provision of law i.e. the section 422 of the Code of Criminal Procedure which is as below:

“422. If the Appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

and, in cases of appeals under [* * *] or section 417, the Appellate Court shall cause a like notice to be given to the accused.”

Upon such observation we are also of the view that the learned Sessions Judge after serving proper notice upon the accused-petitioner will dispose the matter as per law.

As such the impugned order is set-aside.

In the result is the Rule is disposed of.

Let a copy of this judgment and order be transmitted to the concerned Court below at once.

Md. Bazlur Rahman, J:

I agree