

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

PRESENT:

MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN
CRIMINAL REVISION NO. 225 OF 2011

Anup Kumar Guha Biswas.....Convict-petitioner

-Versus-

The State and anotherOpposite parties

Mr. Swapan Kumar Dutta, Advocate

.....For the convict-petitioner

Mr. Md. Abdul. Gaffar, Advocate

.....For the opposite party No. 2

Mrs. Tashrifa Sultana Jali, AAG with

Mr. Md. Emdadul Hanif, AAG and

Mr. Hemayet Uddin, AAG

.....For the state

Heard on: 07.01.2026 and 08.01.2026

Judgment on: The 23rd of February, 2026

ABU TAHER MD. SAIFUR RAHMAN, J.

This Rule was issued at the instance of the convict-petitioner calling upon the respondent to show cause as to why the judgment and order dated 25.01.2011 passed by the learned District and Sessions Judge, Barishal, in Criminal Appeal No. 02(3) of 2009, affirming the judgment and order dated 13.07.2009 passed by the learned Senior Chief Judicial

Magistrate, Barishal in G.R. Case No. 06 of 2000 (Banaripara), convicting the petitioner under section 420 of the Penal Code and sentencing him to suffer rigorous imprisonment for 1 (one) year with a fine of Tk. 5,000/-, in default to suffer simple imprisonment for 3 (three) months, should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

For the purpose of disposal of this Rule, the relevant facts, in brief, are that Md. Tofazzal Hossain, as complainant, filed a petition of complaint being M.P. No. 49 of 2000 before the learned First Class Magistrate, Cognizance Court No. 3, Barishal, against the present convict-petitioner and others, which was subsequently registered as Banaripara P.S. Case No. 06 dated 31.01.2000.

The prosecution case, in short, is that accused Nos. 1-3 entered into an agreement with the complainant for sale of 7 (seven) trees standing on Plot No. 525 under S.A. Khatian No. 259 of Mouza Basaripara, Barishal, and received Tk. 45,000/- upon executing a written receipt assuring delivery of possession. However, they failed to deliver possession and, upon repeated demands, denied receipt of the money and disowned the document, thereby allegedly committing offences under sections 406 and 420 of the Penal Code.

Upon completion of investigation, charge sheet dated 31.07.2000 was submitted against the present petitioner alone

under sections 406 and 420 of the Penal Code. The learned trial Court took cognizance, framed charge, and, upon trial in which 8 (eight) prosecution witnesses were examined and cross-examined, found the accused guilty and convicted and sentenced him accordingly under section 420 of the Penal Code.

Being aggrieved, the petitioner preferred Criminal Appeal No. 02(3) of 2009 before the learned District and Sessions Judge, Barishal, which was dismissed, thereby affirming the judgment and order of conviction sentence passed by the trial Court. Being further aggrieved, the petitioner preferred the present Criminal Revision before this Court and obtained the Rule along with ad interim bail and stay of realization of fine.

Mr. Swapan Kumar Dutta, the learned Advocate for the petitioner, submits that the alleged transaction, having been reduced into writing, gives rise to a civil dispute, and mere denial thereof does not constitute an offence under section 420 of the Penal Code. He further contends that there was no denial of the transaction by the petitioner and that the courts below failed to appreciate the absence of dishonest intention at the inception, rendering the impugned judgment unsustainable.

Conversely, Mr. Md. Abdul Gaffar, the learned Advocate for the complainant-opposite party No. 2, submits that the learned trial Court, upon proper appreciation of evidence,

rightly found the accused guilty and the conviction calls for no interference by this Court.

Heard the learned Advocates for both sides and perused the records.

The only question for determination is whether the impugned judgment and order of conviction and sentence are sustainable in law.

It is settled that the prosecution must prove its case beyond reasonable doubt, and any reasonable doubt must ensure to the benefit of the accused.

In the present case, the prosecution relies on a sale receipt (Exhibit-1/3) regarding seven trees, which, on its face, places the trees on the western side of Plot No. 525. However, P.W.1, while admitting purchase of land including the western portion, denied that the trees were situated there—thereby contradicting the very document relied upon.

This inconsistency between oral and documentary evidence creates serious doubt as to the location of the trees and the substratum of the prosecution case. Moreover, a civil dispute (Title Suit No. 56 of 2021(Banaripara) concerning the same property is admittedly pending between the parties.

There is no clear evidence of deception or dishonest intention at the inception of the transaction so as to attract

section 420 of the Penal Code. The Courts below failed to consider these material contradictions, resulting in mis appreciation of evidence.

Accordingly, the prosecution having failed to prove the charge beyond reasonable doubt, the accused is entitled to the benefit of doubt.

In the result, the Rule is made absolute.

The impugned judgment and order of conviction and sentence dated 25.01.2011 passed by the learned District and Sessions Judge, Barishal in Criminal Appeal No. 2(3) of 2009, affirming those dated 13.07.2009 passed by the learned Senior Chief Judicial Magistrate, Barishal in G.R. Case No. 06 of 2000, are hereby set aside.

The convict-appellant, Anup Kumar Guha Biswas, is acquitted of the charge. He be discharged from his bail bond and be released forthwith.

Send down the Lower Court Records.

Communicate this judgment at once.