

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

Present

Mr. Justice Md. Kamrul Hossain Mollah

Criminal Appeal No.5794 of 2022

Md. Nazrul Islam

...Convict-Appellant

-VERSUS-

The State and another

... Respondents

Mr. Dr. Chowdhury Ishrak Ahmed Siddiky, Adv. with
Mr. Syed Mohammad Raihan Uddin, Advocate and
Mr. Syfullah Al Muzahid, Advocate

... For the appellant

Mr. A.K.M. Alamgir Parvez Bhuiyan, Advocate

....For the ACC

**Heard on: 05.11.2023, 07.11.2023, 14.11.2023,
05.12.2023 & Judgment on: 11.12.2023**

Md. Kamrul Hossain Mollah.J:

This appeal is directed against the judgment and order of conviction and sentence dated 19.05.2022 passed by the learned Special Judge (District and Sessions Judge), Cumilla in Special Case No.03 of 2021 arising out of Banggara Bazar Police Station Case No. 16 dated 31.08.2018, corresponding to G.R. No. 128 of 2018 lodged under sections 409/420/467/468/471/201 of the Penal Code and section 5(2) of the Prevention of Corruption Act, 1947 convicting and sentencing him under section 420 of the Penal Code, 1860 for rigorous imprisonment for 03(three) years and also to pay fine of

Tk.16,01,007.66 and also under section 471 of the Penal Code to suffer rigorous imprisonment for two years.

The prosecution case, in short, is that the informant Mustafa Borhan Uddin, Sub-Assistant Director, Anti-Corruption Commission combined District Office, Cumilla lodged an FIR being Banggara P.S. Case No. 16 dated 31.08.2018 under sections 409, 420, 467, 468, 471, 201 of the Penal Code and section 5(2) of the Prevention of Corruption Act, 1947 (Hereinafter referred to as “the said FIR”) against the convict-appellant alleging inter alia that the convict-appellant by cheating and using forged certificate employed as Assistant Teacher of Baira Md. Arif School and College of Muradnagar, Cumilla in the year 2004 and wrongfully gained Tk. 16,01,007.66/-.

Subsequently, the police after investigation submitted charge sheet being No.8 dated 17.11.2020 against the convict-appellant under sections 409, 420, 467, 468, 471, 201 of the Penal Code and section 5(2) of the Prevention of Corruption Act, 1947 and on 12.02.2021 the case was transferred to the court of learned Special Judge, Cumilla for trial. On that date (i.e. 12.02.2021) cognizance was taken against the convict petitioner. Thereafter, the learned Special Judge, Jessore framed charge against the convict appellant on 18.10.2021 under sections 409/420/467/468/471/201 of the Penal Code and section 5(2) of the Prevention of Corruption Act, 1947. The charge was read over

and explained to the convict-appellant to which he pleaded not guilty and claimed to be tried.

During the trial the prosecution examined as many as 12(twelve) witnesses and the defense examined none. After closing the witnesses the convict-petitioner was examined under section 342 of the Code of Criminal Procedure and he claimed himself innocent.

The learned Special Judge (District and Sessions Judge), Cumilla after hearing the parties and considering the facts and circumstances and materials on record found the appellant guilty and sentenced him under section 420 of the Penal Code, 1860 for rigorous imprisonment for 03(three) years and also to pay fine of Tk.16,01,007.66/- and also under section 471 of the Penal Code to suffer rigorous imprisonment for two years by his judgment and order dated 19.05.2022.

Being aggrieved by and dissatisfied with the judgment and order dated 19.05.2022 passed by the learned Special Judge (District and Sessions Judge), Cumilla in Special Case No.03 of 2021 the convict-appellant filed this Criminal Appeal, before this Hon'ble High Court Division.

Mr. Dr. Chowdhury Ishrak Ahmed Siddiky, the learned Advocate appearing on behalf of the appellant submits that no vital witness (member of the appointment committee of the said School and College during the appointment of the convict appellant) was

examined to prove the charge against the appellant and as such, the conviction and sentence dated 19.05.2022 in Special Case No.3 of 2021 is liable to be set-aside.

He further submits that all the PWs were interested witnesses who deposed against the convict-appellant at behest of the then managing committee of the said College and no expert witness was examined to ascertain the authenticity of the forged certificate in question.

He next submits that the certificate obtained by the convict-appellant from Modern Training Academy for Multilingual Shorthand, Dhunat, Bogura is genuine as such the certificate was issued by virtue of a circular dated 25.05.1996 of the National Training and Research Academy for Multilingual Shorthand and the appellant obtained a certificate of Diploma in Computer science & Technology being serial No.868 and registration No.878 dated 06.07.2001 from the Modern Training Academy for Multilingual Shorthand, Dhunat, Bogura and the same was submitted to obtain his job.

The learned Advocate for the appellant lastly submits that the Special Judge, Cumilla failed to consider that no one saw the original of forged certificate and as a result no prosecution witness was able to ascertain the authenticity of the forged certificate in question and the Ministry of Education through its memo

no.37.00.0000.074.001.001.2018(খত-১).301 dated 18.07.2018 being serial No.08 made a recommendation to reinstate the convict-appellant in his job by stating that his computer training certificate is appropriate and also recommended to disburse his govt. salary and as such, the conviction and sentence dated 19.05.2022 in Special Case No.3 of 2021 is liable to be set-aside. Accordingly, he prays for allowing the appeal.

On the other hand, Mr. A.K.M. Alamgir Parvez Bhuiyan, the learned Advocate appearing on behalf of the Anti-Corruption Commission submits that the convict-appellant by cheating and using forged certificate employed as Assistant Teacher of Baira Md. Arif School and College of Muradnagar, Cumilla in the year 2004 and wrongfully gained Tk. 16,01,007.66/-. Subsequently, the police after investigation submitted charge sheet being No.8 dated 17.11.2020 against the convict-appellant under sections 409, 420, 467, 468, 471, 201 of the Penal Code and section 5(2) of the Prevention of Corruption Act, 1947 and on 12.02.2021 the case was transferred to the court of learned Special Judge, Cumilla for trial. The learned Special Judge (District and Sessions Judge), Cumilla after hearing the parties and considering the facts and circumstances and materials on record found the appellant guilty and sentenced him under section 420 of the Penal Code, 1860 for rigorous imprisonment for 03(three) years and also to pay fine of Tk.16,01,007.66/- and also under section 471

of the Penal Code to suffer rigorous imprisonment for two years by his judgment and order dated 19.05.2022 rightly. Therefore, he prays for dismissing the Appeal.

I have heard the learned Advocate for the appellant as well as the learned Advocate for the Anti-corruption Commission. I have perused the impugned judgment and order of conviction and sentence dated 19.05.2022 passed by the Court below, Memorandum of appeal as well as LC Records.

On perusal of the materials on record, it transpires that the allegation against the convict-appellant that by cheating and using forged certificate employed as Assistant Teacher of Baira Md. Arif School and College of Muradnagar, Cumilla in the year 2004 and wrongfully gained Tk. 16,01,007.66. The police after investigation submitted charged sheet and during trial the prosecution examined as many as twelve witnesses. On meticulous perusal of the evidence, it transpires that PW Nos.1, 2, 4, 6 in their examination categorically stated that they did not see the original of alleged forged certificate. PW.3 Mizanur Rahman in his examination in chief stated that he lodged the FIR against the convict appellant. Convict appellant did not cross examine him. PW Nos. 5, 7 and 11 are the Seizure List witnesses and among them PW.7 in his cross examination stated that he could not remember what documents he seized. PW.9 Md. Rafiqul Islam is an Assistant Teacher of Dhonot High School of Bogura who

in his cross examination stated he does not know whether there was any training Academy in Dhanut Upazilla of Bogura before 2002. PW.10 Tapan Kuma Deb is director of Tondra Technical Training Centre of Dhunat Upazilla of Bogura who is not a relevant witness and PW. 12 Md. Mahtab Uddin an official of Anti-corruption Commission and investigation officer of the case and in his cross he admitted that during the investigation he did not interrogate any member of appointment committee. Apart from that, it transpires that no vital witness member of the appointment committee of the said School and College and Member of the Managing Committee of the said School and College during the appointment of the convict appellant examined to prove the charge against the appellant and also no attempt was taken by the prosecution to examine the alleged forged certificate.

Furthermore, it appears from the Memo dated 18.07.2018 of Ministry of Education that the Ministry of Education through its memo no.37.00.0000.074.001.001.2018(খড-১).301 dated 18.07.2018 being serial No.08 made a recommendation to reinstate the convict-appellant in his job by stating that his computer training certificate is appropriate and also recommended to disburse his government salary, which is contradictory with the prosecution case.

Considering the above facts and circumstances, I find substance in the submissions of the learned Advocate for the appellant.

Therefore, the judgment and order of conviction and sentence dated 19.05.2022 passed by the learned Special Judge (District and Sessions Judge), Cumilla in Special Case No.03 of 2021 is not maintainable in the eye of law and it will be fair to interference there.

Accordingly, the instant Appeal has merit.

In the result, the Criminal Appeal No.5794 of 2022 is allowed.

The impugned judgment and order of conviction and sentence dated 19.05.2022 passed by the learned Special Judge (District and Sessions Judge), Cumilla in Special Case No.03 of 2021 is hereby set aside. The convict-appellant be acquitted from this Case.

The order of ad-interim bail granted the appellant at the time of admitting the appeal is hereby recalled and vacated.

Send down the L.C. Records with a copy of this judgment and order to the concerned Court below at once.

(Md. Kamrul Hossain Mollah)

Md. Anamul Hoque Parvej
Bench Officer