

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

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 1154 of 2022

Md. Ohid Farazi

-Vs-

The State and another

None appears

..For the appellant

Mr. Mahfuj Ul Alam, Advocate

...for the opposite party No. 2

Mr. Md. Anichur Rahman, DAG with

Mr. Mir Moniruzzaman, AAG with

Mr. Md. Sarwar Alam Khan, AAG

with

Ms. Nargis Parvin (Alija), AAG

.....for the respondents

Heard on 11.01.2026

Judgment on 14.01.2026

This Rule under sections 435 and 439 of the Code of Criminal Procedure, 1898, was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 19.01.2022 passed by the Additional Sessions Judge, Court No.1, Chuadanga in Criminal Appeal No. 41 of 2019 allowing the appeal in part and modifying the judgment and order of conviction and sentence dated 30.04.2019 passed by the Senior Judicial Magistrate, Court No. 1, Chuadanga in CR No.

511 of 2014 convicting the petitioner under section 417 of the Penal Code, 1860 and sentencing him to suffer rigorous imprisonment for 01(one) year and fine of Tk. 3000, in default, to suffer imprisonment of 3 months should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution's case, in short, is that the accused Md. Ohid Farazi sold the scheduled land at a price of Tk. 2,70,000 to the complainant Md. Shajahan Ali Biswas. On 24.03.2014, he received Tk. 2,50,000 to send his son to Singapore. On 14.07.2014 at 9.00 am in the presence of the witnesses in the house of the witness No. 4 Hafiz Faraji, the accused refused to register the deed on payment of the remaining Tk. 20,000, transferring the scheduled land in favour of the complainant. The accused persons dishonestly misappropriated Tk. 2,50,000 of the petitioner and committed fraud and forgery. It is stated that to settle the dispute out of court, a delay occurred in lodging the complaint petition.

After filing the complaint petition, the learned Magistrate by order dated 21.07.2014 sent the complaint petition to the Chairman of local Union Parishad to submit a report who after inquiry submitted the report finding prima facie truth of the allegation made against the accused and the learned Magistrate by order dated 29.09.2014 took cognizance of the offence against the accused under sections 406/417 of the Penal Code, 1860.

During trial, Senior Judicial Magistrate, Court No. 1, Chuadanga, by order dated 28.07.2015, framed charge against the accused under section 417 of the Penal Code, 1860, which was read over and explained to him, and he pleaded not guilty to the charge and claimed to be tried following the law. During trial, the prosecution examined 4 witnesses to prove the charge against the accused, and the defence cross-examined P.Ws. After examination of the prosecution witnesses, the accused Md. Ohid Farazi was examined under section 342 of the Code of Criminal Procedure, 1898, and the accused examined himself as DW.1.

After concluding the trial, the trial court, by judgment and order dated 19.01.2022, convicted the accused Md. Ohid Farazi under section 417 of the Penal Code, 1860, and sentenced him thereunder to suffer rigorous imprisonment for 01 year and a fine of Tk. 3000, in default, to suffer imprisonment for 3 months, against which the accused Md. Ohid Farazi filed Criminal Appeal No. 41 of 2019 before the Sessions Judge, Chuadanga. The appeal was heard by Additional Sessions Judge, Court No. 1, Chuadanga, who, by impugned judgment and order dated 19.01.2022, partly allowed the appeal and modified the judgment and order passed by the trial court sentencing him to suffer imprisonment for 6(six) months and a fine of Tk. 3000, in default, to suffer imprisonment for 1(one) month against which the convict petitioner obtained the Rule.

P.W. 1 Md. Shahjahan Ali Biswas is the complainant. He stated that on 10th Choitra, 1420, at 10 am the occurrence took

place in the house of the accused. The accused received Tk. 2,50,000 on the 10th of Choitra, 1420, to sell 36 decimals of land at the price Tk. 2,70,000. Subsequently, he did not transfer the land by registering the deed. On 30th Ashar, 1421, at 9.00 am, sitting in the shop of Hafiz Farazi, the accused refused to transfer the land. Consequently, he filed the case. He proved the complaint petition as exhibit-1 and his signature thereon as exhibits-1/1 and 1/2. During cross-examination, he stated that many cases are pending between him and the accused. A decision regarding the sale of the land was taken in the shop of Hafiz Farazi. Possibly on 30th Choitra, 1420. He and the witnesses were also present there. He denied the suggestion that the witnesses belonged to the same group. He affirmed that the accused filed a case against him. He is not aware whether any case is pending between the accused and the witnesses. He could not mention the Khatian and the dag number of the plot proposed to be sold to him. Out of 4.7 acres of land, 36 decimals of land are the disputed land. He admitted that no baynanama was written, and money was paid without any documents.

P.W. 2 Hafiz Farazi stated that the complainant Md. Shahjahan and Md. Ohid Farazi is known to him. Both of them are present in the Court. (to be continued).

P.W.3 Md. Al Amin Farazi stated that the complainant and the accused are known to him. The accused Md. Ohid Farazi is the paternal cousin of his father. The accused promised to sell his property to the complainant. Price was fixed at Tk. 2,70,000, but

he could not remember the date. The date of occurrence is 5 years ago. The accused Md. Ohid Farazi paid Tk. 2,50,000 in his presence. Subsequently, he did not transfer the land and refused to register the deed. During cross-examination, he affirmed that Saifur Rahman is known to him. His father Sukur filed a case against me and accused Md. Ohid Farazi is a witness in that case. He had no dispute with the accused. He is not aware whether the accused is the sole owner or not. He is the only witness to the transaction between the accused and the complainant. He denied the suggestion that he deposed in a false case against the accused.

P.W. 4 Md. Rabiul Islam stated that the complainant and the accused are known to him. The accused received Tk. 2,50,000 for selling the land about 5 years ago to send his son abroad, but he did not transfer the land. The complainant demanded money, but the accused refused to pay. During cross-examination, he affirmed that a pre-emption suit was pending between the accused and him. But that suit has been compromised. No bainanama was executed. The accused is the son of his cousin. In reply to a question put to him by the defence, he stated that he is not aware whether the accused is the sole owner of the land. He denied the suggestion that the case was filed to harass the accused.

D.W. 1 Md. Ohid Farazi is the accused. He stated that the witnesses and the complainant belonged to the same group. Other cases are also pending between the accused and the

complainant. He denied that he received Tk. 2,50,000 and subsequently Tk. 50,000 to register the deed. He took loan from the Brack Bank to send his son abroad. The schedule land belonged to his father. He proved the passbook of the loan as exhibit-Ka, and the stamp executed in favour of Mukti regarding the mortgage as exhibit-Kha, and mortgage of the land to Tarikul as exhibit-Ga. The deed regarding selling land to Salam as exhibit-Gha, the certified copy of the RS Khatian No. 1003 as exhibit-Oma, and the succession certificate as exhibit-Cha. The photocopy of the plaint and written statement of different suits (18 pages) as exhibit-5. He admitted that witness Hafiz Farazi is his cousin, and his son went to Singapore. G.R. Case No. 520 of 2007 is pending against him. He also admitted that G.R. Case No. 406 of 2017 was pending against him, but the complainant was not the accused in those cases. He denied the suggestion that he executed a baynanama regarding the selling of property. He also denied the suggestion that he deposed falsely.

No one appears on behalf of the convict petitioner.

Learned Advocate Mr. Md. Mahfuj Ul Alam, appearing on behalf of the complainant, opposite party No. 2, submits that on 10th Choitra, 1420 at 10.00 am, the accused received Tk. 2,50,000 to sell his 36 decimals of land to send his son abroad, sitting in the house of the accused Md. Ohid Farazi, but he did not transfer the land by registering the deed and refused to transfer the land and thereby committed cheating as defined in section 415 of the Penal Code, 1860. He further submits that the

evidence of P.W. 1 regarding the payment of Tk. 2,50,000 is corroborated by P.Ws. 3 and 4. The prosecution proved the charge against the accused beyond all reasonable doubt, and the appellate court below, on correct assessment and evaluation of the evidence, passed the impugned judgments and orders. He prayed for the discharge of the rule.

I have considered the submission of the learned Advocate Mr. Mahfuj Ul Alam, who appeared on behalf of the complainant opposite party No. 2, perused the impugned judgments and orders passed by the courts below, the evidence adduced by the parties, and the records.

In the complaint petition, it has been alleged that on 10th Choitra, 1420, the accused Md. Ohid Farazi received Tk. 2,50,000 sitting in his house to transfer the scheduled land of the accused in favour of the complainant Md. Shajahan Ali Biswas, but subsequently, he refused to transfer the land by registering the deed. During cross-examination, complainant P.W. 1 stated that the occurrence took place about 5 years ago, possibly on 30th Choitra, 1420. He reaffirmed that on 30th Choitra, he handed over the money. Although P.Ws. 3 and 4 stated that the accused received Tk. 2,50,000 about 5 years ago, but they did not disclose any date as to handing over Tk. 2,50,000 to the accused by the complainant. Furthermore, there is a contradiction in the evidence of P.W.1 regarding the date of handing over Tk. 2,50,000. Admittedly, there is no document regarding handing over Tk. 2,50,000 by the accused. It is very pertinent here to

mention that Tk. 2,50,000 was allegedly handed over by the P.W. 1 sitting in the house of the accused. P.W. 2 Hafiz Farazi made a part statement before the trial court, but he was not further examined by the prosecution. I am of the view that the prosecution with an oblique motive withheld P.W.2 from completing his evidence. Therefore, an adverse presumption should be drawn against the prosecution for not further examining P.W. 2.

D.W.1 accused Md. Ohid Farazi stated that he is not the owner of the land, but his father is the owner of the land, which has not been denied by the complainant. Furthermore, D.W. 1 asserted that he took loan from the bank and sold the land to Najma, and proved the passbook of the loan and the certified copies of the deed of transfer as exhibit-Ka and Ga. He also asserted that he mortgaged his land to Tariqul and Mukti and proved the deed of mortgage as Exhibit Kha and Gha. He proved the certified copy of the RS Khatian No. 103 as Exhibit-Uma. It is found that many cases are pending between the parties. D.W. 1 proved the 18 pages of the plaint and written statement filed in different cases pending between the parties as exhibit-5. The defence proved that the accused Md. Ohid Farazi sold his land and also mortgaged his land to send his son abroad. In the absence of any documentary evidence, it cannot be held that Tk. 2,50,000 has been paid by the complainant to the convict petitioner for transferring the land to send his son abroad.

The trial court has held that P.W. 1 correctly mentioned the date of handing over money as Choitra, but due to the old date of occurrence, he was misled to mention the 30th Choitra in place of the 10th Choitra. The above finding of the trial court is found baseless. The court is not a party to any proceedings. The duty of the court is to assess the evidence following the law. The purpose of cross-examination is to bring out the contradiction in the evidence given during examination in chief. Therefore, the evidence of P.W. 1 regarding the different date of handing over Tk. 2,50,000 to the accused Md. Ohid Farazi is a material contradiction. I am of the view that the trial court misdirected itself in holding the view that P.W. 1 misled regarding the date of handing over Tk. 2,50,000. Both the courts below failed to apply judicial mind in assessing the evidence of both parties and arrived at a wrong decision as to the guilt of the convict petitioner.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgments and orders passed by the courts below against the accused Md. Ohid Farazi is hereby set aside.

Send down the lower Court's records at once.