

Present:

Mr. Justice Raziuddin Ahmed

Criminal Revision No.297 of 2007

Salah Uddin Ahmed alias Mohan

----- Accused-Petitioner

-Vs-

The State

---- Opposite Party

No one appears

----For the Petitioner

Mr. A.S.M. Badrul Anwar D.A.G with

Mr. Md. Taherul Islam (Tawhid), D.A.G and

Mr. Mohammad Moniruzzaman, A.A.G

---- For the State

Heard on 03.02.2026, 02.03.2026, 03.03.2026, 04.03.2026 and

Judgment on 09.03.2026

On an application filed under section 439 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 06.07.2006 passed by the learned Additional Sessions Judge, Moulvibazar dismissing the criminal appeal No.74 of 1994 and upholding the judgment and order of conviction and sentence dated 08.10.1994 by learned Additional District Magistrate, Moulvibazar arising out of C.R. Case No.118 of 1993 should not be set aside and/ or to pass such other or further order or orders as to this court may deem fit and proper.

The prosecution case, in short, is that one Ms. Rozee Begum, as complainant, filed a complaint petition against the accused-petitioner alleging, inter alia, that the accused-petitioner is her first cousin. The

accused-petitioner, after returning from abroad, was appointed by the complainant's parents as her private tutor. Taking advantage of such close family relationship and access to the complainant, the accused-petitioner allegedly used to tease her by different gestures and conduct.

It was further alleged that on 17.09.1992 at about 8:00 p.m., when the complainant's mother was not present in the house, the accused-petitioner called the complainant to his room. Upon going there, the complainant found Limon Ahmed and Ripon Ahmed present in the room. The accused-petitioner then, in their presence and by touching the Holy Quran, declared that the marriage between him and the complainant had been completed and that they had become husband and wife. Believing such representation to be true, the complainant started living with the accused-petitioner as his wife and continued the relationship on that belief.

Subsequently, the complainant became pregnant. It is alleged that the accused-petitioner thereafter insisted that she take certain tablets brought by him, which the complainant refused. On the advice of the accused-petitioner, the complainant went to her maternal uncle's house. During her stay there, the accused-petitioner communicated with her by sending several letters. Later, the complainant informed her parents about the occurrence. On 20.07.1993, while she was staying at her maternal uncle's house, the complainant gave birth to a female child.

Thereafter, the father of the complainant attempted to settle the matter through local arbitration with the assistance of respectable persons of the locality, but the matter could not be amicably resolved due to the

denial and non-cooperation of the accused-petitioner. Hence, the complainant filed the instant criminal case against the accused-petitioner.

The case was transferred to the Court of the learned Additional District Magistrate, Moulvibazar for trial. The learned trial Court framed charge against the accused-petitioner under section 493 of the Penal Code. The charge was read over and explained to the accused-petitioner, who pleaded not guilty and claimed to be tried.

During trial, the prosecution examined five witnesses, out of whom one witness was tendered. The defence examined none.

Upon considering the evidence and materials on record, the learned Additional District Magistrate, Moulvibazar, by judgment and order dated 08.10.1994, convicted the accused-petitioner under section 493 of the Penal Code and sentenced him to suffer rigorous imprisonment for 3 years and to pay a fine of Tk. 5,000, in default, to suffer rigorous imprisonment for a further period of 6 months.

Against the said judgment and order of conviction and sentence, the accused-petitioner preferred Criminal Appeal No. 74 of 1994 before the learned Sessions Judge, Moulvibazar. The appeal was subsequently transferred to the learned Additional Sessions Judge, Moulvibazar, who, by judgment and order dated 06.07.2006, dismissed the appeal and affirmed the judgment and order of conviction and sentence passed by the trial Court.

Being aggrieved by and dissatisfied with the judgment and order dated 06.07.2006 passed by the learned Additional Sessions Judge, Moulvibazar, the accused-petitioner filed the instant revisional application and obtained the present Rule along with an order of bail on 02.04.2007.

It appears from the record that although the accused-petitioner obtained the Rule in 2007, he has not taken any effective step to get the matter heard for a long period. When the matter was taken up for hearing, none appeared on behalf of the accused-petitioner to support the Rule.

Mr. A.S.M. Badrul Anwar, learned Deputy Attorney General, with Mr. Md. Taherul Islam, learned Deputy Attorney General, and Mr. Mohammad Moniruzzaman, learned Assistant Attorney General, appearing on behalf of the State, submits that both the Courts below, upon proper appreciation of the evidence on record, rightly found the accused-petitioner guilty under section 493 of the Penal Code. He further submits that the complainant's evidence is clear, consistent, and sufficiently corroborated by independent witnesses and documentary evidence, particularly the letters written by the accused-petitioner.

The learned Deputy Attorney General has referred to the decision in *Abed Ali vs. The State*, reported in 34 DLR (AD) 366, wherein the Appellate Division held that the essence of an offence under section 493 of the Penal Code is the practice of deception by a man upon a woman, whereby a false belief is created in her mind that she is lawfully married to him, though in fact no lawful marriage exists. A mere promise of marriage does not by itself attract section 493 unless the prosecution proves that

some form or ceremony of marriage, though invalid in law, was gone through with a fraudulent intention so as to induce the woman to believe that she was lawfully married to the accused.

The learned Deputy Attorney General finally submits that in the present case the prosecution has successfully proved that the accused-petitioner, by deceitful conduct and by making a false representation of marriage upon touching the Holy Quran, induced the complainant to believe that she was his lawful wife and thereafter cohabited with her on the basis of such belief. He therefore submits that no interference is called for by this Court in exercise of revisional jurisdiction.

I have heard the learned Deputy Attorney General, perused the revisional application, the judgments of both the Courts below, and the evidence and materials on record.

The point for consideration in this Rule is whether the Courts below committed any illegality, error of law, misreading or non-reading of evidence, or occasioned any failure of justice in convicting the accused-petitioner under section 493 of the Penal Code.

Section 493 of the Penal Code provides as follows:

“Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with

imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

From a plain reading of the section, it appears that the following ingredients are required to constitute an offence under section 493 of the Penal Code:

First, the woman must not be lawfully married to the accused.

Secondly, the accused must, by deceit, cause the woman to believe that she is lawfully married to him.

Thirdly, such belief must not be a mere casual or vague belief, but must arise from some act, representation, ceremony, or conduct on the part of the accused which is capable of creating in the mind of the woman a belief that a lawful marriage has taken place.

Fourthly, the woman must cohabit or have sexual intercourse with the accused under that false belief of lawful marriage.

The gravamen of the offence is therefore not merely a promise to marry, nor merely a physical relationship between a man and a woman. The offence lies in the fraudulent creation of a false belief of lawful marriage and the consequent cohabitation under that belief. The deception must relate to the status of marriage itself.

In the present case, P.W.1, Ms. Rozee Begum, the complainant and victim, stated in her deposition that the accused-petitioner is her first cousin and used to come to their house regularly. Taking advantage of the

close relationship, he used to tease her and gradually tried to induce her into a relationship. She further stated that on one occasion, after she had told her mother that she needed a bra and a watch, the accused-petitioner brought those articles for her and asked her to meet him near the toilet. When she went there, the accused-petitioner embraced her, but she managed to escape and informed her mother about the incident.

The complainant also produced two letters allegedly written by the accused-petitioner, which were exhibited during trial. These letters are material, as they indicate the continued communication between the accused-petitioner and the complainant and lend support to the prosecution version.

P.W.1 further stated that on 17.09.1992 at about 8:00 p.m., the accused-petitioner called her to his room. Upon entering the room, she found Limon and Ripon present there. The accused-petitioner then brought the Holy Quran and, by touching it, declared that the marriage between him and the complainant had been completed. The complainant believed that a marriage had in fact taken place between them. Thereafter, they lived as husband and wife and maintained a physical relationship on that belief.

She further stated that subsequently she became pregnant by the accused-petitioner. The accused-petitioner thereafter sent her medicine along with a letter, asking her to terminate the pregnancy, but she refused. Later, she gave birth to a female child. Upon her return home, the accused-petitioner refused to accept her as his wife. Thereafter, attempts were

made to settle the matter through local arbitration, but the accused-petitioner did not comply with the decision of the arbitration.

P.W.2, Ashraf Uddin Ahmed, father of the complainant, stated that Rozee Begum is his daughter. He deposed that after the complainant returned from her maternal uncle's house with a baby, she was asked about the matter and she disclosed that the accused-petitioner, by false representation and deceitful assurance, had induced her into the relationship. He further stated that he immediately called Munshi Wazed Ali to his house and, on his advice, attempted to settle the matter through arbitration. In the said arbitration, the letters written by the accused-petitioner were produced. According to P.W.2, the accused-petitioner admitted the matter and sought 2 or 3 days' time, through his mother and relatives, to settle the dispute. It was decided in the arbitration that the accused-petitioner would take necessary steps to take the complainant into his house as his wife, but the decision was not complied with.

P.W.3, Heera Mia alias Hury Miah was declared tender by the prosecution.

P.W.4, Abdul Hasim, stated that the father of the complainant called him and other respectable persons of the locality to his house. The complainant informed them that the accused-petitioner was the father of her child and, in support of her statement, showed them the letters written by the accused-petitioner. He also stated that the paternal uncle of the accused-petitioner sought 2 or 3 days' time to settle the matter and that it was decided that the accused-petitioner would take necessary steps to

accept the complainant as his wife. However, the decision was not complied with.

P.W.5, Abdul Wazed, stated that at the request of the father of the complainant he went to his house and came to know that the accused-petitioner, by giving false assurance of marriage, had induced the complainant into a relationship. He further stated that the complainant informed them that the accused-petitioner had married her by touching the Holy Quran. She also showed the letters written by the accused-petitioner. Thereafter, a local arbitration was arranged after Maghrib prayer. In that arbitration, the complainant again stated that the accused-petitioner had married her by taking oath upon the Holy Quran and that they thereafter lived as husband and wife. According to this witness, the accused-petitioner and his uncle were present in the arbitration and the accused-petitioner admitted that the letters were written by him.

The evidence of P.W.4 and P.W.5 is particularly important because they are independent local witnesses. Their evidence substantially corroborates the testimony of the complainant regarding the arbitration, the production of letters, and the accused-petitioner's conduct after the incident. Their evidence also supports the prosecution case that the matter was not a mere allegation subsequently invented by the complainant, but was raised before respectable persons of the locality soon after the birth of the child and after disclosure of the incident.

The defence did not examine any witness. No material contradiction could be elicited from the prosecution witnesses so as to

demolish the core prosecution case. The evidence of the complainant remains consistent on the material points, namely, that the accused-petitioner caused her to believe that a marriage had been completed by touching the Holy Quran, that she acted upon that belief, and that the relationship continued on that basis.

The legal principle laid down in *Abed Ali vs. The State*, 34 DLR (AD) 366 is squarely applicable in the present case. In that case, the Appellate Division clearly held that in order to prove an offence under section 493 of the Penal Code, the prosecution must establish that some form of marriage, though invalid or not lawful, was gone through with fraudulent intention and that such act caused the woman to believe that she was lawfully married to the accused.

In the instant case, the evidence shows that the accused-petitioner did not merely promise to marry the complainant. Rather, he staged or represented a form of marriage by touching the Holy Quran in the presence of others and declared that the marriage had been completed. Considering the social, religious, and family background of the complainant, such conduct was capable of creating, and in fact did create, a belief in her mind that she had become lawfully married to the accused-petitioner.

Therefore, the essential ingredients of section 493 of the Penal Code are present in this case. The accused-petitioner, by deceitful conduct, caused the complainant to believe that she was his lawful wife and, on the basis of such belief, induced her into cohabitation. The subsequent

pregnancy, the birth of the child, the letters written by the accused-petitioner, and the local arbitration further strengthen the prosecution case.

It is settled that revisional jurisdiction is not intended to function as a second appellate forum for reappraisal of evidence unless there is glaring illegality, misreading or non-reading of evidence, perversity in findings, or miscarriage of justice. Where both the trial Court and appellate Court have concurrently assessed the evidence and arrived at a finding of guilt, the revisional Court should be slow to interfere unless such findings are manifestly illegal or perverse.

In the present case, both the Courts below considered the evidence on record and arrived at concurrent findings that the prosecution proved the charge under section 493 of the Penal Code beyond reasonable doubt. Upon independent scrutiny of the evidence, I do not find any illegality, misreading of evidence, non-consideration of material evidence, or perversity in the judgments of the Courts below.

The learned trial Court correctly appreciated the testimony of the complainant and the corroborative evidence of P.W.2, P.W.4, and P.W.5. The learned appellate Court also rightly affirmed the conviction and sentence. The findings of the Courts below are based on evidence and sound legal reasoning.

In view of the facts, circumstances, evidence on record, and the legal position discussed above, I am of the view that the prosecution has been able to prove the charge under section 493 of the Penal Code against

the accused-petitioner beyond reasonable doubt. There is therefore no ground for interference by this Court in exercise of revisional jurisdiction.

Accordingly, the Rule is discharged.

The judgment and order dated 06.07.2006 passed by the learned Additional Sessions Judge, Moulvibazar in Criminal Appeal No. 74 of 1994, affirming the judgment and order of conviction and sentence dated 08.10.1994 passed by the learned Additional District Magistrate, Moulvibazar in C.R. Case No. 118 of 1993, is hereby maintained.

The order of bail granted earlier by this Court is hereby recalled and vacated.

The accused-petitioner is directed to surrender before the trial Court within 1 month from the date of receipt of this judgment, failing which the trial Court shall take necessary steps against him in accordance with law.

Send down the lower Court records at once.

Communicate this judgment and order immediately.