

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

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 1444 of 2022

Md. Anwar Hossain

.....Convict Petitioner

-versus-

The State and another

.....Opposite Parties

Mr. Md. Belayet Hossain, Advocate with

Mr. Md. Shahinoor Alam, Advocate

.... For the convict petitioner

Mr. Md. Shahidul Islam, AAG with

Mrs. Sharmin Hamid, AAG

....For the State

Mr. Mohammad Salim Miah, Advocate

.....For the Opposite party No. 2

Heard on 01.12.2024, 04.12.2024

Judgment delivered on 08.12.2024.

On an application under section 439 read with section 435 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 of conviction and sentence date 13.10.2021 passed by Sessions Judge, Mymensingh in Criminal Appeal No. 490 of 2019 affirming the judgment and order of conviction and sentence dated 29.7.2019 passed by Senior Judicial Magistrate, Court No. 3, Mymensingh in CR No. 182

of 2017 convicting the petitioner under section 420 of the Penal Code, 1860 and sentencing him to suffer rigorous imprisonment for 03(three) years 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 case, in short, is that the complainant Noor Mohammad and the accused Md. Anwar Hossain are known to each other. The accused Md. Anwar Hossain deals with the manpower business. He had given a proposal to send the son of the complainant to Iraq. On 19.06.2015 at 10.00 am, the accused along with 2 other persons went to the house of the complainant and told that he would send his son Shariful Islam abroad within 3 months and received Tk. 400,000 from him. On 11.10.2015, the accused took Shariful Islam to Dhaka International Airport and sent him to Iraq by Air. When his son reached Iraq, the accused persons informed that Shariful Islam was detained in Iraq and they demanded further payment of Tk. 200,000 to get his son alive and tortured Shariful Islam in Iraq. Subsequently, on 30.10.2015 the complainant paid Tk. 100,000 to get back his son alive to the accused Hosnara and Tk. 100,000 to accused Rimon who are the wife and son respectively of the accused Anwar Hossain. After that, Shariful Islam came back to Bangladesh on 23.011.2015 and the complainant came to know that his son was sent to Iraq for only three months. He also informed that the accused also sent witnesses Nos. 2 to 5 to Iraq and recovered hues amount from them and misappropriated. Sariful Islam and witness Nos. 2 and 5 who were also sent to Iraq came back to Bangladesh and demanded money amounting to Tk. 400,000 each, total Tk. 2400, 000 from the accused Shahidul and Md. Anwar Hossain. The accused Anwar Hossain undertaken to return Tk. 300,000 each and executed an undertaking on a non-judicial stamp of Tk. 300. The accused Anwar Hossain called them in the office of the FM Travels on

10.01.2016 to repay the said amount but he did not pay the money. Tempering on the agreement, he tried to change the amount and attempted to keep the agreement in his custody, but somehow he kept the undertaking in his custody. The complainant alleged that the accused received total Tk. 600,000 to send his son to Iraq.

After filing the complaint petition, the learned Magistrate by order dated 21.03.2016 sent the case for inquiry to the concerned Chairman of the Union Parishad who after inquiry sent the report on 27.07.2016. On 13.10.2016 the complainant filed *Naraji* against the said report dated 27.07.2016. On 24.04.2017, the learned Magistrate recorded the statement of the complainant and was pleased to take cognizance of the offence against the accused Anwar Hossain under sections 406 and 420 of the Penal Code, 1860.

The learned Senior Judicial Magistrate, Cognizance Court No. 3, Mymensingh by order dated 19.08.2018 sent the case to the Chief Judicial Magistrate, Mymensingh who by order dated 19.08.2018 sent the case to the Senior Judicial Magistrate, Court No. 3 Mymensingh for trial and disposal of the case. During the trial, the charge was framed on 31.03.2019 under sections 406/420 of the Penal Code, 1860. The accused was absconding at the time of the framing charge.

The prosecution examined 6 witnesses to prove the charge against the accused and the defence did not cross-examine the prosecution witnesses. After concluding the trial, the Senior Judicial Magistrate, Court No. 3, Mymensingh by judgment and order dated 29.07.2019 convicted the accused under section 420 of the Penal Code, 1860 and sentenced him to suffer rigorous imprisonment for 03 (three) years against which the convict petitioner filed Criminal Appeal No. 490 of 2019 in the Court of Sessions Judge, Mymensingh who by impugned

judgment and order dated 13.10.2021 affirmed the judgment and order of conviction and sentence passed by the trial court against which he obtained the Rule.

P.W. 1 Noor Mohammad is the complainant. He stated that the first occurrence took place on the 5th of last Ashar and the 2nd occurrence took place in the month of 15th Kartik at 11.00 am in his house. On the first date of occurrence, the accused received Tk. 400,000 to send his son Shariful Islam to Iraq within the next three months. But he sends his son to Iraq on a tourist visa. When his son reached Iraq, he was detained. At that time, he again claimed Tk. 200,000. He again paid Tk.200,000 to accused Nos. 2 and 3 and thereafter Shariful Islam came back to Bangladesh. A shalish took place on 2nd Poush at 10.00 am and in that shalish, they have undertaken to return the money within 3 months and signed the undertaking. On 10.01.2016, the accused was instructed to go to Dhaka to receive the money. Tempering on the stamp, the accused said that he would not return the money. The accused was absconding.

P.W. 2 Shariful Islam stated that the first occurrence took place on 5th Ashar at 10.00 am. On the first date of occurrence, the accused came to the house of the complainant and received Tk. 400,000 to send his son Sharif to Iraq. But he was sent to Iraq on a tourist visa. When he reached the Airport in Iraq, he was detained and the accused persons demanded Tk. 200,000. On the second date of occurrence, Tk. 200,000 was paid. Thereafter, Shariful came back to Bangladesh. On next 2nd Poush at 10.00 am, a shalish took place. In that shalish, it was decided that the accused would pay Tk. 300,000. On 10.01.2016, the accused Anwar Hossain refused to repay the money. The accused was absconding.

P.W. 3 Dulal Miah stated that the accused is known to him and the occurrence took place on last 5th Ashar at 10.00 am and the second occurrence took place on 15th Kartik. On the first date of occurrence, the accused received Tk. 400,000 from the complainant to send his son Shariful Islam to Iraq. Subsequently, he was sent to Iraq along with 2 others and they were detained at the Airport of Iraq. After payment of Tk. 200,000, he was returned. A shalish took place on 2nd April and in that shalish, it has been decided that the accused will pay Tk. 300,000. On 10.01.2016, he refused to pay the money, when he went to the office of the accused at Banani. The accused was absconding.

P.W. 4 Jamal Uddin stated that the accused and the complainant are known to him. The occurrence took place on 5th Ashar at 10.00 am and the second date occurred on 15th Kartik. On the first date of occurrence, the complainant paid Tk. 400,000 to send his son Shariful to Iraq. When he reached Iraq, he was detained at the Airport. On the second date of occurrence, Tk. 200,000 was paid. A shalish took place on 2nd Poush at 10.00 am. In that shalish, it has been decided that the accused will pay Tk. 300,000.

P.W. 5 Farida is the wife of the complainant. She stated that on 5th Ashar at 10.00 sitting in her house, the accused received Tk. 400,000 to send her son Shariful abroad. When he reached Iraq, he was detained. After payment of Tk. 200,000 on 15th Kartik at 10.00 am he was allowed to come back to Bangladesh. A shalish took place on 2nd Poush and in that shalish, it was decided that the accused would pay Tk. 300,000. Subsequently, he refused to pay.

P.W. 6 Md. Abdul Khaleque stated that the complaint and the accused persons are known to him. On first Ashar at 11.00 am the first occurrence took place. On the first date of occurrence accused received

Tk. 400,000 to send Shariful Islam to abroad. Subsequently, he reached Iraq and was detained. On the second date of occurrence, Tk. 200,000 was paid and they came back to Bangladesh. On 2nd Poush at 10.00 am, a shalish took place and an undertaking was signed by the accused for payment of Tk. 300,000. The complainant and the Shariful were taken to the office of the accused at Banani. By tempering on the undertaking the accused refused to pay the amount received from the complainant.

The learned Advocate Md. Belayet Hossain appearing on behalf of the convict petitioner submits that at the time of enquiry, the complainant could not produce any witness before the Chairman of the concern Union Parishad and failed to prove any prima facie offence and a report was sent on 27.07.2016 without any recommendation against the accused persons. He further submits that there is no allegation against the convict petitioner that the witness Shariful was not sent to Iraq. He also submits that victim Shariful obtained a job in Iraq but he came back to Bangladesh. Therefore, no offence under section 420 of the Code of Criminal Procedure, 1898 was committed and both the courts below without assessment and evaluation of the evidence illegally convicted the petitioner and arrived at a wrong decision as to the guilt of the accused.

The learned Advocate Mr. Mohammad Salim Miah appearing on behalf of the complainant-opposite party No. 2 submits that the accused received total Tk. 400,000 on 19.06.2015 at 10.00 am sitting in his house and illegally sent his son Shariful to Iraq on 11.10.2015 on a travel visa. When he reached Iraq, he was detained and subsequently the accused persons received Tk. 200,000 through his wife and son to send back his son to Bangladesh. A shalish took place on 10.1.2016 and the accused executed an undertaking to return the money but he did not pay the money. Therefore, he committed an offence under section 420 of the

Penal Code, 1860 and the prosecution proved the charge against the accused beyond all reasonable doubt and both the courts below legally passed the impugned judgment and order. He prayed for discharging the rule.

I have considered the submission of the learned Advocate Mr. Md. Belayet Hossain who appeared on behalf of the convict petitioner and the learned Advocate Mr. Mohamman Salim Miah who appeared on behalf of the opposite party No. 2, perused the evidence, the impugned judgments and orders passed by the courts below and the records.

On perusal of the evidence, it appears that the trial was held in absentia and the defence did not cross-examine P.W. 1. The complainant P.W. 1 proved the undertaking dated 06.11.2015 as exhibit-1. In exhibit 1, it has been stated that the accused Md. Anwar Hossain received total Tk. 600,000 from the complainant to send his son Shariful Islam to Iraq to give him a job in a company. The victim Shariful was sent to Iraq on 19.09.2015. After going to Iraq, the victim Shariful came to know that he was sent by travel visa and the accused received Tk. 200,000 to send back Shariful to Bangladesh. The execution of the undertaking dated 06.11.2015 (exhibit-1) remains uncontroverted by the defence. The evidence of P.W. 1 that the accused received Tk. 400,000 before sending his son Shariful to Iraq and Tk. 200,000 after detaining Shariful in Iraq is corroborated by P.W.2 to 6. The accused deceived the complainant and received Tk. 400,000 from the complaint to send his son Shariful to Iraq for employment and the accused Md. Anwar Hossain sent Shariful on a tourist visa and he was detained there. Subsequently, he was allowed to come back to Bangladesh after payment of Tk. 200,000 to the accused Nos. 2 and 3. I am of the view that the prosecution proved the charge against the accused beyond all reasonable doubt and both the courts

below on proper assessment and evaluation of the evidence legally convicted the accused under section 420 of the Penal Code, 1860.

Considering the evidence, facts and circumstances of the case and the gravity of the offence, I am of the view that ends of justice would be best served if the sentence passed by the trial court is modified as under:

The accused Md. Anwar Hossain is found guilty of the offence under section 420 of the Penal Code, 1860 and he is sentenced to suffer rigorous imprisonment for 01(one) year.

With the above findings and observation, the impugned sentence passed by both the courts below are hereby modified.

In the result, the Rule is disposed of with a modification of the sentence.

Send down the lower Court's record at once.