

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 2164 of 2022

Md. Nazrul Islam

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

No one appears.

...For the convict-petitioner

No one appears.

...For the opposite party No. 2

Heard on 15.01.2025

Judgment delivered on 21.01.2025

On an application filed under Section 439 read with Section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 30.05.2022 passed by Sessions Judge, Lalmonirhat in Criminal Appeal No. 101 of 2019 affirming the judgment and order of conviction and sentence dated 25.09.2018 passed by Senior Judicial Magistrate, Court No. 2, Lalmonirhat in C.R No. 27/2017 (Pat) convicting the petitioner under Section 420 of the Penal Code and sentencing him to suffer rigorous imprisonment for 3(three) years and fine of Tk. 2,000(two thousand), in default, to suffer rigorous imprisonment for 2(two) 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 case, in short, is that the complainant Md. Bulbul Hossain purchased 7 decimals of land described in the schedule of the complaint petition from the accused Md. Nazrul Islam by registered deed No. 762 dated 01.03.2015 registered with the Office of the Sub-Registrar, Patgram. Before selling 7 decimals of land to the complainant by the said registered deed, the accused Md. Nazrul Islam sold 2 decimals of land to his son Md. Robbu

Miah in connivance with each other and committed offence under Section 420 of the Penal Code, 1860.

After filing the complaint petition, the learned Magistrate was pleased to send the case to the Chairman, Jagatber Union Parishad, Patgram, Lalmonirhat to give report after enquiry. The said Chairman during enquiry found prima facie truth of the allegation made in the complaint petition and submitted the report on 06.05.2017. Thereafter, the learned Magistrate was pleased to take cognizance of the offence against the accused under Section 420 of the Penal Code, 1860 and the case record was sent to the Senior Judicial Magistrate, Court No. 2, Lalmonirhat for trial.

During trial, charge was framed against the accused under Section 420 of the Penal Code, 1860. At the time of framing charge, the accused was absconding. The prosecution examined 3(three) witnesses to prove the charge against the accused. After concluding trial, the trial Court by judgment and order dated 25.09.2018 was pleased to convict the petitioner under Section 420 of the Penal Code, 1860 and sentenced him to suffer rigorous imprisonment for 3(three) years and fine of Tk. 2,000(two thousand), in default, to suffer rigorous imprisonment for 2(two) months against which the convict-petitioner filed Criminal Appeal No. 101 of 2019 before the Sessions Judge, Lalmonirhat. After hearing the appeal, the Sessions Judge, Lalmonirhat by impugned judgment and order affirmed the judgment and order of conviction and sentence passed by the trial Court against which the convict-petitioner obtained the instant Rule.

P.W. 1 Bulbul Hossain is the complainant. He stated that the occurrence took place on 08.02.2017 at 1.00 pm in the house of the accused Nazrul. He sold 7 decimals of land on 01.03.2015 to him. While he was residing in the said house on 08.02.2017, Robbu Miah, son of accused Nazrul, showing a deed restrained him from enjoying his property. After getting the certified copy of the deed,

the complainant informed the matter to accused Nazrul Islam and he instructed him to take legal action.

P.W. 2 Namirul stated that the occurrence took place on 08.02.2017 at 1.00 pm. He along with the informant went to the house of the accused Nazrul who sold 7 decimals of land to the complainant. Before selling the said land, the accused also transferred 2 decimals of land to his son. The complainant demanded money to the accused but he refused to return the money.

P.W. 3 Nurujjaman stated that the occurrence took place on 08.02.2017 at 1.00 pm. The complainant called him to the house of the accused. The accused Nazrul Islam committed cheating by selling the property to the complainant after selling the land to his son. The complainant demanded money to the accused but he refused to pay.

No one appears on behalf of the convict-petitioner.

No one appears on behalf of the opposite party No. 2.

I have perused the evidence, impugned judgments and orders passed by the Courts below and the records.

On perusal of the evidence, it appears that in the complaint petition, it has been alleged that the accused sold 7 decimals of land described in the schedule of the complaint petition by registered deed No. 720 dated 0103.2015 and before registration of the said deed, the accused Md. Nazrul Islam transferred 2 decimals of land to his son Robbu Miah by registered deed No. 376 dated 01.02.2015. During trial, the complainant did not prove the complaint petition and said deeds executed in favour of the complainant Md. Bulbul Hossain and Md. Robbu Miah by the accused Md. Nazrul Islam. The complainant also did not prove the total land belonged to the accused Md. Nazrul Islam.

Furthermore, the Chairman of Jagatber Union Parishad, Patgram, Lalmonirhat was not examined in the case who submitted the enquiry report dated 06.05.2017. In the absence of deed of

transfer, it cannot be said that the accused transferred the land to the complainant or his son Robbu Miah. The prosecution failed to prove that the accused transferred the land described in the schedule of the complaint petition to the complainant or his son Robbu Miah.

In view of the above evidence, facts and circumstances of the case, findings, observation and the proposition, I am of the view that the prosecution failed to prove the charge against the accused beyond all reasonable doubt.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgments and orders of conviction and sentence passed by the Courts below against the convict-petitioner Md. Nazrul Islam are hereby set aside.

However, there will be no order as to costs.

Send down the lower Court's records at once.