

Present
Justice Sk. Tahsin Ali

Criminal Appeal No. 5795 of 2023

Md. Mizanur Rahman Suman
Convict-Appellant

-Versus-

The State

----- Respondents.

Mr. Zafar Sadeque, Advocate

.... for the convict-appellant

Mr. Md. Mizanur Rahman, DAG with

Mr. Md. Ahidul Islam, AAG

Mr. Abdullahil Maruf Fahim, AAG

Ms. Nasima Khatun, AAG

----- For the State

**Heard on: 29.07.2026, 02.08.2026,
 03.08.2026 and
 Judgment on: 16.08.2026**

This appeal was directed against the judgment and order of conviction and sentence dated 13.03.2023 passed by the learned Special Judge, 9th Court, Dhaka in Special Session Case No. 892 of 2022 corresponding to Metro Sessions Case No. 1069 of 2011, arising out of G.R. Case No. 590 of 2010 Paltan Police Station Case No. 36 dated 12.11.2010, convicting the appellant-petitioner under Table 9(Ka) of Section 19(1) of the Madok Droibba Niyatron Ain, 1990 and sentencing him to suffer simple imprisonment for a period of 1(one) year and pay a fine of Tk.

10,000/- (ten thousand) in default to suffer simple imprisonment for 1(one) months more.

The prosecution case, in short is that on 11.11.2010 at about 17.25 hours while informant along with his force was on duty within paltan Police Station, Dhaka, a secret information he came to know at 59 Naya Paltan in the ground floor of Medicash Diagnostic and Medical Center presence of accused along with drugs and thereafter, he along with force rushed to the spot and found accused therein who founding presence of police tried to escape. Thereafter, accused were arrested by police force and upon interrogation accused No. 1 admitted that he is owner of Sumon Diagnostic Center and accused No. 2 is employee of that center and then informant in presence of seizure list witnesses searched body of accused and recovered 100 pieces of Yeaba tablets which were kept in his right pocket of gins pant of accused Md. Mizanur Rahman Suman tied up with while poly bag and also recovered 50 pieces of Yeaba tablets which were kept in his right pocket of gins pant of accused Md. Asifuzzaman Asif tied up with while poly bag. Thereafter, as per showing of accused Suman informant also recovered 460 pieces of Yeaba tablets from the X-

ray dark room of that Diagnostic center and thus total 610 pieces of Yeaba tablets were recovered from their possession. Thereafter, informant prepared seizure list in front of seizure list witnesses and lodged the instant FIR before Paltan Police Station, Dhaka under Table 9 (Ka) of section 19 (1) of Madok Droobo Niyantran Ain, 1990 against the present convict-petitioner and hence, the case.

After investigation the investigating officer submitted charge sheet being No. 521 dated 15.12.2010 against the convict-appellant under Table 9(Ka) of Section 19(1) of the Madok Drabbo Niyantron Ain, 1990. The G.R. Case No. 590 of 2010 was transferred to the Metropolitan Sessions Judge, Dhaka and renumbered as Metro Sessions Case No. 1069 of 2011, thereafter, on 25.01.2023 learned Metropolitan Sessions Judge, Dhaka took cognizance against the accused appellant. Thereafter, Metro Sessions Case No. 1069 of 2011 was transferred to the Joint Metropolitan Sessions Judge, 2nd Court, Dhaka for trail and thereafter, on 23.03.2011 charge was framed against the accused under Table 9 (Ka) of section 19 (1) of Madok Droobo Niyantran Ain, 1990. Thereafter, on 18.04.2022 Metro Sessions Case No.

1069 of 2011 was transferred to the Court of Special Judge, 9th Court, Dhaka and renumbered Special Session Case No. 892 of 2022. On 13.03.2023 the Special Judge, 9th Court, Dhaka delivered judgment and convicting the appellant-petitioner under Table 9(Ka) of Section 19(1) of the Madok Droibba Niyatron Ain, 1990 and sentencing him to suffer simple imprisonment for a period of 1(one) year and pay a fine of Tk. 10,000/- (ten thousand) in default to suffer simple imprisonment for 1(one) months more.

Being aggrieved and dissatisfied with the judgment and order dated 13.03.2023 the convict-appellant preferred this appeal.

On 20.06.2023 this Division Bench allowed the convict-appellant to continue on bail which was granted earlier by the learned court below till disposal of the appeal. The Lower Court Records (L.C.R) was attached with this appeal on 12.07.2026.

Mr. Zafar Sadeque, learned Advocate appearing on behalf of the convict-appellant while Mr. Md. Mizanur Rahman, DAG with Mr. Md. Ahidul Islam, AAG, Mr. Abdullahil Maruf Fahim, AAG, Ms. Nasima Khatun, Assistant Attorney General appeared on behalf of the state.

The learned advocate Mr. Zafar Sadeque, appearing on behalf of the convict-appellant submits that although the seizure list was prepared by the RAB personnel, they had no authority to prepare the seizer list, as it ought to have been prepared by the police personnel. He further submits that there is no jurisdiction for lodging the FIR by the informant who was the DAD attached with the of RAB 3. He further submits that the convict-appellant further submits that during trial as many as 7(seven) witnesses, including PW-2 appeared before the court in connection with the two seizer list and stated that their signatures was put on the blank paper. The learned trial Court ought not to rely upon the evidence of interested witnesses. Learned advocate for the convict-appellant further submits that informant Masud Karim Khan a member of RAB during examination-in-chief he disclosed that the FIR was lodged at 5:50 hours at the place of occurrence. However, the said complainant stated that on the same night, at 10:15 pm they lodged the FIR at Paltan Police Station but at the time of cross-examination the said deponent disclosed the facts that the FIR was actually lodged at 2:25 a.m. that is after about 9(nine) hours of the alleged of occurrence. This gross contradiction creates serious doubt to prove the case on the part of the prosecution. Learned

advocate for the convict-appellant further submits that the alleged recovery of 100 pieces yeaba tablets from the physical possession of convict-appellant was not proved, as per testimony of PW-1 member of raiding team, PW-2 informant and PW-7 investigating officer which were not corroborative regarding the place of recovery of yeabha as well as colour of alleged yaba tablets which proves that this a clear case of no evidence. In support of his submission he cites two decisions in the case of Rokeya Begum Vs. State reported in 19 BLC(2014) page-554 and in the case of Md. Zulfigure Ali @ Kazal Vs. The State reported in 15 BLD (1995) page-571.

Mr. Md. Mizanur Rahman, learned Deputy Attorney General appeared on behalf of the state opposes the appeal.

The prosecution examined 7 P.Ws out of 8 charge sheeted witnesses and defense examined none.

P.W.-1, Md. Juel Miah, member of raiding team admitted in his examination in cross that he along with team did not went to the place of occurrence not from RAB office rather from another duty place and also admitted that he along with two others stayed outside Diagnostic center and four others entered into there. He

also admitted that he could not say anything what happened inside that Diagnostic center and he did not search body of accused. He also admitted that they stayed at place of occurrence for 15 minutes and he could not remember date of examination by investigating officer. He further admitted that Platan police station is away 100-150 yards from place of occurrence and after completion of raiding they boarding on vehicle went to police station but within how many times he could not remember. He denied suggestion of defense that no seize goods were recovered from the accused and with recovery of narcotics of different raiding program the same was used in this case.

P.W. -2, Md. Masum Karim Khan, informant admitted in his cross examination that commander of RAB 3 was Let. Colonel Mamun and head of CPC-2 was let. Commander Jarrar Hossain and he with permission of Commander he raided the place of occurrence and also admitted that DAD of that Company was Nurul Islam but he did not participate in raiding. He further admitted that when he received information he was then at RAB 3 Mogbazar office and from to reach at place of occurrence from his office one hour was consumed. He further admitted that when they

reached to place of occurrence there were patients and staffs and they stayed there for 10/15 minutes and from that place they strait went to Paltan police station where FIR was written by their person. He further admitted that color of seized Yeaba tablets were reddish, pink and green colours and seize narcotics were pink and green in colour and also admitted that Diagnostic center was besides the road and factory of biscuit and logence. He denied suggestion of defense that being influenced by owner of another Diagnostic center he lodged this false case against the accused. He further admitted that on 11th November at about 5.25 p.m. he arrested accused but lodged FIR at 2.25 a.m. after none hours of arrest of accused. He further admitted that accused No. 1 is owner of that Diagnostic center and he has no knowledge that owner of that building noticed accused No. 1 to abandon that space and also admitted that after arrest within four days that building was demolished by builder company DOMINNO and denied suggestion of defense that being biased by owner of that building and that builder company he lodged this false case against accused. He further admitted that seizure list was prepared within 10 minutes of recovery and also denied suggestion that in counting seized Yeaba tablets 30 minutes were required and being

biased by owner of that building and in a preplanned way he along with seize goods lodge this false case against the accused.

P.W 3, Azizul Haque, constable member of the raiding team was tendered by the prosecution along with P.W. 1 and he was not cross examined by the defense.

P.W 4, Nizam Uddin, Sainik member of the raiding team was tendered by the prosecution along with P.W. 1 and he was not cross examined by the defense.

P.W. 5, Abul Kalam Azad, seizure list witness was stated in his examination in chief that on the date of occurrence was besides his shop where he was taking rest by closing his and D.B. police asked them to open shutter and he was asked to sign in white paper and he admitted in his examination in cross that his shop in the ground floor of that building and accused were not searched in his presence and also admitted tat he did not see recovery of 100 pieces of Yeaba tablets and D.B. police were 8/10 in number.

P. W. 6, Md. Rubel Miah, seizure list witness was stated in his examination in chief that on the date of occurrence by open the door of his room he found D.B. Police who asked him to sign in white paper and he admitted in his examination in cross that when

he signed in seizure list the same was blank and also admitted tat he did not see recovery of 100 pieces of Yeaba tablets. He further admitted that said building was five storied and after two months developer company DOMINNO broke that the same.

P.W. 7, Md. A. Jalil who investigated the case admitted in his examination in cross that he did not recognize/know all members of raiding team and he asked informant but did not record his statements. He also admitted that informant along with his raiding party seized narcotics from accused and all of them searched body of accused and he was informed by informant. He further admitted that during his investigation he visited place of occurrence and marked sketch as K to Jha but no where he mentioned about X-Ray dark room and also admitted that he sent for chemical examination of 5 pieces of Yeaba tabets and rest are lying with malkhana of police station. He further admitted that he did not initiate to produce those rest of Yeaba tablets from police station to court. He further admitted that in FIR there is a MCC number No. 1028/2010 and in order to make out controversy between informant and S.I. Ferdous Alam in respect of conducting

raid in the place of occurrence he did not seize that MCC number No. 1028/2010.

Heard the learned advocate for the convict-appellant and the learned Deputy Attorney General for the state and perused the materials on record. It appears that the learned advocate for the convict-appellant somehow convinced this Hon'ble Court that the time of pronouncement of judgment District Special Sessions Judge, Court No. 9, Dhaka convicted the appellant in Special Case No. 892 of 2022 without going into the merit of the case. There were gross infirmity regarding in the evidence of the prosecution witnesses specially about the time of lodging FIR, PW-2, Md. Masum Karim Khan during examination-in-chief he disclosed that the FIR was lodged at 5:50 hours at the place of occurrence. However, the said complainant stated that on the same night, at 10:15 pm they lodged the FIR at Paltan Police Station but at the time of cross-examination the said deponent disclosed the facts that the FIR was actually lodged at 2:25 a.m. that is after about 9(nine) hours of the alleged of occurrence. This gross contradiction creates serious doubt to prove the prosecution case and at the time of trial, the prosecution utterly failed to prove the

case against the convict-appellant beyond all reasonable doubt and also failed to explain the delay of lodging the FIR.

Considering the above facts and circumstances of the case, justice would be best served if the instant appeal is allowed. Hence, the appeal is allowed in favour of the convict-appellant. I find merit in the appeal.

In the result, the appeal is allowed. The judgment and order dated 13.03.2023 passed by the learned Special Judge, 9th Court, Dhaka in Special Session Case No. 892 of 2022 is hereby set aside.

Send down the Lower Courts Record.

Communicate the judgment and order at once.

Shokat (B.O.)(F)