

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No. 2746 of 2022

Mohammad Nurul Amin

.... complainant-petitioner

-Versus-

Md. Joynal Abedin and another

.... Accused-opposite parties

No one appears

.... For the petitioner

Mr. Md. Harunur Rashid, Advocate

.... for the opposite party No.1

Heard on 08.10.2023 and

Judgment on: 12.10.2023

Md. Kamrul Hossain Mollah.J:

This is an application filed by the petitioner under section 439 read with section 435 of the Code of Criminal Procedure. This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 17.05.2022 passed by the learned Additional Metropolitan Sessions Judge, 5th Court, Chattogram in Criminal Appeal No.667 of 2019 allowing the appeal in altered form and thereby setting aside the judgment and order of conviction and sentence dated 07.11.2017 passed by the learned Metropolitan Magistrate, 4th Court, Chattogram in C.R Case No.80 of 2015 (Akbar Shah) and sending back the case for re-trial should not be

set-aside and/or pass such other order or further order or orders as to this court may seem fit and proper.

At the time of issuance of the Rule this Court stayed the operation of the impugned judgment and order dated 17.05.2022 passed by the learned Additional Metropolitan Sessions Judge, 5th Court, Chattogram till disposal of the Rule.

The relevant facts necessary for disposal of the Rule are as follows:-

The prosecution case, in short is that the accused Md. Joynal Abedin is the brother in law of the complainant who made a request to the complainant on 07.04.2012 at about 10:00 a.m. to provide him Taka 10,00,000/- (Ten lac) as loan which he required to purchase a piece of land. Accordingly the complainant lend Tk.10,00,000/- (ten lac) to the accused on 08.04.2012 and also executed a loan agreement locally called as "Hawlatnama" in front of some witnesses. There were conditions laid with the Hawlatnama that the loan amount will be paid by the accused as and when required by the complainant. As per condition of the said Hawlatnama this petitioner demanded his loan amount back, but the accused did not pay the said amount, rather he threatened the petitioner. In

such circumstances, this petitioner lodged a General Diary with Akbar Shah Police Station vide G.D No.1068 dated 23.06.2015. Thereafter this petitioner sent a legal notice to the accused on 04.08.2015 to get his money back. As the accused was not complying with the condition of Hawlatnama, for this reason petitioner filed a complaint-petition before the learned Chief Metropolitan Magistrate, Court, Chattogram against the accused-opposite party No.1 on 01.09. 2015.

The learned Court after examining the complainant-petitioner under section 200 of the Code of Criminal Procedure took cognizance against the accused-opposite party No.1 under sections 406/421/422/506 of the Penal Code,1860 and issued a summon against the opposite party No.1.

The accused-opposite party No.1 after receiving the summons from the Court, surrendered before the said Court and enlarged on bail on 21.09.2015. Thereafter, the learned trial Court framed charge on 11.01.2017 against the accused-opposite party No.1 under section 420 of the Penal Code and the charge could not be read over to the accused-opposite party No.1 for his absconsion.

At the time of trial the prosecution produced as many as 02(two) witnesses before the learned trial Court to prove the case. After conclusion of the witness the learned trial Court could not examine the accused under section 342 of the Code of Criminal Procedure for his absconion.

After completion of trial, hearing both the parties and considering the materials on record the learned trial Court found guilty the accused and convicted the petitioner under section 420 of the Penal Code and sentenced him to suffer simple imprisonment for a period of 02(two) years and to pay a fine of Tk.5,000/- in default to suffer simple imprisonment for a period of 01(one) months more by his judgment and order of conviction and sentence dated 07.11.2017. Against the said judgment and order of conviction and sentence, the convict-appellant-opposite party No.1 filed Criminal Appeal No.667 of 2019 before the learned Metropolitan Sessions Judge, Chattogram. Thereafter, it was transferred to the learned Additional Metropolitan Sessions Judge, 5th Court, Chattogram for disposal. After hearing the parties and upon considering material on record the learned Additional Metropolitan Sessions Judge, 5th Court, Chattogram allowed the aforesaid appeal in

altered form and thereby setting-aside the judgment and order of conviction and sentence dated 07.11.2017 passed by the learned Metropolitan Magistrate, 4th Court, Chattogram in C.R. Case No.80 of 2015 (Akbar Shah) and send back the case for re-trial by his judgment and order dated 17.05.2022.

Being aggrieved by and dissatisfied with the judgment and order dated 17.05.2022 passed by the learned Additional Metropolitan Sessions Judge, 5th Court, Chattogram in Criminal Appeal No.667 of 2019, the complainant-petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

No one appears for the Complainant-Respondent-petitioner to press the instant Rule, when the matter was taken up for hearing and disposal, although it appears in the daily cause list for several times.

On the other hand, Mr. Md. Harunur Rashid, the learned Advocate appearing on behalf of the accused-appellant-opposite party No.1 submits the complainant as P.W-1 stated in his deposition that after withdrawing money from the bank, he paid Tk.10,00,000/- in cash to the accused on 08.04.2012 and Jahangir, Siraj, Ahmad Ullah were present when the money was

given. The lend agreement was performed on 08.04.2012. In the said lend agreement, the negotiator Muhammad Jahangir Alam testified as P.W-2, but no witness of the lend agreement gave evidence before the Court. On the other hand, since the trial was completed in the absence of the accused, he could not cross-examine the witnesses of the complainant. The learned Advocate for the accused-opposite party No.1 submits that the lend agreement marked as exhibit-5 has only the signature of Zainal Abedin as the donor and the receiver Md. Nurul Amin has no signature and none of the witnesses mentioned in the lend agreement came to testify in the Court. Therefore, if the accused-opposite party No.1 is not given an opportunity to cross-examine the two witnesses produced for the complainant along with the lend agreement marked as Exhibit-5,

Finally, the learned counsel for the accused-opposite party No.1 prayed for upheld and confirmed the Judgment passed by the learned lower appellate Court and sent back the case remand to the trial Court in the interest of fair and just trial of the case. Therefore, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and order of the Courts' below, the submissions of the learned Advocate for the opposite party No.1, the papers and documents as available on the record.

It appears from the records that the complainant as P.W-1 stated in his deposition that after withdrawing money from the bank, he paid Tk.10,00,000/- in cash to the accused on 08.04.2012 and Jahangir, Siraj, Ahmad Ullah were present when the money was given. The lend agreement was performed on 08.04.2012. In the said lend agreement, the negotiator Muhammad Jahangir Alam testified as P.W-2, but no witness of the lend agreement gave evidence before the Court. On the other hand, since the trial was completed in the absence of the accused, he could not cross-examine the witnesses of the complainant. The learned Advocate for the accsued-opposite party No.1 submits that the lend agreement marked as exhibit-5 has only the signature of Zainal Abedin as the donor and the receiver Md. Nurul Amin has no signature and none of the witnesses mentioned in the lend agreement came to testify in the Court. Therefore, if the accused-opposite party No.1 is not given an opportunity to cross-examine the two witnesses

produced for the complainant along with the lend agreement marked as Exhibit-5, he will be deprived of justice. Finally, the learned Advocate prayed for remand in the interest of fair and just trial of the case.

In the light of the above discussion, and considering the submission of the learned Advocate for the accused opposite party No. 1, it is clear before me that the judgment and order dated 17.05.2022 passed by the learned Additional Metropolitan Sessions Judge, 5th Court, Chattogram in Criminal Appeal No.667 of 2019 rightly and is maintainable in the eye of law.

Accordingly, I find cogent and legal ground in the submissions of the learned Advocate for the accused-opposite party No.1 and do not find any cogent and legal ground to interfere with the impugned judgment and order dated 17.05.2022. Therefore, the instant Rule has no merit.

In the result, the Rule is discharged.

The judgment and order dated 17.05.2022 passed by the learned Additional Metropolitan Sessions Judge, 5th Court,

Chattogram in Criminal Appeal No.667 of 2019 is hereby upheld and confirmed.

The learned concerned trial Court is hereby directed to further hearing and disposal upon considering all evidence and documents, after hearing both the parties within 06(six) months from the date of receipt of this judgment and order.

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

Send down the lower Court records along with a copy of the judgment and order to the concerned Court below at once.

Md. Anamul Hoque Parvej
Bench Officer