

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No.1663 of 2023

Faruk Hossain

.....complainant -petitioner

-Versus-

The State and another

..... opposite-parties

Mr. Md. Faruk Hossain, Advocate

.....For the complainant-petitioner

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Heard and Judgment on: 20.02.2024

Md. Kamrul Hossain Mollah.J:

This is an application 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 30.03.2022 passed by the learned Sessions Judge, Chuadanga in Criminal Appeal No.82 of 2022 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 23.12.2019 passed by the learned Senior Judicial Magistrate, 1st Court, Chuadanga in C.R. Case No.84 of 2017(Chuadanga) T.R. Case No.317 of 2019 convicting the petitioner under section 420 of the Penal Code and sentencing him to suffer rigorous imprisonment for a period of 03(three) years and also

to pay a fine of Tk.5,000/- (five thousand) in default to suffer rigorous imprisonment for a period of 03(three) months more, 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.

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

The prosecution case, in short is that the complainant petitioner has been working with the N.G.O Project of institute namely "Alor Mukh", and the witnesses of the complainant case has been doing service in the N.G.O. Project of the Institute "Alor Mukh". The convict-respondent No.2 proposes to award a project to his NGO representatives of Gado Bangladesh Foundation including 1-3 witnesses along with of the complaint-petitioner,s organization and amongst them a meeting held at Bhojan Bilas Hotel and the accused confirmed a project value Tk.5,00,00,000/- mentioning that which is passed by the Chairman of the organization and also the final permission has been obtained. At the same time convict-respondent No.2 claims an advance of Tk.7,00,000/- for the expenses in cash and the complainant petitioner paid Tk. 700,000/- against a money receipt signed by the accused in

charge and his Chairman of the company in presence of the witnesses. The accused after receiving the money did not come back to Chuadanga to hand over the project letter through the witness no.1. Thereafter the accused assured that the project letter will be sent. In this way he killed the time but not sent the project letter, due to that the plaintiff is compelled to meet with the accused and accordingly on 19.10.2016 at night with witnesses No.1-3 and others to arrange a meeting with the accused and they met with the accused on 20.10.2016 at 11:00 a.m. They demanded the project letter failing which the complainant petitioner claimed to back the money. But the accused passed the time and tried to kill the complainant petitioner and the witnesses understood that they were planning to kill the petitioner so they left from there. Thereafter the accused informed the witness no.1 to go to Ginaidah office to collect the money on 15.11.2016 but the accused-respondent did not come there in time then the complainant believed that the defendant had a bad intention to misappropriate the plaintiff's money. It is also mentioned that if the plaintiff failed to escape on the date, he would have been killed. Thereafter, on 21.11.2016 the complainant filed a complaint-petition under

sections 406/417/506 of the Penal Code before the learned Senior Judicial Magistrate, Amoli Adalat, Chuadanga Sadar, Chuadanga against the convict-respondent No.2.

The learned Senior Judicial Magistrate after examination the complainant under section 200 of the Code of Criminal Procedure took cognizance against the petitioner under sections 406/417/506 of the Penal Code as C.R. Case No.84 of 2017 and issued summons upon the convict-respondent No.2. The learned Senior Judicial Magistrate, 1st Court, Chuadanga framed charge against the convict-respondent No.2 under sections 420 of the Penal Code on 28.08.2019 and the said charge could not read over and explain the convict-respondent No.2 for his absconsion.

The prosecution adduced as many as 04(four) witnesses in support of the case, but the defence did not examine none.

Due to abscondence of the convict-respondent No.2 the trial Court could not examine him under section 342 of the Code of Criminal Procedure.

After conclusion of the trial the learned trial Court on perusal of the evidence on record and document convicted the

petitioner under section 420 of the Penal Code and sentenced him to suffer rigorous imprisonment for a period of 03(three) years and also to pay a fine of Tk.5,000/- in default to suffer rigorous imprisonment for a period of 03(three) months more by his judgment and order of conviction and sentence dated 23.12.2019.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 23.12.2019 passed by the learned Senior Judicial Magistrate, 1st Court, Chuadanga in C.R. Case No.84 of 2017 (Chuadanga) T.R. Case No.317 of 2019 the complainant-petitioner preferred the Criminal Appeal No.82 of 2022 before the learned Sessions Judge, Chuadanga. The learned Sessions Judge, Chuadanga after hearing both the parties dismissed the said appeal for barred by limitation and affirmed the judgment and order of conviction and sentence dated 23.12.2019 passed by the learned Senior Judicial Magistrate, 1st Court, Chuadanga in C.R. Case No.84 of 2017 (Chuadanga) T.R. Case No.317 of 2019 by his judgment and order dated 30.03.2022.

Being aggrieved by and dissatisfied with the judgment and order dated 30.03.2022 passed by the learned Sessions

Judge, Chuadanga in Criminal Appeal No.82 of 2022, the complainant-petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

Mr. Md. Faruk Hossain, the learned Advocate appearing for the complainant-petitioner submits that a amicable settlement has been reached between the parties through a deed of compromise dated 29.03.2022, which was notarized before the Notary Public, REGD No.280 dated 29.03.2022. The complainant has no claimed against the convict-respondent No.2 if he be acquitted and the complainant got his claimed amount. Accordingly, he prays for making the Rule absolute.

Mrs. Umme Masumun Nesa, the learned Assistant Attorney General appearing on behalf of the respondent No.2 supported the submission of the learned Advocate for the petitioner and submits that the convict-respondent No.2 paid the total cheque amount to the complainant and the peaceful compromise has been held between the parties and he has no objection to absolute the Rule.

I have perused the revisional application, the impugned judgment and order of the Courts' below, the submissions of

the learned Advocates for the parties, the papers and documents as available on the record.

It appears from the submissions of the learned Advocates for both the parties that an amicable settlement became between the parties and there is no claim to each other.

In the light of the above discussion, it is clear before me that since the convict-petitioner paid the claimed amount, an amicable settlement has been held between the parties and there is no any claim to each other, the judgment and order of conviction and sentence dated 30.03.2022 passed by the learned Sessions Judge, Chuadanga in Criminal Appeal Case No.82 of 2022 is not maintainable against the convict-respondent No.2 and it will be fair to interference there.

Accordingly, I find cogent and legal ground in the submissions of the learned Advocates for the parties and to interfere with the impugned judgment and order of conviction and sentence dated 30.03.2022. Therefore, the instant Rule has merit.

In the result, the Rule is made absolute.

The impugned judgment and order of conviction and sentence dated 30.03.2022 passed by the learned Sessions Judge, Chuadanga in Criminal Appeal No.82 of 2022 dismissing the said Appeal and affirming the judgment and order of conviction and sentence dated 23.12.2019 passed by the learned Senior Judicial Magistrate, 1st Court, Chuadanga in C.R. Case No.84 of 2017 (Chuadanga) T.R. Case No.317 of 2019 is hereby set-aside and the convict-respondent No.2 be acquitted.

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

Md. Anamul Hoque Parvej
Bench Officer