

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

Criminal Revision No. 1309 of 2021

Md. Polash Mollah.

...Convict-petitioner

-VERSUS-

The State.

... Opposite party

Present

Mr. Justice Mamnoon Rahman

Mr. Deluwar Hussain, Adv.

... For the petitioner.

Mr. Md. Taifoor Kabir, DAG with

Mr. Md. Lokman Hossain, AAG

Mr. Md. Hatem Ali, AAG

...For the State.

Heard & Judgment on: 30.11.2023

In an application under section 439 read with section 435 of the Code of Criminal Procedure rule was issued calling upon the opposite party to show cause as to why the judgment and order dated 04.04.2021 passed by the learned Senior Sessions Judge, Khulna in Criminal Appeal No. 100 of 2021 dismissing the appeal summarily and thereby upholding the judgment and order of conviction and sentence dated 28.01.2021 by which the learned Judicial Magistrate, Court No. 4 Khulna in Digholia P.S. Case No. 04 dated 12.10.2017 corresponding to G.R. No. 105 of 2017 convicted the appellant-petitioner under section 19(1), Table Serial No. 7(Ka) of the Madok Drobbo Niontron Ain, 1990 sentencing him thereunder to suffer rigorous imprisonment for 6(six) months and also to pay fine of Tk. 5000/- in default to suffer simple imprisonment for one month more, 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 short facts relevant for the disposal of this rule, is that, on secret information the informant's side along with victim went to the place of occurrence and found the petitioner in the said place who tried to run away. Subsequently, the raiding party apprehend him who admitted that he is in the trade of such incriminating articles and ultimately 10 gm of Ganja was recovered from his body resulting which the police started Digholia Police Station Case No. 4 dated 10.12.2017 against the accused person. Eventually, the case record was transmitted to the court of Senior Judicial Magistrate, Khulna being G.R. Case No. 105 of 2017 wherein the prosecution adduced eight witnesses and the defence adduced none. The trial court examined the petitioner under section 342 of the Code of Criminal Procedure and thereby convicted and sentenced him as mentioned hereinabove. Being aggrieved the petitioner moved before the learned Sessions Judge, Khulna being Criminal Appeal No. 100 of 2021 and the learned Sessions Judge vide the judgment and order dated 04.04.2021 dismissed the appeal and thereby affirmed the judgment and order of conviction and sentence passed by the trial court. Being aggrieved the petitioner moved before this court and obtained the present rule.

Mr. Deluwar Hussain, the learned Advocate appearing on behalf of the petitioner submits that both the courts below without applying their judicial mind and without considering the facts and circumstances

most illegally and in an arbitrary manner passed the impugned judgment and order of conviction and sentence which requires interference by this court. He submits that in the present case in hand both the seizure list witnesses denied the case against the petitioner as much as the other witnesses are highly interested witness and conviction solely based on their testimony which is neither desirable nor come to the beyond all reasonable doubt. He further submits that there are serious contradictions regarding the place, manner and time of occurrence as because there are contradictions in between the prosecution witnesses to that effect and as such the petitioner is liable to get the benefit of doubt in the present case in hand.

Ms. Taifoor Kabir, the learned Deputy Attorney General appearing on behalf of the opposite party/state vehemently opposes the rule. He submits that the court below on proper appreciation of the facts and circumstances, evidence both oral and documentary as well as the relevant provisions of law passed the impugned judgment and order of conviction and sentence which requires no interference by this court.

I have perused the impugned judgment and order passed by the lower appellate court as well as trial court. I have perused the revisional application, grounds taken thereon, necessary papers and documents as well as the LC records and I have heard the learned Advocate for the petitioners as well as the learned Deputy Attorney General for the State.

On perusal of the same, it transpires that the petitioner stood charge for the offence committed under section 19(1), Table Serial No. 7(Ka) of the Madok Drobbyo Niontron Ain, 1990 for possessing 10 gm of Ganja (incriminating articles). P.W. 1 in his deposition stated that on secret information they went to the place of occurrence apprehended the petitioner and recovered the incriminating articles. P.W. 2 and P.W. 3 are also the member of the raiding party who in their deposition stated and supported the version of the P.W. 1. P.W. 5 and P.W. 7 are also the member of the raiding party who also supported the version of the P.W. 1. P.W. 8 is the Investigating Officer who conducted investigation and took the charge sheet. P.W. 4 and 6 are the seizure list witnesses who in their deposition however denied the prosecution case regarding their witness of the recovery of the incriminating articles. Admittedly, it transpires that the allegation against the petitioner relates to recovery of 10 gm of Ganja (incriminating articles). It further transpires from the P.W. 1 that they went to the place of occurrence and immediately apprehended the petitioner while P.W. 2 in his deposition stated that they went to the place of occurrence and since the petitioner tried to runaway to apprehend him and on query he discloses the involvement in the trade of such incriminating articles. So, it transpires that there are material contradictions regarding the manner of arrest and recovery of incriminating articles from the actual possession of the petitioner. It also transpires that the seizure list witnesses denied the prosecution version. However, the decision as cited by the trial court

reported in 6BLC 113 that *“Although the public seizure list witnesses did not support the prosecution case corroborated by other police personnel who were the members of patrol party. There is no legal bar to convict the appellant on such unimpeachable evidence of police”*.

But in the present case in hand, it transpires that there are some material contradictions in between of the testimony of the police personnel regarding the manner of arrest and recovery which creates a serious doubt about the constructive possession of the petitioner over the incriminating articles. It also transpires from the cross-examination of P.W. 1 that the seizure list was prepared in the police station not in the place of occurrence and such contradiction is also supported by the seizure list witnesses which also creates a serious doubt in the prosecution case in hand. Hence, in find substance in the instant rule.

Accordingly, the instant rule is made absolute. The impugned judgment and order passed by the courts below are hereby set aside and the petitioner be discharged from the bail bond.

Send down the L.C. records to the concerned court below with a copy of the judgment at once.

(Mamnoon Rahman,J:)

Emdad. B.O.