

Present:

Mr. Justice Md. Shohrowardi

Criminal Revisional Case No. 3714 of 2024

Md Obaidur Rahman

...Convict-petitioner

-Versus-

The State

...Opposite party

Mr. Md. Haroon Ar Rashid, Advocate

...For the convict-petitioner

Mr. Md. Anichur Rahman Khan, D.A.G with

Mr. Sultan Mahmood Banna, A.A.G with

Mr. Mir Moniruzzaman, A.A.G

...For the State

Heard on 14.08.2025 and 27.08.2025

Judgment delivered on 28.08.2025

On an application filed under section 439 read with section 435 of the Code of Criminal Procedure, 1898 the Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 06.02.2024, passed by the Additional Sessions Judge. Court No. 1, Narail in Criminal Appeal No. 124 of 2022, modifying the judgment and order of conviction and sentence dated 07.07.2022 passed by the Senior Judicial Magistrate, Court No. 2, Narail in Narail Police Station Case No. 27 dated 29.08.2019 corresponding G.R. No. 168 of 2019 (Narail) convicting the accused Md Obaidur Rahman under section 406 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 2(two) years and fine of Tk. 2,000, in default, to suffer imprisonment for 15 days and convicting him under section 420 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 2(two) years and fine of Tk. 2,000, in default, to suffer imprisonment for 15 days, which will run concurrently, 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's case, in short, is that the informant Chitra Rani Bhattacharjee is the Record Assistant of Joint District Judge,

Court No. 2, Narail and the accused Md Obaidur Rahman is the Land Assistant Officer of Perli Union under Kalia Thana, Narail and defendant of the Artha Rin Case No. 21 of 2016 pending in the Artha Rin Adalat No. 2, Narail filed by the BRAC Bank Ltd, SME Unit, Lohagora Branch. The said Artha Rin case was filed against the accused Md Obaidur Rahman and 3 others and he was the defendant No. 3 in the said suit. The accused Md Obaidur Rahman was a guarantor of the loan taken by the co-accused Amaresh Chandra Saha, and the outstanding dues of the BRAC Bank were Tk. 14,86,860.17 as on 03.09.2016. On 01.08.2019 at 10.30, the accused Md Obaidur Rahman, came to the informant Chitra Rani Bhattacharjee and disclosed that he is an employee of the Office of the Deputy Commissioner. At that time, he was the Assistant Land Officer of Perli Union under Kalia Thana. He requested the informant to give the records of the Artha Rin Case No. 21 of 2016. Initially, she did not agree to supply photocopy of the records of the said case. On repeated requests of the accused, on good faith, the informant handed over the records of the said case to the accused and, requested him to return the records after photocopy. The accused made promise to return the records within 10/15 minutes but he did not return the records. Thereafter, she searched for the accused Md Obaidur Rahman, but she could not trace him. The Process Surveyor Md. Afanur Rahman of the said Court and Office Assistant Subas Chandra Das of Joint District Judge, Court No. 1, Narail were aware of the fact. She also informed about the matter to the higher officers. She also reported the matter to the police, who instructed her to lodge a GD. Subsequently, she lodged GD No. 325 on 08.08.2019. Since the District Judge was on leave, she could not obtain the permission of the District Judge to lodge the FIR. She informed the matter to the District Judge on 28.08.2019, who instructed her to lodge the FIR. The informant stated that since the District Judge was on leave, she

could not take the permission in time, for which it was delayed to lodge the FIR.

S.I Md. Shafi Uddin was appointed as Investigating Officer of the case. During the investigation, he visited the place of occurrence, prepared the sketch map and index and recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. After completing the investigation, he found the truth of the allegation against the accused and submitted charge sheet against FIR named accused Amaresh Chandra Saha, Md. Ayub Hossain, Md Obaidur Rahman and Sanda Saha. Thereafter, the case was sent to the Judicial Magistrate, Court No. 2, Narail for trial. During the trial, the charge was framed against the accused persons under sections 406/420 of the Penal Code, 1860, which was read over and explained to them and they pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 8(eight) witnesses to prove the charge against the accused persons and the defence cross-examined the prosecution witnesses. After examination of the prosecution witnesses, the accused persons were examined under section 342 of the Code of Criminal Procedure, 1898 and the defence examined 2(two) D.Ws.

After concluding trial, the Judicial Magistrate, Court No. 2, Narail, by judgment and order dated 07.07.2022, convicted the accused Md Obaidur Rahman, under section 406 of the Penal Code, 1860 and sentenced him thereunder to suffer rigorous imprisonment for 3(three) years and fine of Tk. 5,000, in default, to suffer imprisonment for 1(one) month, and convicted him under section 420 of the Penal Code, 1860 and sentenced him thereunder to suffer rigorous imprisonment for 5(five) years and fine of Tk. 5,000, in default, to suffer imprisonment for 1(one) month, which will run consecutively, and acquitted co-accused Amaresh Chandra Saha, Md. Ayub Hossain and Sanda Saha from the charge framed against them. Against the said judgment, the convict-petitioner filed Criminal

Appeal No. 124 of 2022 before the Sessions Judge, Narail. The Additional Sessions Judge, Court No. 1, Narail heard the appeal and by impugned judgment and order modified the judgment and order passed by the trial Court and sentenced the convict-petitioner as stated above against which he obtained the Rule.

P.W. 1 Chitra Rani is the informant. She stated that she is the Record Assistant of the Joint District Judge, Narail. The occurrence took place on 01.08.2019 at 10.30 am in the Court of the Joint District Judge. The Artha Rin Case No. 21 of 16 was pending, and the plaintiff was the BRAC Bank. The suit value of the said suit was Tk. 14,86,80.17. On 01.08.2019, the accused Obaidur Rahman came to the seresta and wanted documents of the said suit. On bona fide belief, she handed over the documents to the accused. At that time, Afanur and Subhas were also present at the place of occurrence. Subsequently, the accused Obaidur did not come back with the records, and she lodged a GD on 08.08.2019. She proved the FIR as exhibit 1 and her signature on the FIR as exhibit 1/1. She claimed that the accused was suspended seven times. During cross-examination, she stated that she lodged the GD after 1 week of occurrence. The Office Assistant was not present in her Court. The Office Assistant of another Court used to discharge duty in her Court. The accused was known to her before the occurrence. She allowed the accused to take records out of Court on bona fide belief. The Banks' documents were lying with the records. The accused was a guarantor of the said case. She only filed the case against the accused Obaidur. She lodged the FIR on 28.08.2019. Initially, she verbally informed the matter to the authority. After the occurrence, she searched for Afanur and Subhas. At that time, Afanur was discharging duty along with her. He is aware of the entire occurrence. Subhas also witnessed the occurrence. At about 11/11.15 am, Afanur and Subhas were present. She went to the photocopy shop situated in front of the Court. After reading, she signed the FIR. She knows that permission is required to inspect the

records. At the time of the occurrence, Afanur and Subhas were also present. She informed the matter to the District Judge in writing, who instructed her to lodge the FIR. She affirmed that no departmental action was taken against her, and the Artha Rin Suit No. 21 of 16 was disposed of on compromise, and the debtor deposited the money.

P.W. 2 Afanur Rahman is the Office Assistant of the District Judge, Narail. He stated that the occurrence took place on 01.08.2019. He was posted in the office of the Nazir. At 1.30 pm, he saw the accused Obaidur in the seresta of the Joint District Judge. He humbly requested Chitra Rani to give photocopy of the documents to submit the written statement. Initially, she did not agree. Subsequently, when the accused Obaidur disclosed that he is a government employee. Chitra Rani handed over the documents to the accused on condition to return the same within next 15 minutes. Subsequently, Chitra Rani came and told that the documents were not returned, and Obaidur is also not available. During cross-examination, he stated that after the lodgment of the GD, the police detained the accused Obaidur from the Khorkhoria Bazaar. He went along with the police to identify the accused. He went to the office of the accused and identified him. Subsequently, a case was lodged. He is the Process Surveyor. Saiful was the Serestader. At that time, Serestader was not present. One Serestader discharged duty in 3 Courts. Subhas was the MLSS of the Court. He was also present there. He went to the shop of the photocopy at 12.30. He denied the suggestion that he did not see the accused or that the accused did not receive any record. He identified the accused and said that he took the records.

P.W. 3 Subhas Chandra Das is the MLSS of the Joint District Judge, Narail. He stated that the accused Obaidur took the records for photocopying. On that day, he was busy with the farewell of the Judge. The accused did not come back to return the records. He identified the accused Obaidur. He did not see that the document was handed over. He did not see the handing over document to the

accused. Saiful was the Serestader. Obaidur was detained for 1 week. He denied the suggestion that the statement made in the FIR is not correct. He saw the accused in the chamber of Matiar at 12.00/12.30 noon. After 2.00 pm, he heard that the accused had fled along with the records. He denied the suggestion that he deposed falsely.

P.W. 4 Advocate Matiar Rahman stated that after the lodgment of the FIR, he came to know about the accused. On 01.08.2019 at 11.00, Chitra Rani said that the accused Obaidur took the records, but he did not return the records. During cross-examination, he stated that Chitra Rani disclosed the occurrence at 11.00 am.

P.W. 5 Rana Shikder is the MLSS, Joint District Judge, Narail. He stated that the occurrence took place on 01.08.2019. At 10.30 am, his Sir told him to search for the record. At that time, Obaidul was talking to Chitra. He wanted the record of Artha Rin Case No. 21 of 16. The accused Obaidul disclosed his identity as a staff of the D.C Court. He humbly requested Chitra to give the record for photocopying. At 11/11.30, Chitra said that the records were not returned. At the time of the occurrence, he was present at the place of occurrence. He affirmed that the accused took the records in his presence. He affirmed that he did not make any statement earlier.

P.W. 6 Nur Miah is the Process Surveyor of the Joint District Judge, Court No. 2, Narail. He stated that the occurrence took place on 01.08.2019. The accused Obaidul wanted the records of Artha Rin Case No. 21 of 16 and took the records, but he did not return the records to Chitra Bhattacharjee. At about 11.00 am, he saw that Chitra was crying, saying that Obaidul had taken the records but did not return them. Subsequently, the records were not found. During cross-examination, he stated that Chitra requested him to take the photocopy. He refused to copy the records. He was not present at the time of handing over the records. At the time of the conversation at

11.00 am, he was present. He denied the suggestion that no occurrence took place, as stated by him.

P.W. 8 Elias Hossain is the Inspector of Police. He stated that he recorded the FIR on 29.07.2019, lodged by Chitra Rani Bhattacharjee, and appointed S.I. Md. Shafi Uddin as the investigating officer of the case. The charge sheet was submitted against the FIR-named four accused persons. He identified the signature of S.I. Shafi Uddin. He affirmed that subsequently he died. During cross-examination, he affirmed that the record of the case was not recovered. The other records, which have been missing, are available with the records, but those were not seized. He denied the suggestion that the records were not missing or that he deposed falsely.

D.W. 1 Obaidur Rahman is the accused in the case. He stated that on 01.08.2019, he discharged his duty as Assistant Land Officer, Perli Union. On that day at 8.50 am, he came to his office and he left the office at 5.00 pm. On that day, he recovered the land development tax amounting to Tk. 4080. At 3.00 pm, he, along with the Office Assistant, had withdrawn the salary. On that day, he was present in his Office. He submitted the photocopy of the registration book regarding the recovery of Tk. 4080. He also submitted the photocopy of the cash book. During cross-examination, he stated that he did not file any original record. He affirmed that he was not the guarantor of the Artha Rin Suit No. 21 of 16. Subsequently admitted that he was the guarantor. He did not submit any original document. He denied the suggestion that on 01.08.2019 at 10.30 am, he took the records of Artha Rin Case No. 21 of 16 pending in the Joint District Judge from Chitra Rani.

D.W. 2 Akash Sikder is the Office Assistant, Office of the D.C, Narail. He stated that on 01.08.2019, he discharged his duty in the Land Office, Perli Union. He, along with Obaidul, withdrew the money from the Office of AC Land. Mr. Obaidul was present in his

office from 8.50 am to 5.00 pm. He joined on 20.04.2017, and at that time, there were three staff. He did not hear that Obaidul was suspended seven/eight times.

Learned Advocate Mr. Md. Haroon Ar Rashid appearing on behalf of the convict-petitioner submits that the alleged occurrence took place on 01.08.2019 at 10.30 am in the Court of Joint District Judge, Court No. 2, Narail and a GD was lodged on 08.08.2019 and the FIR was lodged after 28 days of the occurrence on 29.08.2019 without giving any satisfactory explanation about the delay in lodging the FIR and the GD No. 325 dated 08.08.2019 was not proved in the case although the investigation was started based on the said GD which is the First Information Report in the case. He further submits that P.W. 1 Chitra Rani stated that P.Ws 2 and 3 were present at the time and place of occurrence, but P.W. 2 Afanur Rahman stated that at about 1.30 pm, he saw the accused in the seresta of the Joint District Judge, who told Chitra Rani to give the records for photocopy, and P.W. 3 admitted in cross-examination that he did not see that the accused took the records, and Serestader Saiful and MLSS Subhas of the Joint District Judge, Second Court were not examined in the case. P.W. 5 stated that he did not make any statement earlier, and P.W. 6 is a hearsay witness. None of the witnesses corroborated the evidence of P.W. 1 Chitra Rani. Learned Advocate cited decisions made in the case of Akhtar Hossain alias Babul Akhtar alias Akhtar Ali and another Vs. The State reported in 44 DLR 83 para 30 and State vs Al Hasib Bin Jamal alias Hasib and five others reported in 59 DLR 653 para 53.

Learned Deputy Attorney General Mr. Md. Anichur Rahman Khan appearing along with learned Assistant Attorney General Mr. Sultan Mahmood Banna on behalf of the State submits that the accused is the Assistant Land Officer under the Deputy Commissioner, Narail and the informant P.W. 1 bonafide handed over the records of the Artha Rin Case No. 21 of 16 to the accused on

condition to return the same within next 15 minutes but he did not return the records and committed breach of trust as defined in section 405 of the Penal Code, 1860. P.Ws 2 to 6 heard about the occurrence from P.W. 1 that the accused took the records to copy the same. During trial, the prosecution proved the charge against the accused beyond all reasonable doubt and the Courts below on correct assessment and evaluation of the evidence arrived at a concurrent finding of facts that the accused took the records of Artha Rin Case No. 21 of 16 from the P.W. 1 and he did not return the records. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Md. Haroon Ar Rashid, who appeared on behalf of the convict-petitioner, and the learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, who appeared along with learned Assistant Attorney General Mr. Sultan Mahmood Banna on behalf of the State, perused the evidence, impugned judgments and orders passed by the Courts below and the records.

In the FIR, it has been stated that P.W. 1 Chitra Rani lodged GD Entry No. 325 on 08.08.2019 regarding the missing records of Artha Rin Case No. 21 of 2016 pending in the Court of Joint District Judge, Court No. 2, Narail. During the trial, the said GD was not proved. P.W. 2 Afanur Rahman stated that based on the GD, police arrested the accused Obaidur from the Khorkhoria Bazaar, and he went to the office of the accused to identify him, but at that time, the accused was not arrested.

On perusal of the evidence, it reveals that on the basis of the GD No. 325 dated 08.08.2019, the police started the investigation. Therefore, the GD No. 325 dated 08.08.2019 is the First Information Report in the case and the said GD is required to be proved but the prosecution did not prove said GD admittedly lodged by the P.W. 1. In the FIR, it has been stated that the learned District Judge, Narail was on leave for which the informant could not take the permission

from the District Judge to lodge the FIR. It is found that the records of Artha Rin Case No. 21 of 2016 were missing. No explanation has been given by the P.W. 1 as to why she did not inform the matter to the Joint District Judge, Court No. 2, Narail, and obtain permission from the said Court.

P.W. 1 stated that she filed an application to the District Judge regarding the missing records of the said case, but the said application was not proved in the case. Since the record of the Joint District Judge, Court No. 2, was missing, the permission of the said Court is sufficient to lodge the FIR. Furthermore, in the absence of the District Judge, Narail, the District Judge (In charge), Narail also did not take necessary steps.

P.W. 1 stated that at the time of the occurrence on 01.08.2019 at 10.30 am, Afanur and Subhas were present, and Afanur was aware of the entire occurrence. P.W. 2 Afanur Rahman stated that on 01.08.2019 at 1.30 pm, he saw that the accused was requesting Chitra Rani to give the records for photocopy. P.W. 3 Subhas Chandra Das stated that he did not see the accused to take the documents, and he is not aware when the records were taken. The evidence of P.W. 1 is not corroborated by P.Ws 2 and 3.

P.W. 4 stated that he heard at about 11.00 am that Chitra Rani said that the accused Obaidur had taken the records, which is not corroborated by P.W. 2. He stated that he saw at 1.30 pm that the accused was requesting Chitra Rani to give the records for photocopy. Although P.W. 5 Rana Shikder stated that on 01.08.2019 at 10.30 am, he saw that the accused was talking to Chitra to give the records for photocopy, but he stated that earlier he did not make any statement to anyone, which proved that he was not examined under section 161 of the Code of Criminal Procedure, 1898 by the Investigating Officer. Therefore, the belated statement of P.W. 5 cannot be relied on by this Court. During cross-examination, P.W. 6 stated that at the time of handing over the records, he was not present. P.W. 7 is a police

personnel and he verified the address of the accused persons. P.W. 8 is the Recording Officer.

From the evidence discussed hereinabove, it reveals that the P.W. 1 Chitra Rani is the sole eyewitness of the alleged occurrence, and P.Ws 2 and 3 did not corroborate the evidence of P.W. 1. The initial version of the prosecution case stated in the GD No. 325 dated 08.08.2019 is not proved in the case. The statement made by P.W. 1 in the GD No. 325 dated 08.08.2019 is the First Information Report. The statement made by P.W. 1 in the FIR is the statement under section 161 of the Code of Criminal Procedure, 1898. P.W. 1 failed to give any reasonable explanation regarding the delay in lodging both the GD and the FIR. No reason has been assigned by P.W. 1 as why she did not lodge GD on the date of occurrence.

Admittedly, the Artha Rin Case No. 21 of 2016 pending in the Court of Joint District Judge, Court No. 2, was disposed of considering the compromise made between the parties. Furthermore, the Serestader of the Joint District Judge, Court No. 2, Narail, who is the custodian of the records of the Joint District Judge, Court No. 2, is not examined in the case. The alleged occurrence took place on 01.08.2019 at 10.30 am. Therefore, it is presumed that Serestader Saiful of the said Court was present at the relevant time in Court and his evidence is indispensable to prove the disappearance of the records of the said Court, but he was not examined in the case. Therefore, an adverse presumption is drawn against the prosecution for the non-examination of Serestader Saiful of the Joint District Judge, Court No. 2, Narail.

In the case of Akhtar Hossain alias Babul Akhtar alias Akhtar Ali and another Vs. The State reported in 44 DLR 83 para 30 judgment dated 25.08.1991, it has been held that;

‘In the instant case also an information was lodged by a person of the locality named Abdus Sattar and a GD Entry was made accordingly which gave authority to

the police to investigate the case and, accordingly, investigation was started. Therefore, it becomes questionable whether the information which was lodged to the police station by police officer, if the investigation proceeded for some time, can be treated as FIR. Furthermore, we find that FIR was lodged after more than a month on receipt of the report from the doctor who held the post-mortem examination and, therefore, the Ext. 1 cannot be treated as FIR. We have already found from the evidence of PWs mentioned hereinbefore, that there is no eye-witness of the murder, there is no proper identification of the dead body rather, the skeleton which was alleged to have been found in the Bhedagari beel. PW 1 Md. Abdul Wahab is a formal witness being a police officer. It appears that his evidence is the verbatim reproduction of information given by Abdus Sattar and from his knowledge derived from the statement made by the confessing accused Akbar Hossain. In the absence of examination of Abdus Sattar, the evidence of PW 1 narrating the story as was told by Abdus Sattar, is inadmissible in evidence. It is also submitted by the learned Advocate for the appellants that non-examination of Abdus Sattar and nonproduction of the GD Entry, consequent on which the UD Case was started and non-examination of the son of Haran, the boy who first saw the severed head at the beel, the prosecution case suffers from infirmities.”

In the case of State vs Al Hasib Bin Jamal alias Hasib and five others reported in 59 DLR 653 para 53, judgment dated 22.08.2007, it has been held that;

“The facts and circumstances of the above referred cases are fully consistent with those of the present case. So, the principle of law enunciated in those cases is fully applicable in this case. We, therefore, hold that the information as to shooting the deceased on receipt of which PW 21, the Officer-in-charge of the police station, rushed to the place of occurrence, started investigation of the case and returning to the police station recorded the information in the General Diary, being the information of commission of a cognisable offence earliest in point of time, on the basis of which law was already set in motion, is the first information report within the meaning of section 154 of the Code of Criminal Procedure and the first information report lodged later on during investigation is a statement of PW 1 under section 161 of the Code of Criminal Procedure and, as such, it is inadmissible.”

Furthermore, D.W. 1 accused Md Obaidur Rahman stated that on 01.08.2019, he was present in the Union Land Office, Perli Union and discharged his duty from 8.50 am to 5.00 pm, which is also corroborated by D.W. 2, who stated that the accused Obaidur discharged his duty in his office on 01.08.2019 from 8.50 am to 5.00 pm. The evidence of D.W. 2 regarding the presence of accused D.W. 1 in his office on 01.08.2019 from 8.50 am to 5.00 pm was not denied by the prosecution. When both parties adduce evidence, the Court shall consider the evidence of both parties in juxtaposition. In the instant case, both the Courts below arrived at a wrong finding of guilt of the accused Md Obaidur Rahman without considering the evidence of D.Ws 1 and 2. The prosecution failed to prove the charge against the accused Md Obaidur Rahman beyond all reasonable doubt.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgments and orders passed by the Courts below against the accused Md Obaidur Rahman are hereby set aside.

However, there will be no order as to costs.

Send down the lower Court's records at once.