

Present:

Mr. Justice Md. Salim

CRIMINAL RIVISION NO.409 OF 2007

Masuk Miah

..... Convict-Petitioner.

-VERSUS-

The State and another

..... Opposite parties.

No one appears

..... For the Petitioner.

Mr. Monzurul Alam Sujan, DAG with

Mr. Towhidul Islam, AAG

Mr. Syed Akhtarul Islam, AAG

..... For the State.

Heard on: 17.05.2026

Judgment on: 18.05.2026.

By this Rule, the opposite parties were called upon to show cause as to why the Judgment and order dated 17.01.2005 passed by the learned Additional Sessions Judge, Moulvibazar in Criminal Appeal No.19 of 1993 dismissing the appeal in affirming the Judgment and order of conviction and sentence dated 28.02.1993 passed by the learned Magistrate, 1st Class, Sree Mongal, Moulvibazar in C.R. Case No.201 of 1992 convicted the accused petitioner under section 323 of the penal code and sentenced to him suffer

rigorous imprisonment for 3(three) months and further convicted the accused petitioner under section 4 of the Dowry Prohibition Act, 1980 and sentenced to suffer rigorous imprisonment for 6(six) months and both the sentences will run concurrently should not be set aside, and or pass such other, or orders as to this court may seem fit and proper.

The prosecution case, in brief, is that the opposite party No. 2 as a complainant filed a petition of complaint before the Magistrate, 1st Class, Sree Mongal, Moulvibazar on 25.08.1992 alleging interalia that she was married to the convict petitioner about 10 years ago, according to Muslim Sharia law and their marriage was registered by kabinnama; that the said marriage was duly consummated and out of their wedlock three children were born; that after the said marriage the convict petitioner took in cash in several time from her father; that the date of occurrence the convict petitioner demanded further money and was putting pressure upon the complainant for the sum of Tk.20,000/- as dowery. On refusal, the convict petitioner tortured her and sent her to her father's

house. Therefore, the complainant is living an inhuman life with her children.

The learned Magistrate, Moulvibazar, on perusal of the complaint, examined the complainant under Section 200 of the Code of Criminal Procedure, and took cognizance of the case against the accused-petitioner under Section 323 of the Penal Code and Section 4 of the Dowry Prohibition Act, 1980.

Subsequently, the learned Magistrate, 1st Class, Sree Mongal, Moulvibazar, framed the charge against the accused petitioner under Section 323 of the Penal Code and Section 4 of the Dowry Prohibition Act, when they pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined as many as 06 (six) witnesses, whereas the defense examined 04 (four).

After the evidence was closed, the accused petitioner was examined under Section 342 of the Code of Criminal Procedure, during which he again pleaded his innocence.

After closure of the trial, the learned Magistrate, 1st Class, Moulvibazar, by the Judgment and order

dated 28.02.1993, convicted the accused petitioner under section 323 of the penal code and sentenced him to suffer rigorous imprisonment for 3(three) months, further convicting him under section 4 of the Dowry Prohibition Act, 1980 and sentencing him to suffer simple imprisonment for 6(six) months.

Being aggrieved by and dissatisfied with the above Judgment and order of conviction and sentence, the accused petitioner preferred an appeal, which has been registered as Criminal Appeal No.19 of 1993 before the Sessions Judge, Moulvibazar.

Eventually, the learned Additional Sessions Judge, Moulvibazar, by the Judgment and order dated 17.01.2005, disallowed the appeal, affirming the Judgment and order of conviction and sentence passed by the trial Court.

Being aggrieved by and dissatisfied with the above impugned Judgment and order, the accused petitioner has filed this Criminal Revision before this court and obtained the instant Rule.

Despite the matter appearing on the cause list for hearing with the name of the learned advocate for the

petitioner on consecutive dates, no one appears on behalf of the petitioner to press the Rule. However, in the presence of Mr. Monzurul Alam Sujjan, the learned Deputy Attorney General for the State, we are inclined to dispose of the Rule on its merits.

Mr. Monzurul Alam Sujjan, the learned Deputy Attorney General, appearing for the State submits that the prosecution has been able to prove its case against the convict petitioner beyond reasonable doubt, that both the court below opined that in fact and circumstances of the case and the heinous nature of offence, the convict petitioner deserved punishment as has been impugned by the courts below. So, there is no cogent reason to interfere with the same.

We have considered the submissions of the petitioner as stated in the Revisional application then that of the learned Deputy Attorney General, and have perused the impugned Judgment, the evidence, and other materials on record.

In order to bring home the charge, the prosecution examined as many as 6 (six) witnesses. Of them, P.W.1-Jamilla Begum, the complainant, in her

examination-in-chief, stated that the accused demanded dowry several times, and initially Tk.7,000/- was taken from her. Thereafter, the accused petitioner further demanded the sum of Tk.20,000/-. On refusal to pay the money, the accused petitioner assaulted and sent her to her father's house.

In cross-examination, she denies that the divorce has been acted upon.

P.W.2- Monir Miah, in his examination-in-chief, stated that the complainant of his daughter, that on 8 Bhadra at 8:30 am the accused demanded Tk.20,000/- from the complainant. On refusal of the same, the accused assaulted and sent her to his house.

In cross-examination, this witness stated that the occurrence was held on 8 Bhadra, but he could not remember the year.

P.W.3- Riasot Ullah, in his examination-in-chief, stated that last year in the month of Bhadra, the accused petitioner demanded dowry, assaulted complainant and sent her to her parent's house.

In cross-examination, this witness stated that he did not see the incident.

P.W.4- Md. Sanaullah, in his examination-in-chief, stated that the accused petitioner demanded dowry amounting to Tk.20,000/-, assaulted the complainant, and sent her to her parent's home.

In cross-examination, this witness stated that he did not see the incident.

P.W.5- Abdul Latif, in his examination-in-chief, stated that the parties in the case are husband and wife. He purchased land from the complainant's father. The complainant now lives with her parent's.

P.W.6- Md. Ismail Miah, in his examination-in-chief, stated that the parties to the case are husband and wife. He was not present at the place of occurrence.

On the contrary, the defense witness, Md. Kalim Ullah, as D.W.-1, deposed that approximately 3½ years ago, the accused divorced the complainant, and since then the complainant has been living at her parent's home.

D.W.2- Altafur Rahman deposed that approximately 3½ years ago, the accused divorced the complainant, and since then the complainant has been living at her parents' home.

D.W.3 - Mannan Miah deposed that the accused petitioner divorced the complainant approximately 3½ years ago.

D.W.4- Md. Lal Miah deposed that the accused petitioner divorced the complainant about 3½ years ago.

Analyzing the above evidence on record, it appears that the prosecution alleges that the convict-petitioner demanded money of Tk.20,000/- from the complainant, and upon refusal to pay the same, the convict-petitioner tortured her and sent her to her parents' house.

It is the settled proposition of law that the demand for simply money by the husband from his wife does not constitute any offense under the provisions so enumerated in section 4 of the Dowry Prohibition Act. This view gets support in the case of

Motilal Saha vs Zhunu Rani Saha, reported in 37 DLR (HCD) (1985) 27, LEX/BDHC/0017/1985 laid----

The amount allegedly demanded does not satisfy the definition of dowry as under the Act.

In the instant case, the prosecution claimed that the accused petitioner, who is the husband of the complainant, demanded Tk.20.000/- from the complainant. Moreover, the prosecution failed to prove the specific date of occurrence. Therefore, the allegation of simply demanding money by the husband to the wife does not constitute any offense under section 4 of the Dowry Prohibition Act.

Further, the trial court below also convicted the petitioner under section 323 of the penal code, which has been affirmed by the appellate court for the allegation that the accused petitioner tortured the complainant.

Section 323 of the penal code prescribes punishment for an indicated person who voluntarily causes hurt. In order to try an offense of section 323 of the penal code, it is to be proved that (I) the accused by his act caused bodily pain, disease, or infirmity to the

complainant, and (II) the accused did such act intentionally or with knowledge that it would cause hurt, etc.

A meticulous analysis, a careful survey of statements coming from the lips of witnesses, manifests that the prosecution has failed to prove that due to torture by the petitioner, the victim-complainant suffered bodily pain, disease, or infirmity.

In view of the above, we are of the view that the allegation of simple torture does not constitute any offense punishable under section 323 of the Penal Code.

Notably, it was imperative on the part of the learned Judge of the appellate court to find out whether every incriminating circumstance in respect of the implication of the convict person in the felony has been established by credible, reliable, and clinching evidence. The prosecution left no ring of truth evidence and circumstances to convict the petitioner and went overboard by fabricating false evidence and a colored version. Therefore, the learned Judge of the appellate court committed a serious error in affirming the

Judgment and order of conviction and sentence of the trial court below. Moreover, to justify the accused's guilt without identifying any reason for that conclusion, without an objective, independent, and impartial analysis or assessment of the materials, and without recording a finding of guilt against the convict before affirming the conviction awarded by the trial court below.

The doubtful and suspect nature of the evidence sought to be relied upon to substantiate the circumstances suffered from serious infirmities and lacked legal credibility. So, the findings of the learned Judge of the appellate court do not deserve the merit of approval of this court, having regard to the infirmities and illegalities vitiating them and the patent errors apparent on the face of the record, resulting in a serious and great miscarriage of Justice.

On assessing evidence, materials on record and rummaging fact and circumstances of the case and embarking a survey on the legal debate involved in the case, we are of this considered view that the prosecution failed to connect the convict-petitioner in

commission of offence under section 323 of the Penal Code and under section 4 of the Dowry Prohibition Act beyond any shadow of doubt and convict petitioner is required to be liberated of charges and be acquitted on the concept of Criminal Jurisprudence of Benefit of Doubt on finding him not guilty of charges staged against him. Thus, the Rule has substance, and the impugned Judgment and order are liable to be set aside.

Resultantly, the Rule is made absolute.

The Judgment and order dated 17.01.2005 passed by the learned Additional Sessions Judge, Moulvibazar in Criminal Appeal No.19 of 1993 dismissing the appeal in affirming the Judgment and order of conviction and sentence dated 28.02.1993 passed by the learned Magistrate, 1st Class, Sree Mongal, Moulvibazar in C.R. Case No.201 of 1992 convicted the accused petitioner under section 323 of the penal code and sentenced to him suffer rigorous imprisonment for 3(three) months and further convicted the accused petitioner under section 4 of the Dowry Prohibition Act, 1980 sentenced to suffer

rigorous imprisonment for 6(six) months are hereby set aside.

Let the accused person be discharged from his bail bonds.

Send down the lower courts' records with a copy of this Judgment.

(Md. Salim,J:)

Rakib(ABO)