

Present:
Mr. Justice Md. Salim

CRIMINAL REVISION NO.4942 OF 2023.

Abdus Salam
.....Convict-Petitioner.

-VERSUS-
The State and another
..... Opposite Parties.

No one appears
.....For the Petitioner.

Mr. Mohammad Hasibur Rahman with
Mr. Md. Anamul Hossain, Advocate
..... For the opposite party No.2.

Ms. Syeda Shajia Sharmin, D.A.G. with
Mr. Md. Rejaul Islam, A.A.G.
Mr. Khan Mahfuzun Noor, A.A.G.
.....For the State.

**Heard on: 15.01.2026, 20.01.2026
and 03.02.2026.**

Judgment on: 18.02.2026.

This Rule at the instance of convict-petitioner was issued on a revisional application against the judgment and order dated 15.11.2022 passed by the learned Additional Sessions Judge, 1st Court, Sylhet in Criminal Appeal No.143 of 2022 disallowed the appeal and affirming the judgment and order of conviction and sentence dated 18.04.2022 passed by the learned Senior Judicial Magistrate, 2nd Court, Sylhet in C.R. Case No.121

of 2020 convicting the accused-petitioner under Sections 406 and 420 of the Penal Code and sentencing him to suffer rigorous imprisonment for 1(one) year with pay fine of Tk.1,000/- in default to suffer simple imprisonment for a period of 1(one) month more.

The prosecution's case, in brief, is that the opposite party No. 2 herein, as complainant, filed a petition of complaint before the Judicial Magistrate, 4th Court, Sylhet, alleging, inter alia, that she permanently resides in the United Kingdom. The accused, Abdus Salam, is a neighbor of her village in Sylhet. To look after her property in her village and various family matters, she appointed the accused, Abdus Salam, as her attorney by a registered power of attorney dated 09.09.2018. The complainant also transferred various amounts of money to the accused's account from abroad from 2012 to 2015. The accused, Abdus Salam, also instilled confidence in the complainant by assuring her that she would profit from the purchase and sale of land in her locality through him. Subsequently, the complainant came to know that the accused, Abdus Salam, had transferred her homestead to one Dulal Mia secretly, worth Tk.52,00,000/-. The

transferor, Dulal Mial, paid the sale proceeds through three cheques dated 30.11.2019, 28.04.2020, and 30.07.2020, for amounts of TK 15,00,000/, 21,00,000/-, and 16,00,000/-, respectively, in a total of TK. 52,00,000/- in favor of the accused Abdus Salam. The complainant returned from abroad in 2020, and on 15.06.2020 at 7:00 pm, she, along with witnesses, went to the dwelling house of the accused Abdus Salam, and asked him to pay the sale proceeds. Although accused Abdus Salam had admitted selling the complainant's homestead, he refused to pay the sale proceeds to the complainant and became annoyed, threatening the complainant to kill her if she demanded the sale proceeds of the homestead again. The complainant believes that the accused, Abdus Salam, took advantage of the complainant's simplicity. In this way, the accused Abdus Salam has committed a breach of trust by cheating.

Upon receipt of the petition of complaint, the learned Senior Judicial Magistrate, 4th Court, Sylhet, examined the complainant under Section 200 of the Code of Criminal Procedure and took cognizance of the offense under Sections 406/420/418/506 of the Penal Code

against the convict-petitioner. Subsequently, the case was registered as C.R. case No. 121 of 2020.

The case, being ready for trial, was sent to the court of the learned Judicial Magistrate, 2nd Court, Sylhet. Subsequently, the learned Judicial Magistrate framed charges against the convict-petitioner under sections 406/420/418/506 of the Penal Code, to which he pleaded not guilty and claimed to be tried.

The prosecution, in order to prove its case, examined 2(two) witnesses. On the contrary, the defense examined none.

After the conclusion of the taking of evidence, the convict-appellant could not be examined under Section 342 of the Code of Criminal Procedure due to his absence before the court.

However, after conclusion of the trial, the learned Senior Judicial Magistrate, 2nd Court, Sylhet by the judgment and order dated 18.04.2022 convicted the petitioner under Sections 406/420 of the Penal Code and sentenced him to suffer rigorous imprisonment for 1(one)

year and to pay a fine of Tk.1,000/- in default to suffer simple imprisonment for 1(one) month more.

It is worth noting that the accused petitioner was absent from the court when the judgment was pronounced.

Being aggrieved by and dissatisfied with the above judgment and order, the petitioner, as appellant, preferred Criminal Appeal No.143 of 2022 before the learned Sessions Judge, Sylhet.

Eventually, the learned Additional Sessions Judge, 1st court, Sylhet, by the judgment and order dated 10.04.2025, disallowed the appeal and affirmed the judgment and order of conviction and sentence passed by the trial Court below.

Being aggrieved by and dissatisfied with the said judgment, the convict, as petitioner, preferred the instant Criminal Revision.

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 Ms. Syeda Shajia Sharmin, the learned Deputy Attorney General for the State, and Mr. Mohammad Hasibur Rahman, the learned advocate appearing on behalf of the complainant-opposite party No.2, we are inclined to dispose of the Rule on its merits.

Ms. Syeda Shajia Sharmin, the learned Deputy Attorney General, appearing for the State, submits that the allegations made in the petition of complaint clearly show that the accused petitioner had the initial intention to deceive the complainant and thereby cheating with the complainant, the prosecution rightly proved the charge brought against the convict-petitioner by adducing and producing the evidence on records, complying with all formalities as required under Section 420 of the Penal Code.

Mr. Mohammad Hasibur Rahman, the learned advocate appearing on behalf of the complainant-opposite party No.2, adopts the submission of Ms. Syeda Shajia Sharmin, the learned Deputy Attorney General, and prays for discharge of the Rule.

We have anxiously considered the submission of the accused petitioner inserted in the Criminal Revisional

Application, and the learned Deputy Attorney General, and perused the impugned judgment, evidence, and other materials on record.

In a criminal case, the conviction and sentence must be based on evidence beyond a reasonable doubt, and the prosecution must stand on its own legs throughout without taking advantage of any flaws in the defense. In the present case, the admitted position is that at the trial, the complainant, appearing in the witness box as P.W. 1, stated, in line with the petition of complaint, and P.W. 2 supported the evidence of P.W. 1, who were not cross-examined by the defense. In their evidence, P.W-1 Reba Khanam, the complainant in the instant case, deposed in the examination-in-chief that the accused, Abdus Salam, is a neighbor in her village in Sylhet. To look after her property in her village and various family matters, she appointed the accused, Abdus Salam, as her attorney by a registered power of attorney dated 09.09.2018. The accused, Abdus Salam, also instilled confidence in her by assuring her that she would profit from the purchase and sale of land in her locality through him. Subsequently, the complainant came to know that the accused, Abdus

Salam, had transferred 58.53 decimals of her homestead land to one Dulal Mia secretly, worth Tk. 52,00,000/-. The complainant returned from abroad in 2020, and on 15.06.2020 at 7:00 pm, she, along with witnesses, went to the dwelling house of the accused Abdus Salam, and asked him to pay the sale proceeds of her homestead land. Although the accused Abdus Salam had admitted selling her homestead, refused to pay the sale proceeds to her, and became annoyed, threatening the complainant to kill her if she demanded the sale proceeds again. This witness also produced a certified copy of the alleged sale deed No. 2459 dated 28/10/2019, receipts for the money transferred to the accused, and photocopies of three cheques by which the transferor, Dulal Mia, paid the sale proceeds to the accused, which are marked as exhibits accordingly.

P.W.-2 Abdus Samad deposed that the complainant and the accused are known to him. The accused, Abdus Salam, is his father's cousin. The complainant appointed the accused as attorney to look after her homestead. The accused sold the complainant's homestead to Dulal Mia on 28/10/2020 when the complainant was in London.

Later, upon her arrival in the country, she came to know that the accused had sold her homestead land. The complainant told him about the incident. Later, the complainant took him to the accused's house on 15.06.2020 at 7:00 pm, and when the complainant asked about the sale of the land, the accused admitted that he had sold the land, and when the complainant asked the accused to pay the sale proceeds, the accused refused to pay the sale proceeds of TK. 52,00,000/-.

In order to attack the provision of Section 420 of the Penal Code, it must be proved (i) that the accused has cheated the complainant; and (ii) that the accused has, by such cheating, induced the complainant to deliver any property to any purpose.

The word cheating has been defined in Section 415 of the Penal Code, which is quoted below:-

"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces

the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

From the above evidence, as it appears from the record, the convict-petitioner has cheated the complainant, thereby inducing the complainant to deliver the property to a person. In such circumstances, the learned Judicial Magistrate, 2nd court, Sylhet, very judiciously considered the evidence on record and justifiedly convicted the accused petitioner, and the learned Additional Sessions Judge, with consent reasons, affirmed the judgment of the trial court below in dismissing the appeal.

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 has able to connect the convict-appellant in commission of offence under section 406 and 420 of the Penal Code with

a reasonably considered the evidence, facts and circumstances of the case found the accused petitioner guilty of the charge staged against him. Thus, the Rule has no substance.

Resultantly, the Rule is discharged.

Send down the lower court records with a copy of this judgment.

(Md. Salim,J:)

Kabir(BO)