

Present:
Mr. Justice Md. Salim

CRIMINAL REVISION NO.163 OF 2023

Md. Sukchan Ali
.....Petitioner.

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

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

Mr. Md. Abdus Saleque with
Ms. Ranima Khatun, Advocate
..... For the opposite party No.2.

Mr. Monzurul Alam Sujon, DAG
Mr. Towhidul Islam, AAG
Mr. Syed Akhtarul Islam, AAG
..... For the State.

Heard on: 12.05.2026

Judgment on: 12.05.2026

By this Rule, the opposite parties were called upon to show cause as to why the judgment and order dated 07.11.2022 passed by the learned Sessions Judge, Natore in Criminal Appeal No.193 of 2021 allowed the appeal in part and modifying the judgment and order of conviction and sentence dated 12.08.2018 passed by the learned Senior Judicial Magistrate, 3rd Court, Natore in C.R. Case No.57 of 2017 (Shingra) with the effect that convicting the petitioner under Section 420 of the Penal

Code and sentencing him to suffer simple imprisonment for 6 (six) months and acquitted the accused from the charge under section 406 of the penal code instead of conviction and sentence for each of the offence under Sections 420 and 406 of the Penal Code for a period of 1(one) year with a fine of Tk.2,000/- in default to suffer simple imprisonment 1(one) month should not be set aside and or pass such order or orders as to this court seem fit and proper.

The prosecution case, in brief, is that the opposite party No. 2 herein, as complainant, filed a complaint before the Chief Judicial Magistrate, Natore, alleging that on 05.08.2011, the accused person entered into an agreement with the complainant that he took Tk.50,000/- in cash from her by mortgaging 66 decimals of land. Subsequently, on 17.08.2011, the accused further mortgaged his additional 33 decimals of land for Tk.30,000/- in the name of witness No. 2, by executing another agreement. In that agreement, the accused promised to pay 24 (twenty-four) maunds of Paddy annually, but did not comply. Therefore, she, along with the witnesses, went to the accused's house

on 15.01.2017 and demanded the said amount of Tk. 80,000/- and 144 Maunds of paddy valued at Tk.1,50,000/-, but the accused refused to pay the same. Thus, the accused committed fraud, a breach of trust, and embezzled Tk.2,50,000/-.

Upon receipt of the petition of complaint, the learned Judicial Magistrate, Natore, examined the complainant under Section 200 of the Code of Criminal Procedure and took cognizance of the offense under Sections 406 and 420 of the Penal Code against the convict-petitioner.

The case, ready for trial, was sent to the Senior Judicial Magistrate, 3rd Court, Natore. The learned Judicial Magistrate framed the charge against the accused under section 406/420 of the Penal Code. The charge was read over and explained to him, who then pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined 3 witnesses and produced several documents. On the contrary, the defense examined none.

After the conclusion of the taking of evidence, the accused-petitioner was not examined under section 342 of the Code of Criminal Procedure, due to his absence from the court.

However, after conclusion of the trial, the learned Senior Judicial Magistrate, 3rd Court, Natore by the judgment and order dated 12.08.2018 convicted the accused petitioner for each of the offence under Section 406 and 420 of the Penal Code and sentenced him to suffer simple imprisonment for 1(one) year and to pay a fine of Tk.2,000/- in default to suffer simple imprisonment for 1(one) month.

Being aggrieved by and dissatisfied with the above judgment and order of conviction and sentence, the convict petitioner preferred Criminal Appeal No.193 of 2021 before the Sessions Judge, Natore. Eventually, the learned Sessions Judge, Natore, by the judgment and order dated 07.11.2022, allowed the appeal in part and modifying the judgment and order of conviction and sentence dated 12.08.2018 passed by the learned Senior Judicial Magistrate, 3rd Court, Natore in C.R. Case No.57 of 2017 (Shingra) convicting the petitioner

under Section 420 of the Penal Code and sentencing him to suffer simple simple imprisonment for 06(six) months instead of 1 (one) year simple imprisonment while acquitted the accused petitioner of the conviction and sentence under section 406 of the penal code.

Being aggrieved by and dissatisfied with the said judgment and order of conviction and sentence, the convict, as petitioner, herein came before this court and obtained the instant Rule.

Despite the matter appearing in 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 Sujon, the learned Deputy Attorney General, and Ms. Ranima Khatun, on behalf of the complainant-opposite party No.2, we are inclined to dispose of the matter on merit.

Mr. Monzurul Alam Sujon, the learned Deputy Attorney General, appearing for the State, submits that the allegations made in the petition of complaint clearly showed 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 oral and materials evidence, complying with all formalities as required under Section 420 of the Penal Code and the learned appellate court below very judicially consider the evidence on record partly allowed the appeal and modifying the judgment and order of conviction and sentence of the trial court below. Thus, the Rule may be discharged.

Ms. Ranima Khatun, the learned advocate appearing on behalf of the complainant-opposite party No. 2, adopts the submission of Mr. Monzurul Alam Sujan, the learned Deputy Attorney General, and prays for the discharge of the Rule.

We have eagerly considered the submission of the accused petitioner inserted in the Criminal Revisional Application and the learned Deputy Attorney General, and have 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. To prove the charge, the prosecution examined as many as 3 witnesses, including P.W.1 Ambia Begum, the complainant, who deposed in her examination-in-chief that the accused Sukchan affixed his signature to a revenue stamp to receive Tk.50,000/- from her on 5.08.2011 by mortgage of his land. Thereafter, he received Tk. 30,000/- by putting his signature on a revenue stamp mortgage of his property of 3 bigha, and there was a contract between them to give 24th Maunds of Paddy to them each year. However, the accused did not perform the terms of the contract and ultimately refused to pay the paddy as required. Therefore, on 15.01.2017, she, along with the witnesses, went to the house of the accused Sukchan and demanded paddy and the amount due on the mortgage, but the accused Sukchan refused to give any paddy or money.

P.W.2- Merina Khatun deposed that accused Sukchan took Tk.50,000/- and Tk.30,000/- on 05.08.2011 and 17.08.2011, respectively, by signing two sets of agreements, with the condition that each

year the accused would give 24 maunds of Paddy to the complainant, but he did not comply with the promise. Therefore, the complainant, along with the witness, on 15.01.2017, went to the house of the accused, Sukchan; however, he refused to give Paddy or return the amount as per the contract.

P.W.3- Kafil Uddin deposed that the complainant is his wife, the accused Sukchan took Tk.50,000/- on 05.08.2011 by signing on a revenue stamp, the accused also took Tk.30,000/- by signing on a revenue stamp on 17.08.2011. According to the contract, the accused promised to give 24 maunds of paddy annually, but did not do so. However, on 15.01.2017, the complainant, along with witnesses, went to the house of the accused, Sukchan, and demanded the same, but he refused to pay any paddy or return the amount as per the contract.

A meticulous analysis and a careful survey of statements coming from the lips of witnesses manifest that the instant case arose out of the contract that the accused petitioner made 2 (two) contracts with the complainant, taking Tk.50,000/- and Tk.30,000/- on

the condition of giving 24 maunds of paddy annually. However, the accused petitioner did not comply with the promise.

To constitute an offense of cheating as described in Section 415 of the Penal Code, there must be a specific allegation that the accused has the initial intention of deceiving the complainant. It is also true that such intention can be gathered from the facts and circumstances of the case because such intention normally is concealed in the mind and is not expressed. If there are allegations that goods were delivered on credit, with a specific promise of repayment by a specific date, but the payment was not made within that time, it may be inferred that there was an initial intention to deceive.

In this regard, we may refer to the case of Arifur Rahman alias Bablu vs Shantos Kumar Sadhu, and another reported in 46 DLR (AD) 180. In this reported case, our Appellate Division considered several decisions on this point, specifically the decision given in 30 DLR page 327 wherein it was laid:-

“Intention to cheat must be proved to have existed at the time when the offence was committed, and subsequent conduct or failure to fulfill a promise would not constitute an offense under section 415 of the penal code. In 30 DLR 327, it was held that when a person promises to pay the price of goods, and on his undertaking to pay, the goods were delivered to him, but he fails to pay the price thereof, no case of cheating would lie against him.”

In light of the above principle, we have considered the case before us and found that, each year, the promised date of delivery of paddy, the promised date of making or giving delivery of goods, etc., are to be mentioned. The complainant mentioned only the first date of demand and the date of refusal. In this particular case before us, there is no allegation of any inducement or any specific promise. It is clear to us that the transaction between the accused and the complainant was a regular, routine business

transaction. In such a transaction, there is naturally no inducement and no specific promise.

Further, all normal business transactions imply the existence of either an oral or a written agreement. Even if a party purchases credit, some conditions are normally settled between the purchaser and the seller, constituting an agreement. It is not necessary that there should be a written agreement in every case, however, in the instant case, there are two contracts between the parties. The complainant had business transactions with the accused before, and, as we found above, the transaction in question was routine; accordingly, the accused's liability, if any, is civil.

As we have found from our above discussion that there are no ingredients of the offenses under Section of 420 of the Penal Code, the proceedings of the instant case were an abuse of the process of the court but the learned judge of the appellate court, as well as the trial court below did not at all minimum consider the same simply convicted the accused petitioner which is not tenable in the eye of law.

In view of the above facts and circumstances, and the discussion made above and the preponderance of jurisprudence, we are of the firm view that the courts below, in convicting the petitioner, misread the evidence and the facts, and committed an error of law. Therefore, we find merit in the Rule.

Resultantly, the Rule is made absolute.

The impugned judgment and order dated 07.11.2022 passed by the Sessions Judge, Natore, in Criminal Appeal No.193 of 2021, allowed the appeal in part and reversed the judgment and order of conviction and sentence dated 12.08.2018, passed by the learned Senior Judicial Magistrate, 3rd Court, Natore, in C.R. Case No.57 of 2017 (Shingra), is hereby set aside.

The accused petitioner is acquitted of the charges leveled against him and discharged from the bail bonds.

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

(Md. Salim, J:)