

Present:

Mr. Justice Md. Salim

CRIMINAL APPEAL NO.8072 of 2025

Md. Shakil

.....Appellant.

-Versus-

The State

.....Respondent.

Mr. Sk. Imran Kabir, Advocate

.....For the Appellant.

Mr. Monzurul Alam Sujan, DAG

Mr. Syed Akhtarul Islam, AAG

..... For the State.

Heard on 20.07.2026, 09.08.2026

and 10.08.2026

Judgment on 10.08.2026

This appeal is directed against the judgment and order of conviction and sentenced dated 25.06.2024 passed by the learned Additional Metropolitan Sessions Judge, 3rd Court, Dhaka in Metropolitan Sessions Case No.12100 of 2022 arising out of Tejgaon Industrial Police Station Case No.07 dated 04.10.2021 corresponding to G.R No. 339 of 2021 convicting the convict appellant under Table 14(Kha) of appended to Section 36(1) of the Madok Drobbo Niyantaran Ain, 2018 and sentencing him to suffer rigorous imprisonment for a period of 7(seven) years and pay a fine of Tk.5,000/- in default to suffer simple imprisonment for 03 months more.

The prosecution case, in brief, is that on 04.10.2021, one Md. Shaim Ahmed, Sub-Inspector (Unarmed), Tejgaon Zonal Team, DB, Tejgaon Division, DMP, Dhaka, as informant, lodged a First Information Report with Tejgaon Industrial Area Police Station, DMP, Dhaka, against the appellant and another accused under Serial No. 14(Kha) of the Table appended to Section 36(1), read with Section 41 of the Madok Drobboya Niontron Ain, 2018, alleging, inter alia, that on the same day at about 19:00 hours, acting upon secret information, the informant, accompanied by his raiding party, conducted a raid and arrested the convict-appellant on the road in front of the eastern gate of Oponin Medicine Company, Holding No. 360, adjacent to Tejgaon Industrial Area BG Press High School Mor, Tejgaon, DMP, Dhaka, but the other accused persons fled away from the place of occurrence. Thereafter, a search of the plastic bag held in his right hand was conducted, from which 40 bottles of Phensedyl, each containing 100 ml and bearing labels and corks, were recovered. Thereafter a seizure list was prepared at the place of occurrence. Subsequently, the police took the accused and the seized articles to the police station.

After investigation, the police submitted the charge sheet against the accused appellant under Table 14(Kha) appended to

Section 36(1) and 41 of the Madok Drobbo Niyran Ain, 2018, before the Chief Metropolitan Magistrate, Dhaka. Thereafter, the Magistrate took cognizance of the case against the accused appellant under Table 14(Kha) appended to Section 36(1) and 41 of the Madok Drobbo Niyran Ain, 2018.

As the case was ready for trial, it was transferred to the Metropolitan Sessions Judge, Dhaka, where it was registered as Metropolitan Sessions Case No. 12100 of 2022.

Subsequently, the learned Additional Metropolitan Sessions Judge, 3rd Court, Dhaka, framed the charge against the appellant under Tablet 14(Kha) of the Act appended to Section 36(1) of the Madok Drobbo Niyran Ain, 2018, which was read over and explained to the accused appellant, to which he pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined 11 (eleven) witnesses, while the defense examined none.

After the witnesses' evidence closed, the appellant was not examined under Section 342 of the Code of Criminal Procedure because he was absent.

After the conclusion of the trial, the learned Additional Sessions Judge, 3rd Court, Dhaka, by the impugned judgment and order dated 25.06.2024, convicted the accused appellant under

Table 14(Kha) of appended to Section 36(1) of the Madok Drobbo Niyantaran Ain, 2018 and sentenced him to suffer rigorous imprisonment for 7(seven) years and pay a fine of Tk.5,000/- in default to suffer simple imprisonment for 03 months more.

Mr. Sk. Imran Kabir, the learned Advocate appearing on behalf of the convict-appellant, submits that the appellant is innocent and has been falsely implicated in the instant case due to a conspiracy at the instance of the informant. He further submits that no incriminating article was recovered from the possession of the appellant and that the alleged recovery of 40 bottles of Phensedyl has not been proved by reliable and independent evidence. Accordingly, he submits that the impugned judgment and order of conviction and sentence is liable to be set aside and the appellant is entitled to be acquitted.

On the contrary, Mr. Monzurul Alam Sujan, the learned Deputy Attorney General appearing on behalf of the State, vehemently opposes the submissions made by the learned Advocate for the convict-appellant and submits that the prosecution case regarding the recovery of 40 bottles of Phensedyl has been duly corroborated by the evidence of the police witnesses as well as the independent seizure-list

witnesses. He further submits that the prosecution witnesses consistently deposed regarding the apprehension of the appellant and the recovery of the aforesaid contraband from his possession. The learned Trial Court, upon proper and judicious consideration of the evidence and materials on record, rightly found the appellant guilty under Table No. 14(Kha) appended to section 36(1) of the Madok Drobboya Niontron Ain, 2018. He, therefore, submits that the impugned judgment and order of conviction and sentence call for no interference and that the appeal is liable to be dismissed.

We have anxiously considered the submission advanced by the learned counsel for the appellant, then that the learned Deputy Attorney General, perused the impugned judgment, evidence, and other materials on record.

In order to prove the charge, the prosecution examined as many as 11 (eleven) witnesses. Of them -

P.W.1 Md. Shamim Ahmed, Sub-Inspector, Tejgaon Zonal Team, DB, Tejgaon Division, DMP, Dhaka, as informant, lodged an FIR with Tejgaon Industrial Area Police Station against the appellant under Table No. 14(Kha) of appended to Section 36(1), read with Section 41 of the Madok Drobboya Niontron Ain, 2018, alleging that on the date of occurrence, at about 19:00

hours, acting on secret information, he and his raiding party arrested the appellant in front of Opsonin Medicine Company at Tejgaon Industrial Area, while the other accused fled away. Thereafter, a search of the plastic bag held in his right hand was conducted, from which 40 bottles of Phensedyl, each containing 100 ml and bearing labels and corks, were recovered. Subsequently, the accused and the seized articles were taken to the police station.

P.W.-2, S.I. Md. Zahid Khan, in his deposition, stated that on 04.10.2021, while participating in a special anti-narcotics operation conducted by the DB, he, along with the raiding party, proceeded to the place of occurrence at about 19:00 hours based on secret information and arrived at the eastern side of the garage of Opsonin Pharmaceutical Company, adjacent to BG Press High School, Holding No. 360, within Tejgaon Industrial Area Police Station. Upon seeing the raiding party, the accused attempted to flee but was apprehended. Thereafter, in the presence of the witnesses, a search was conducted, and 40 bottles of Phensedyl, each containing 100 ml and bearing labels and corks, were recovered from a plastic bag held in the accused's right hand. A seizure list was prepared at the place of occurrence, and the signatures of the witnesses were obtained thereon.

P.W.-3, A.S.I. Md. Tarikul Islam, in his deposition stated that on 04.10.2021, while participating in a special anti-narcotics operation conducted by the DB, he, along with the raiding party, proceeded to the place of occurrence at about 19:00 hours on the basis of secret information and arrived at the eastern side of the garage of Opsonin Pharmaceutical Company, adjacent to BG Press High School, Holding No. 360, within Tejgaon Industrial Area Police Station. Upon seeing the police party, the accused, Shakil Babu, attempted to flee but was apprehended. Thereafter, in the presence of the witnesses, the plastic bag in the accused's right hand was searched, and 40 bottles of Phensedyl, each containing 100 ml and bearing labels and corks, were recovered. A seizure list was prepared at the place of occurrence, and the witnesses' signatures were obtained thereon. Subsequently, the accused and the seized articles were taken to the police station, where the case was lodged.

P.W.-4, A.S.I. Sree Rajib Majumdar, in his deposition, stated that on 04.10.2021, while participating in a special anti-narcotics operation conducted by the DB, he, along with the raiding party, proceeded to the place of occurrence on the basis of secret information and arrived at about 19:00 hours at the eastern side of the garage of Opsonin Pharmaceutical Company,

adjacent to BG Press High School, Holding No. 360, within Tejgaon Industrial Area Police Station. Upon seeing the police party, the accused, Shakil Babu, attempted to flee but was apprehended. Thereafter, in the presence of the witnesses, a search was conducted, and 40 bottles of Phensedyl, each containing 100 ml and bearing labels and corks, were recovered from a plastic bag held in the accused's right hand. A seizure list was prepared at the place of occurrence, and the witnesses' signatures were obtained thereon. Subsequently, the accused and the seized articles were taken to the police station, where the case was lodged.

P.W.-5, Constable Md. Atiur Rahman, in his deposition, stated that on 04.10.2021, while participating in a special anti-narcotics operation conducted by the DB, he, along with the raiding party, proceeded to the place of occurrence on the basis of secret information and arrived at about 19:00 hours at the eastern side of the garage of Oponin Pharmaceutical Company, adjacent to BG Press High School, Holding No. 360, within Tejgaon Industrial Area Police Station. Upon seeing the police party, the accused, Shakil Babu, attempted to flee but was apprehended. Thereafter, in the presence of the witnesses, a search was conducted, and 40 bottles of Phensedyl, each

containing 100 ml and bearing labels and corks, were recovered from a plastic bag held in the accused's right hand. A seizure list was prepared at the place of occurrence, and the witnesses' signatures were obtained thereon. Subsequently, the accused and the seized articles were taken to the police station, where the case was lodged.

P.W.-6, Constable Md. Zahirul Islam, in his deposition, stated that on 04.10.2021, while participating in a special anti-narcotics operation conducted by the DB, he, along with the raiding party, proceeded to the place of occurrence based on secret information and arrived at about 19:00 hours at the eastern side of the garage of Opsonin Pharmaceutical Company, adjacent to BG Press High School, Holding No. 360, within Tejgaon Industrial Area Police Station. Upon seeing the police party, the accused, Shakil Babu, attempted to flee but was apprehended. Thereafter, in the presence of the witnesses, the plastic bag in the accused's right hand was searched, and 40 bottles of Phensedyl, each containing 100 ml and bearing labels and corks, were recovered. A seizure list was prepared at the place of occurrence, and the signatures of the witnesses were obtained thereon. Subsequently, the accused and the seized articles were taken to the police station, where the case was lodged.

P.W.-7, Constable Md. Abdur Motaleb, a member of the raiding party accompanying the informant and a seizure-list witness, in his deposition stated that on 04.10.2021, while participating in a special anti-narcotics operation conducted by the DB, he, along with the raiding party, proceeded to the place of occurrence based on secret information and arrived at about 19:00 hours at the eastern side of the garage of Opsonin Pharmaceutical Company, adjacent to BG Press High School, Holding No. 360, within Tejgaon Industrial Area Police Station. Upon seeing the police party, the accused, Shakil Babu, attempted to flee but was apprehended. Thereafter, a search of the plastic bag held in his right hand was conducted, from which 40 bottles of Phensedyl, each containing 100 ml and bearing labels and corks, were recovered. He signed the seizure list prepared at the place of occurrence as a witness. Subsequently, the accused and the seized articles were taken to the police station.

P.W.-8, Investigating Officer S.I. Sukanta Biswas, in his deposition stated that he is the Investigating Officer of the case. On 04.10.2021, upon being entrusted with the investigation of the case by the Officer-in-Charge, he visited the place of occurrence, prepared the sketch map and index thereof, and

examined the witnesses and recorded their statements under section 161 of the Code of Criminal Procedure. He also verified the accused's address, sent the seized articles for chemical examination, collected the chemical examination report, and conducted the investigation both secretly and openly. Upon completion of the investigation, as the allegation against the accused under Serial No. 14(Kha) of the Table appended to section 36(1), read with section 41 of the Madok Drobboya Niontron Ain, 2018, was found prima facie established, he submitted Charge Sheet No. 441 dated 28.12.2021 before the court.

P.W.-9, public witness Md. Harun Molla, in his deposition, stated that he is a seizure-list witness in the case. He stated that the date of occurrence was 04.10.2021. On that day, at about 19:00 hours, after offering Maghrib prayer, while he was proceeding towards the garage, DB police stopped him on the road in front of the garage. Thereafter, police searched him in his presence, and 40 bottles of Phensedyl were recovered from his possession.

P.W.-10, public witness S.M. Rajib Sagar, in his deposition stated that he is a seizure-list witness in the case. He stated that the date of occurrence was 04.10.2021. On that day, at

about 19:00 hours, after finishing his office work, while he was proceeding towards the garage, DB police stopped him on the road in front of the garage. Thereafter, police searched him in his presence and recovered 40 bottles of Phensedyl from his possession.

P.W.-11, a public witness, in his deposition stated that he is a seizure-list witness in the case. On 04.10.2021, at about 19:00 hours, while he was proceeding towards his residence after offering prayer, DB police stopped him on the road in front of the garage of Opsonin Pharmaceutical Company. Thereafter, police searched him in his presence and recovered 40 bottles of Phensedyl from his possession. The DB police asked him to act as a witness to the apprehension of the accused and seizure of the articles and recorded his name and address.

Analyzing the evidence on record, it appears that P.W.1, Md. Shamim Ahmed, the informant of the instant case, narrated the prosecution case in detail and proved the First Information Report and the seizure list. P.W.2, S.I. Md. Zahid Khan, P.W.3, A.S.I. Md. Torikul Islam, P.W.4, A.S.I. Sree Rajib Mojumder, and P.W.5, Constable Md. Atiur Rahman, being members of the raiding party, corroborated P.W.1's evidence in material

particulars. P.W.6, Constable Md. Zahirul Islam, and P.W.8, S.I. Sukanta Biswas, the Investigating Officer, stated that the chemical report had been collected, duly proved, and identified. P.W.9, Md. Harun Molla, and P.W.10, S.M. Rajib Sagar, being public seizure-list witnesses, also supported the prosecution case. P.W.11 also claimed to be a seizure-list witness and stated that the search was conducted by the raiding party in his presence. Moreover, the chemical examination report indicates that the alleged phensedyl contains codine phosphate.

From the evidence on record, it appears that the members of the raiding party apprehended the appellant and, upon searching his person and possession, recovered 40 bottles of Phensidyl from his control and possession. The chemical examination report further indicates that the seized substance contained codeine phosphate. Thus, the prosecution has established the recovery of the aforesaid phensedyl from the control and possession of the appellant through the evidence on record.

Notably, in a case involving recovery of narcotics, the prosecution must establish the charge against the accused by adducing cogent, reliable, and convincing evidence. In this

regard, the case of *Takhaji Hiraji Vs. Thakore Kubersing Chamansing and others*, reported in 6 SCC (2001) 145, may be referred to, wherein it was held that-

“If already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinize the worth of the evidence adduced. The court of facts must ask itself -- whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive, then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it uninfluenced by the factum of non-examination of other witnesses.

In another case of Jahedul Islam @ Javed Vs. State, reported in MLR (AD) 77, laid down that-

“Even if independent witnesses and the seizure list witnesses do not support the prosecution case, conviction can be given relying only upon the evidence of police witnesses if such evidence inspires confidence or is worthy of credit.”

In another case of Nurul Islam Vs. State, reported in 9 MLR 429 laid that-

“In the absence of any cogent reason, there can be no logic to disbelieve the police witnesses simply they are members of the prosecuting agency.”

In the instant case, it has already been noticed that P.Ws.1 to 7, being police personnel, categorically deposed regarding the commission of the offence by the appellant and, in material particulars, corroborated one another. On the other hand, P.Ws.9 to 11, being the seizure-list witnesses, clearly and consistently stated in their respective depositions that the search of the appellant was conducted in their presence and that 40 bottles of Phensidyl were recovered from the control and possession of the

appellant. Thus, the police witnesses' evidence regarding the search and recovery of the contraband has been duly corroborated by the independent seizure-list witnesses P.W. 11. Further it appears that the seized substances contained codine phosphate and then it appears the prosecution successfully proved the charge against the appellant.

Further, upon perusal of the judgment and order passed by the learned court below, it appears that the learned Judge of the trial Court, upon careful and judicious consideration of the oral and documentary evidence on record, rightly found the appellant guilty of the charge. We find no cogent reason to interfere with the impugned judgment and order. Accordingly, we find no merit in the instant appeal. However, considering the facts and circumstances of the case, P.C. and P.R. of the convict appellant, it appears this is the 1st criminal case against him, and thus it appears that the ends of justice would be best served if the sentence is modified with the effect that the sentence be reduced to rigorous imprisonment for 5(five) years with a fine of Tk.1000/- in default to suffer simple imprisonment for 3(three) months more instead of 7(seven) years rigorous imprisonment

with a fine of Tk.5,000/- in default to suffer simple imprisonment for 3(three) months more.

Accordingly, the appeal is dismissed. The impugned judgment and order dated 25.06.2024 passed by the learned Additional Metropolitan Sessions Judge, 3rd Court, Dhaka, in Metropolitan Sessions Case No.12100 of 2022, arising out of Tejgaon Industrial Police Station Case No. 07 dated 04.10.2021, corresponding to G.R. No. 339 of 2021, is hereby affirmed with modification of sentence with the effect that the sentence be reduced to rigorous imprisonment for 5(five) years with a fine of Tk.1000/- in default to suffer simple imprisonment for 3(three) months more instead of 7(seven) years rigorous imprisonment with a fine of Tk.5,000/- in default to suffer simple imprisonment for 3(three) months more.

Send down the lower court records at once, along with a copy of the judgment.

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(Md. Salim, J).

Rakib(ABO)