` **IN THE SUPREME COURT OF BANGLADESH**
HIGH COURT DIVISION
(CRIMINAL REVISIONAL JURISDICTION)

Present:
Mr. Justice Md. Bashir Ullah

Criminal Revision No. 3111 of 2025

In the matter of:
An application under section 439 read with 435 of the Code of Criminal Procedure
-And-
In the matter of:
Mawlana Md. Shahab Uddin
... Convict-Petitioner
-Versus-
The State and another
...Complainant-Opposite Parties

Mr. A.K.M. Faiz, Senior Advocate with
Ms. Mirza Zesika Sultana and
Ms. Kakoli Akter, Advocates
... For the Convict- Petitioner

Mr. Golam Abbas Chowdhury, Senior Advocate
With
Mr. Gazi Touhidul Islam and
Mr. Muhammad Oli Miah, Advocates
... For the Complainant- opposite party No. 2

Mr. Md. Shafiquil Islam, D.A.G with
Ms. Farhana Abedin, A.A.G with
Mr. Hemaith Uddin, A.A.G and
Mr. K. M. Saiful Islam, A.A.G
… For the State

Heard on: 22.04.2026, 05.05.2026 and 07. 05.2026.
Judgment on: 14.05.2026.

This Rule was issued at the instance of the petitioner calling upon the opposite parties to show cause as to why the judgment and order dated 24.06.2025 passed by the learned Additional Sessions Judge, 1st Court, Habiganj in Criminal Appeal No. 157 of 2022, dismissing the appeal and thereby modifying the judgment and order dated 21.03.2022 passed by the learned Senior Judicial Magistrate, Habiganj in C.R Case No. 414 of 2017 (Hobi) convicting the petitioner under Section 500 of the Penal Code, 1860 and sentencing him to suffer rigorous imprisonment for 01(one) year and to pay a fine of Tk. 5,000/- (five thousand) should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

The facts, relevant for disposal of the Rule, in brief, are that the complainant instituted C.R. Case No. 414 of 2017 before the learned Chief Judicial Magistrate, Court No. 1, Habiganj alleging *inter alia* that a news item was published in the "Daily Pratidiner Bani" on 23.05.2017 concerning the arrest of the Finance Secretary for alleged misappropriation of funds belonging to "Artha Samajik Shikkha Unnayan Sangstha" and another news item was published in the same

newspaper on 24.05.2017 regarding the release of Vice Principal Shahab Uddin on condition of refund of the misappropriated funds. Thereafter, the accused published a rejoinder against the above-mentioned news items on 25.05.2017 in “the Daily Habiganj Samachar” allegedly defaming the complainant. In the said publication, the accused described the complainant as a “third class employee”, “Jambura Mollah”, “womanizer”, “fraud” and “greedy person”. The accused further alleged that the complainant had arranged illegal marriages in consideration of huge money. Thus, according to the complainant, the accused intentionally harmed and tarnished his reputation, which he valued at Taka 1 (one) crore. The complainant thereafter sent rejoinder to the publisher and editor of the newspaper on 27.05.2017 and 20.06.2017 respectively. Subsequently, the publisher and editor expressed their sincere apology by publishing another news item stating that the accused was solely responsible for the impugned publication. The complainant served a legal notice upon the accused on 20.06.2017, requesting him to retract the defamatory statements and tender an unconditional apology. Although the

accused received the legal notice, he neither replied thereto nor complied with the demand made therein. Consequently, the complainant instituted the complaint case under section 500 and 501 of the Penal Code, 1860

Upon receipt of the petition of complaint, the learned Judicial Magistrate took cognizance of the offence against the accused and issued process. Subsequently, on 08.03.2018, charges were framed under Section 500 and 501 of the Penal Code, to which the accused pleaded not guilty and claimed to be tried.

In course of trial, the prosecution examined 07(seven) witnesses and the defence examined 10(ten) witnesses. The accused was also examined under Section 342 of the Code of Criminal Procedure while he repeated innocence.

Upon conclusion of the trial and hearing of the parties, the learned Judicial Magistrate, Court No. 2, Habiganj convicted the accused under Section 500 of the Penal Code, 1860 and sentenced him to suffer simple imprisonment for 01(one) year with a fine of Tk. 5,000/- (five thousand) by rendering judgment and order dated 21.03.2022.

Challenging the conviction and sentence, the convict-petitioner filed Criminal Appeal No. 157 of 2022 before the learned Sessions Judge, Habiganj. Upon transfer the learned Additional Sessions Judge, 1st Court, Habiganj dismissed the appeal reducing the sentence of imprisonment from 01(one) year to 06(six) months by judgment and order dated 24.06.2025.

Being aggrieved by and dissatisfied with judgment and order dated 24.06.2025, the convict-petitioner preferred the instant Criminal Revision before this Court and obtained the Rule along with an order of bail.

Mr. A.K.M. Faiz, the learned Senior Advocate appearing on behalf of the petitioner contends that the complainant did not implead the publisher or editor of the daily newspaper in the case who published the alleged defamatory news and, as such, the case is not maintainable in law and hence the judgments and orders of conviction and sentence are liable to be set aside.

He further submits that the newspaper in question was not formally exhibited during trial therefore the very

foundation of the prosecution case remained unproved. He also submits that the defence examined 10(ten) witnesses who categorically testified that the complainant was commonly known in the locality as “Jambura Mollah” and as such no defamatory imputation was made against him.

The learned Advocate contends that the prosecution failed to prove that the alleged defamatory statements were actually published and therefore the essential ingredients of the offence under section 500 of the Penal Code were not established.

He further submits that the Courts below failed to properly appreciate the evidence on record and did not apply their judicial mind in passing the impugned judgments and orders of conviction and sentence and as such the same are liable to be set aside. He finally prays for making the Rule absolute.

In support of his contention the learned Advocate referred to the decisions passed in the cases of ***Khondker Moshtaque Ahmed Vs. Bangladesh***, reported in 34

DLR(AD)(1982)222 and ***Khondkar Abu Taleb Vs. The State***, reported in 19 DLR(SC)(1967)198.

Per contra, Mr. Golam Abbas Chowdhury, the learned Advocate appearing on behalf of the opposite party no. 2, submits that there is no illegality, impropriety or infirmity in the impugned judgments and orders. The Courts below have rightly convicted and sentenced the petitioner and as such the Rule is liable to be discharged.

He further submits that the decisions referred to by the learned Advocate for the petitioner are distinguishable on facts and are not applicable to the instant case.

He next submits that it is an admitted fact that news item was published concerning the complainant and therefore in view of section 58 of the Evidence Act, 1872, admitted facts need not be formally proved by exhibiting the newspaper in question.

Ms. Farhana Abedin, the learned Assistant Attorney General appearing for the State contends that the witnesses proved that the accused published the defamatory statements in the daily newspaper, so there is no need to Exhibit the news item of the daily newspaper in view of Section 58 of the

Evidence Act, 1872. She finally prays for discharging the Rule.

I have heard the learned Advocates for the parties, perused the revisional application, the impugned judgments and orders and the materials on record.

It is true that in a criminal trial relating to defamation, exhibition of the newspaper containing the alleged defamatory publication is ordinarily of considerable evidentiary importance. If the newspaper is not exhibited there is no "*corpus delicti*" (body of the crime). It is also true that the prosecution failed to produce the newspaper as exhibit. However, it reveals from the record that the newspaper was marked as Exhibit "X" and the trial court took judicial notice thereof considering the surrounding facts and circumstances of the case. In this regard, the trial Court observed as follows:

" উল্লেখ্য, যে পত্রিকায় প্রকাশিত সংবাদের বিরুদ্ধে অত্র মানহানির মোকাদ্দমাটি দায়ের করা হয়েছে উক্ত পত্রিকার সংশ্লিষ্ট সংবাদ বাদী কিংবা বিবাদীপক্ষ কর্তৃক প্রদর্শনী চিহ্নিত হয়নি। কিন্তু যেহেতু উক্ত পত্রিকায় প্রকাশিত সংবাদের বিষয়টি আসামী কর্তৃক স্বীকৃত এবং রায় পর্যালোচনার ক্ষেত্রে অতীব গুরুত্বপূর্ণ সেহেতু আইনের বিধান অনুযায়ী উক্ত বিগত ২৫/০৭/২০১৭ ইং তারিখের "দৈনিক হবিগঞ্জ সমাচার"

পত্রিকায় মাওলানা সাহাব উদ্দিন কর্তৃক ‘‘প্রকাশিত সংবাদের প্রতিবাদ’’ আদালত কর্তৃক প্রদর্শনী ‘‘X’’ হিসেবে চিহ্নিত করা হলো।’’

The appellate court below, while affirming the conviction similarly observed as follows:

‘‘আসামী আপীলকারীপক্ষের দাবী মতে, মূল মামলার বিচারকালে তর্কিত মামলার কমপ্লেইন্ট ও তর্কিত বিজ্ঞপ্তি প্রকাশিত পত্রিকাটি প্রদর্শনী করা না হলেও এবং তর্কিত পত্রিকার সম্পাদক বা পত্রিকার সংশ্লিষ্ট কাউকে মামলার সাক্ষী মান্য ও এইরুপ কোন সাক্ষীকে আদালতে পরীক্ষা করা না হলেও মূল মামলার রায়ে বিজ্ঞ বিচারিক আদালত বিগত ২৫/০৫/২০১৭ ইং তারিখের ‘‘দৈনিক হবিগঞ্জ সমাচার’’ পত্রিকার কপি প্রদর্শনী ‘‘X’’ হিসেবে চিহ্নিত করেন। অধিকন্তু মামলার কমপ্লেইন্ট বাদী কর্তৃক দায়েরকৃত নয় বা তর্কিত বিজ্ঞপ্তিটি আসামী কর্তৃক প্রকাশিত নয় মর্মে আসামীপক্ষের কোন দাবী নেই। সেহেতু তর্কিত মামলার কমপ্লেইন্ট বাদী কর্তৃক দায়েরকৃত ও তর্কিত বিজ্ঞপ্তিটি আসামী কর্তৃক প্রকাশিত হওয়ার বিষয়দ্বয় উভয়পক্ষের স্বীকৃত বিধায় উক্ত বিষয়দ্বয় পৃথকভাবে প্রমাণের আবশ্যকতা নেই।’’

It is settled that the Revisional Court generally does not interfere with concurrent findings of fact unless the same suffer from patent illegality, misreading of evidence, or non-consideration of material evidence on record.

The record further demonstrates that the prosecution examined as many as 07(seven) witnesses and all of whom were cross-examined by the defence. However, no suggestion

was put to any of the prosecution witnesses to the effect that no such news item had been published in the newspaper concerning the complainant. Furthermore, each of the prosecution witnesses testified that they had read the newspaper and seen the defamatory statement published by the accused. The defence examined 10(ten) witnesses, some of whom admitted that such news item had in fact been published in the newspaper. Therefore, publication of the impugned news item appears to have been substantially admitted by both parties.

Since the factum of publication was admitted, the same did not require further formal proof in view of section 58 of the Evidence Act, 1872, which provides as follows:

"58. Facts admitted need not be proved- No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

Consequently, the technical defect arising out of non-exhibition of the newspaper was cured by the oral evidence adduced by both sides. As such failure to formally exhibit the newspaper did not occasion any failure of justice.

It transpires from the record that the accused himself authored and sent the rejoinder containing the alleged defamatory imputation and therefore, he was the primary maker of the defamatory statements. In such circumstances the complainant was legally competent to proceed against the maker of defamatory statement without impleading the editor or publisher of the newspaper as an accused. There is no legal mandate requiring the editor or publisher to be impleaded in every prosecution for defamation arising out of publication in a newspaper.

It is stated in the complaint that "আমি উপরোক্ত বক্তব্যের তীব্র প্রতিবাদ করে একখানা প্রতিবাদ লিপি গত ২৭.০৫.২০১৭ ইং এবং গত ২০.০৬.২০১৭ ইং তারিখে আরেকটি লিগ্যাল নোটিশ রেজিঃ এ/ডি ডাকযোগে প্রত্রিকার সম্পাদক ও প্রকাশক বরাবরে প্রেরণ করিলে পত্রিকার সম্পাদক ও প্রকাশক

গত ১১.০৭.২০১৭ ইং তারিখে পত্রিকায় প্রকাশিত করে উপরোক্ত মানহানিকর বক্তব্য প্রচারের জন্য আন্তরিকভাবে দুঃখ প্রকাশ করেন এবং উপরোক্ত মানহানিকর বক্তব্যের সমূদয় দায়ভার প্রতিবাদকারীর অর্থ্যাৎ আসামীর বলে জানান।”

PW-1 substantiated the aforesaid allegations in his examination-in-chief. Since, the editor and publisher expressed regret and stated that they bore no responsibility for publishing the rejoinder, no illegality or irregularity was committed by the complainant in not impleading the editor or publisher as accused in the case.

Accordingly, non-joinder of the editor or publisher of the newspaper did not occasion any failure of justice. This is generally not fatal to the case involving the alleged offence. The absence of the editor or publisher of the newspaper as an accused does not invalidate the trial.

It further appears from the record that both the complainant and the convict-petitioner are socially respectable persons in their locality. The complainant reportedly involved with several social organizations while the convict-petitioner is a vice principal of a madrasha. However, it also appears that animosity existed between the parties and both had attempted to undermine the image and

dignity of each other which is wholly undesirable and unbecoming of persons of their social standing.

Notwithstanding the above, the evidence on record clearly establishes that the petitioner published defamatory statements including imputation such as “womanizer”, “fraud”, “greedy person” and allegations of illegal marriages for money. Although, the statement of “Jambura Mollah” was not proved.

On appraisal of facts unveiled in evidence adduced there can be no manner of doubt that the accused had acted consciously to defame the complainant by making some derogatory writings published in the ‘Daily Habiganj Samachar’ which indubitably constituted the offence of defamation punishable under section 500 of the Penal Code.

Considering the totality of the facts and circumstances of the case, as well as the social standing of the parties, this Court is of the view that the ends of justice would be best served if the sentence is modified by setting aside the substantive term of imprisonment and the fine while maintaining the conviction.

Accordingly, the conviction of the petitioner under Section 500 of the Penal Code, 1860 is hereby affirmed. However, the sentence is modified. The sentence of 06 (six) months rigorous imprisonment is reduced to the period already undergone and the fine of Taka 5,000/=(five thousand) is reduced to Taka 500/-, in default, the petitioner shall suffer simple imprisonment for further period of 03(three) days.

In the result, the Rule is discharged with modification of sentence as indicated above.

The judgment and order of conviction dated 21.03.2022, passed by the learned Senior Judicial Magistrate, Hobiganj as modified by the learned Additional Sessions Judge, 1st Court, Hobiganj in Criminal Appeal No. 157 of 2022 dated 24.06.2025, stands affirmed in respect of conviction and modified in respect of sentence as above.

Let the judgment along with the lower Court records (LCR) be transmitted to the Court concerned forthwith.

(Md. Bashir Ullah, J.)

Md. Ariful Islam Khan
Bench Officer