

**IN THE SUPREME COURT OF
BANGLADESH**

HIGH COURT DIVISION

**(CRIMINAL REVISIONAL
JURISDICTION)**

Present:

Mr. Justice Md. Shohrwardi

Criminal Revision No. 63 of 2007

Md. Habibur Rahman

.....Convict Petitioner

-versus-

The State

.....Opposite Party

No one appears

.... For the convict petitioner

Mr. Md. Anichur Rahman, DAG with

Mr. Mir Moniruzzaman, AAG with

Mr. Md. Sarwar Alam Khan, AAG with

Ms. Nargis Parvin (Alija), AAG

....For the State

Heard on 11.03.2026

Judgment delivered on 12.03.2026

On an application under sections 439 and read with section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 09.08.2006 passed by Additional Sessions Judge, Court No.1, Jessore in Criminal

Appeal No. 160 of 2005 affirming the judgment and order of conviction and sentenced dated 31.08.2005 passed by the Additional District Magistrate, Jessore in Sharsha Police Station Case No. 06 dated 27.09.2004 corresponding G.R. Case No. 692 of 2004 convicting the petitioner under table 7(Ka) of section 19(1) of the Narcotics Control Act, 1990 and sentencing him thereunder to suffer rigorous imprisonment for 01 (one) year, and fine of Tk. 2000 under section 19(4) of the said Act, in default, to suffer rigorous imprisonment for 03(three) months should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The prosecution's case, in short, is that based on secret information, the informant Md. Humayun Kabir, Inspector (Sharsha), Narcotics Control Directorate, Benapole Circle, Jessore, along with the departmental S.I. S.M. Kamrul Alam and A.S.I. Md. Isahque Mullah, Constable Abdus Sukur Mulla, Constable Mohammad Ali, Constable Motaleb Ali, Constable Rabindra Nath Biswas, on 27.09.2004 at 07.05 pm encircled the house of Md. Habibur Rahman, situated at village Doger Bagan of Sharsha Thana and searched his north biti hut in the presence of witnesses and recovered 200 grams of cannabis kept under the cot in the bag made of plastic, and prepared the seizure list in the presence of witnesses. At the time of recovery of the said cannabis, the accused was absconding.

Md. Humayun Kabir, Inspector of the Directorate of Narcotics Control, Benapole Circle, Jessore, took up the investigation of the case. During the investigation, he visited

the place of occurrence, prepared the sketch map and index, recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898, and sent the cannabis for the report of the chemical examination. After completing the investigation, he found prima facie truth of the allegation against the accused Md. Habibur Rahman under table 7(Ka) of section 19(1)/19(4) of the মাদক দ্রব্য নিয়ন্ত্রন আইন, ১৯৯০.

During the trial, charge was framed under table 7(Ka) of Sections 19(1) and 19(4) of the মাদক দ্রব্য নিয়ন্ত্রন আইন, ১৯৯০, which was read over and explained to the accused Md. Habibur Rahman and he pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 06 witnesses to prove the charge against the accused, and the defence cross-examined the prosecution witnesses. After examination of the prosecution witnesses, the accused was examined under section 342 of the Code of Criminal Procedure, 1898, and he declined to adduce any D.W.

After concluding the trial, the Additional District Magistrate, Jessore, by judgment and order dated 31.08.2005, convicted the petitioner Md. Habibur Rahman under table 7(Ka) of sections 19(1) of the মাদক দ্রব্য নিয়ন্ত্রন আইন, ১৯৯০ and sentenced him thereunder to suffer rigorous imprisonment for 01 (one) year and a fine of Tk. 2000 under section 19(4) of the said Act, in default, to suffer rigorous imprisonment for 03 (three) months. Being aggrieved by, and dissatisfied with the said judgment and order passed by the trial court, the convict petitioner filed Criminal Appeal No. 160 of 2005 before the

Sessions Judge, Jessore. The Additional Sessions Judge, Court No. 1, Jessore, heard the appeal and, by impugned judgment and order dated 09.08.2006, affirmed the judgment and order passed by the trial court against which the convict petitioner obtained the Rule.

No one appears on behalf of the convict petitioner.

The learned Deputy Attorney General Mr. Md. Anichur Rahman Khan appearing along with learned Assistant Attorney General Mr. Mir Moniruzzaman on behalf of the State submits that 200 grams of cannabis was recovered on 27.09.2004 at 7.00 pm from the north bitu hut of the accused in presence of the witnesses and the evidence of informant P.W. 1 regarding the recovery of 200 grams of cannabis is corroborated by P.Ws. 2 to 5 and the prosecution proved the charge against the accused beyond all reasonable doubt and both the courts below on correct assessment and evaluation of the evidence legally passed the impugned judgment and order. He prayed for discharging the Rule.

I have considered the submission of the learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, who appeared along with the learned Assistant Attorney General Mr. Mir Moniruzzaman on behalf of the state, perused the evidence, impugned judgments and orders passed by the courts below and the records.

P.W. 1 Md. Humayun Kabir, Inspector, Director of Narcotics Control, Benapole Circle, Jessore, is the informant of

the case. He stated that on 27.09.2004 at 3.00 pm, based on a secret informant, he, along with S.I. S.M. Kamrul Alam and A.S.I. Md. Isahque Mullah, Constable Motaleb, Constable Rabindra Nath Biswas, and Constable Sukur Mollah, raided the north biti hut of the accused Md. Habibur Rahman and searching the south-facing tinshed bitihut, recovered 200 grams of cannabis kept under the cot in a bag made of plastic, and in the presence of witnesses prepared the seizure list at the place of occurrence and sent the symbol of the cannabis to the chemical examiner for report. He affirmed that at the time of the occurrence, the accused was on the run. During cross-examination, he affirmed that at the time of searching the house, the accused fled away, but his wife was present in the house. The above evidence of P.W. 1 regarding the recovery of 200 grams of cannabis from his house is corroborated by P.W. 2 A.S.I. Md. Ishak Mollah, and P.W. 3 Constable Rabindranath Biswas.

P.W. 4 Md. Enamul Haque is a seizure list witness. He stated that on 27.09.2004 at 3.00 pm hearing hue and cry near the house of the accused Md. Habibur Rahman, he saw the officers of the Narcotics Control Department. They took his signature. He proved the seizure list as Exhibit 2. He stated that he saw the cannabis at the place of occurrence. P.W. 5 Md. Abdul Aziz stated that 8/9 months ago at 3.00 pm, while he was going through the house of the accused, driving the van, the police took his signature on a paper. The officer of the

Narcotics Department informed him that the cannabis was recovered from his possession.

On scrutiny of the evidence of the prosecution witnesses reveals that P.Ws 4 and 5, who are the witnesses of the seizure list, were not present at the time of recovery of the alleged cannabis from the house of the accused Md. Habibur Rahman. P.Ws. 4 and 5 came to the place of occurrence after the alleged recovery of the cannabis. To prove an offence regarding the recovery of the cannabis, the report of the chemical examiner is indispensable. In the instance case, the report of the chemical examiner is not proved. In the absence of the report of the chemical examiner, it cannot be said that the cannabis was recovered from the house of the accused.

In view of the above evidence, findings, observation, and the proposition, I am of the view that the prosecution failed to prove the charge against the accused beyond all reasonable doubt.

I find merit in the rule.

In the result, the Rule is made absolute.

The impugned judgment and order passed by the courts below against the convict petitioner Md. Habibur Rahman is hereby set aside.

Send down the lower Court's records at once.