

**Present:**

Mr. Justice Raziuddin Ahmed

**Criminal Revision No. 1263 of 2007**

Md. Salauddin Sardar

----- Petitioner

**-Vs-**

The State and another

----- Opposite Parties

Mr. Das Tapan Kumar, Senior Advocate

----For the Petitioner

Mr. Md. Badrul Anwar, D.A.G with

Mr. Md. Taherul Islam (Tawhid), D.A.G

---- For the State

**Heard on 27.01.2026, 08.02.2026, 16.02. 2026**

**and Judgment on 03.03.2026**

On an application filed under section 439 read with section 435 of the Code of Criminal Procedure, 1898 a Rule was issued calling upon the Deputy Commissioner, Satkhira to show cause as to why the impugned judgment and order dated 23.04.2007 passed by the learned Additional Sessions Judge, 2<sup>nd</sup> Court, Satkhira in Criminal Appeal No. 05 of 1997 dismissing the appeal and thereby affirming those dated 29.12.1996 passed by the learned Additional District Magistrate, Satkhira in C.R. Case No. 131/1996 (Asha) should not be set aside and/or pass such other or further order or orders passed as this court may deem fit and proper.

The prosecution case, in short, for disposal of the Rule is that one Mst. Rashida Khatun, as complainant, filed a petition of complaint before the First Class Magistrate, Nalishi Adalat "Ga"

Anchol, Satkhira, on 15.11.1995 against the accused-petitioner alleging, inter alia, that she had been working as a maid servant in the house of the accused-petitioner for about 2/3 years. During that period, the accused allegedly began expressing love towards her repeatedly and used to give her dresses and toiletries, as a result of which she developed an affection for him. Subsequently, on 5th Ashwin, 1401 B.S., at about 10.00 p.m., the accused allegedly took her to a nearby village and kept her in an isolated room. Thereafter, a Maulana with a beard, along with another unknown person, appeared there and informed her that a marriage would be solemnised between her and the accused. It was alleged that, by such representation, the accused induced her to believe that they had become husband and wife, and thereafter they started living together and cohabiting as such, as a result of which she became pregnant. The complainant further alleged that when she requested the accused to accept her as his wife and to provide shelter in his house, he refused to do so and denied the marriage altogether. In the meantime, she gave birth to a male child. Finding no other alternative, she instituted the present case.

After examining the complainant under section 200 of the Code of Criminal Procedure, the learned Magistrate sent the matter to the Officer-in-Charge of Ashashuni Police Station for enquiry. Subsequently, the Investigating Officer submitted his enquiry report stating that no prima facie case was found against the accused. Thereafter, the complainant filed a naraji petition. On the basis of a

subsequent judicial enquiry, cognizance was taken under sections 493/417 of the Penal Code, and the case was transferred to the learned Additional District Magistrate, Satkhira, for trial.

Charge was framed against the accused-petitioner under sections 493/417 of the Penal Code. The accused pleaded not guilty and claimed to be tried.

At the trial, the prosecution examined 4 witnesses, while the defence examined none. Upon conclusion of the trial, the learned Additional District Magistrate, Satkhira, by judgment and order dated 29.12.1996, convicted the accused under section 417 of the Penal Code and sentenced him to suffer simple imprisonment for 1(one) year, but acquitted him of the charge under section 493 of the Penal Code.

Being aggrieved by and dissatisfied with the said judgment and order dated 29.12.1996, the accused-petitioner preferred Criminal Appeal No. 05 of 1997 before the learned Sessions Judge, Satkhira. The appeal was transferred to the Court of learned Additional Sessions Judge, 2nd Court, Satkhira, for hearing, who, by judgment and order dated 23.04.2007, dismissed the appeal and affirmed the judgment and order of conviction and sentence passed by the trial Court.

Challenging the aforesaid appellate judgment and order, the accused-petitioner moved this Court and obtained the present Rule along with an order of bail on 30.09.2007.

Mr. Das Tapan Kumar, the learned Advocate appearing on behalf of the accused-petitioner, submits that although charge was framed against the accused under sections 493/417 of the Penal Code, he was acquitted of the charge under section 493, which goes to the root of the prosecution story. He submits that once the principal allegation of deceitful inducement to believe in a lawful marriage was found not proved, the accused could not legally be convicted under section 417 of the Penal Code on the same set of facts.

He further submits that the learned trial Court relied upon the evidence of P.Ws. 1, 2 and 3, who are all closely related and highly interested witnesses, without independent corroboration. He also contends that the enquiry report submitted by the Officer-in-Charge of Ashashuni Police Station, wherein no prima facie case was found, was not properly considered by the trial Court. He next submits that the learned appellate Court failed to re-assess the evidence independently and dismissed the appeal in a perfunctory and slipshod manner. According to him, both the Courts below failed to appreciate the evidence on record in its proper perspective and thereby committed an error of law in convicting and sentencing the accused-petitioner.

On the other hand, Mr. A.S.M. Badrul Anwar, the learned Deputy Attorney General, assisted by Mr. Md. Taherul Islam (Tawhid), the learned Deputy Attorney General, appearing on behalf of opposite party No. 1, opposes the Rule and submits that both the

Courts below, upon proper consideration of the materials on record, arrived at concurrent findings of fact and law, which call for no interference by this Court in revisional jurisdiction.

None appears on behalf of the complainant-opposite party No. 2 at the time of hearing of the Rule.

I have heard the learned Advocates for the respective sides, perused the revisional application, the judgments of the Courts below, and the materials on record.

It appears that the accused-petitioner has been convicted under section 417 of the Penal Code. For proper appreciation of the matter, it is necessary to refer to section 417 of the Penal Code, which reads as follows:

“Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

In order to constitute an offence under section 417, it must be established that the accused “cheated” a person within the meaning of section 415 of the Penal Code.

From the record, it appears that the substance of the allegation against the accused-petitioner is that he, by deceitful means, induced the complainant to believe that she was lawfully married to him, and on that belief she cohabited and had sexual intercourse with him. Such allegation squarely attracts section 493 of the Penal Code. Section 493 provides:

“Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

It further appears that a specific charge under section 493 of the Penal Code was in fact framed against the accused-petitioner. However, the learned trial Court acquitted him of that charge. Such acquittal clearly indicates that the prosecution failed to prove the foundational allegation that the accused, by deceit, caused the complainant to believe that she was lawfully married to him and thereby induced her to cohabit with him.

The prosecution examined 4 witnesses. P.W.1, Rashida Khatun, the complainant herself, stated that she used to work in the house of the accused as a maid servant; that on 5th Ashwin, 1402 B.S., the accused took her to a nearby village, arranged a false marriage, and thereafter lived with her as husband and wife; that she became pregnant and later gave birth to a son; and that when she requested the accused to accept her as wife, he refused. She further deposed that a village salish was held, where the accused was allegedly fined Tk. 4,000/-, which he refused to accept, and that in another salish arranged by the local mosque committee, he was again fined Tk. 8,000/-, which the complainant also refused to accept. She

admitted in her evidence that P.W.2 is her father and P.W.3 is her uncle.

P.Ws. 2, 3 and 4 supported the complainant's version. However, it appears that no neutral or independent witness was examined by the prosecution. The persons in whose presence the alleged marriage took place were not produced. No documentary evidence, nor any convincing circumstantial evidence, was adduced to prove the alleged marriage or the deceitful inducement forming the basis of the accusation.

It also appears that the prosecution failed to establish, by cogent and reliable evidence, that the accused committed any act which would satisfy the ingredients of section 493 of the Penal Code. The learned trial Court itself was not convinced regarding the commission of the offence under section 493 and, accordingly, acquitted the accused of that charge. In effect, the very substratum of the prosecution case as narrated in the complaint petition thus stood disbelieved.

It is true that from the evidence on record it appears that the complainant became pregnant and gave birth to a male child. But mere proof of pregnancy or birth of a child is not sufficient to sustain a conviction under section 417 of the Penal Code unless the ingredients of "cheating" are established beyond reasonable doubt.

The record further shows that the enquiry report submitted by the Officer-in-Charge of Ashashuni Police Station found no prima

facie case against the accused. The learned trial Court does not appear to have considered this aspect in its proper perspective. The learned trial Court also failed to give due consideration to the affidavit said to have been made by local persons to the effect that the accused was a man of good character and had not committed the offence alleged. Whether or not such affidavit by itself could exonerate the accused, the same was nonetheless a relevant circumstance requiring consideration.

In the case of Nasiruddin Mahmud vs. Momtazuddin Ahmed, reported in 36 DLR (AD) 14, the Appellate Division observed, in substance, that in order to constitute cheating, it must be established that a person was dishonestly induced to part with property or to do or omit to do something which he or she would not have done or omitted if not so deceived. In the instant case, the prosecution has failed to prove by cogent evidence that the accused committed the offence of cheating within the meaning of section 415, punishable under section 417, of the Penal Code.

When the prosecution story of deceitful marriage and cohabitation was not proved to the satisfaction of the trial Court under section 493 of the Penal Code, the conviction under section 417 on the same evidence and on the same factual foundation cannot be sustained in law.

The learned appellate Court, instead of undertaking an independent assessment of the evidence, mechanically affirmed the judgment of the trial Court. In the facts and circumstances of the

case, I am constrained to hold that both the Courts below failed to properly appreciate the evidence on record and thereby arrived at findings which are not sustainable in law.

Accordingly, I find substance in the Rule.

In the result, the Rule is made absolute.

The judgment and order dated 23.04.2007 passed by the learned Additional Sessions Judge, 2nd Court, Satkhira, in Criminal Appeal No. 05 of 1997 affirming the judgment and order dated 29.12.1996 passed by the learned Additional District Magistrate, Satkhira, in C.R. Case No. 131 of 1996 (Asha), are hereby set aside.

The accused-petitioner is acquitted of the charge under section 417 of the Penal Code and discharged from his bail bond.

Let the lower Court records be sent down at once.

Communicate this order to the Court concerned at once.

S.Naher/ABO