

Present:

Mr. Justice Raziuddin Ahmed

Criminal Revision No.1148 of 2007

Md. Jana @ Jinnat Ali

----- Convict-Petitioner

**-Vs-**

The State

----- Opposite Party

No one appears

----For the Petitioner

Mr. Md. Asad Uddin, D.A.G with

Mr. Md. Habibur Rahman Sarker, A.A.G and

Mr. Kazi Mohammad Moniruzzaman, A.A.G

-----For the State

Heard on 21.04.2026, 28.04.2026 and

Judgment on 07.05.2026

On an application filed under section 439 read with section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the Deputy Commissioner, Jhenidah to show cause as to why the judgment and order dated 10.07.2007 passed by the learned Sessions Judge, Jhenidah in Criminal Appeal No.26 of 2007 dismissing the appeal and thereby upholding the judgment and order dated 23.03.2006 passed by the learned Assistant Sessions Judge, 2<sup>nd</sup> Court, Jhenidah in Sessions Case No.07 of 2004 arising out of Kaliganj P.S. Case No.22 dated 26.11.2002 corresponding to Kaliganj G.R. No.185 of 2002 should not be set aside and/or to pass such other or further order or orders as to this court may deem fit and proper.

The prosecution case, in short, is that one Billal Hossain, Sub Inspector of the Directorate of Narcotics Control, Jhenidah Circle, as informant, lodged an FIR with Kaligonj Police Station stating inter alia, that on 26.11.2002 at about 10.20 a.m. to 10.50 a.m., on the basis of a secret information, he along with his accompanying force went to the house of the accused petitioner and encircled the same. Upon search, 3 (three) bottles of Phensidyl, wrapped in a packet, were allegedly recovered from underneath a bed inside the house of the accused petitioner. The informant prepared a seizure list in presence of witnesses and sent 1 (one) bottle of Phensidyl to the laboratory for chemical examination. The estimated value of the seized articles was Tk. 300. Thereafter, the informant filed the instant case against the accused petitioner under section 19(1), 3(Ka) of the Narcotics Control Act, 1990.

The police, after investigation, submitted charge sheet No.177 dated 30.12.2002 against the accused petitioner under section 19(1), 3(Ka), of the Narcotics Control Act, 1990.

After receipt of the charge sheet, the case was sent to the learned Sessions Judge, Jhenidah, who took cognizance of the offence and transferred the case to the Court of the learned Assistant Sessions Judge, 2nd Court, Jhenidah for trial. The learned trial Court framed charge against the accused petitioner under sections 19(1), 3(Ka) and 19(4) of the Narcotics Control Act, 1990. The charge was read over and explained to the accused petitioner, who pleaded not guilty and claimed to be tried.

At the trial, the prosecution examined 4 four witnesses, while the defence examined none.

Upon conclusion of the trial, the learned Assistant Sessions Judge, 2nd Court, Jhenidah, by judgment and order dated 23.03.2006, found the accused petitioner guilty under sections 19(1), 3(Ka) and 19(4) of the Narcotics Control Act, 1990 and sentenced him to suffer rigorous imprisonment for 2 two years and to pay a fine of Tk. 200, in default, to suffer rigorous imprisonment for 1 one month.

Being aggrieved by the said judgment and order of conviction and sentence, the accused petitioner preferred Criminal Appeal No. 26 of 2007 before the learned Sessions Judge, Jhenidah. The learned Sessions Judge, Jhenidah, by judgment and order dated 10.07.2007, dismissed the appeal and affirmed the judgment and order of conviction and sentence passed by the trial Court.

Being aggrieved by and dissatisfied with the judgment and order dated 10.07.2007, the accused petitioner moved this Court in revision and obtained the present Rule on 05.09.2007 along with an order of bail.

At the time of hearing of the Rule, no one appears on behalf of the accused petitioner.

Mr. Md. Habibur Rahman Sarker, the learned Assistant Attorney General appearing for the State, submits that the prosecution has been able to prove the charge against the accused petitioner beyond reasonable doubt. He further submits that both the Courts below, upon proper

appreciation of the evidence and materials on record, rightly convicted and sentenced the accused petitioner, and as such, the impugned judgment and order suffer from no illegality or infirmity calling for interference by this Court in its revisional jurisdiction.

I have heard the learned Assistant Attorney General for the State, perused the impugned judgments and orders of the Courts below, and carefully examined the evidence and materials on record.

It appears from the materials on record that the allegation brought against the accused petitioner is that 3 three bottles of Phensidyl were recovered from his house. In order to sustain a conviction under the relevant provisions of the Narcotics Control Act, 1990, the prosecution is required to prove, beyond reasonable doubt, that the alleged contraband articles were recovered from the conscious and exclusive possession of the accused petitioner.

It is a settled principle of criminal jurisprudence that the burden lies entirely upon the prosecution to prove its case beyond reasonable doubt, and such burden never shifts upon the accused. If any reasonable doubt arises from the evidence on record, the accused is entitled to the benefit of such doubt.

On scrutiny of the evidence, it appears that P.W. 1 Md. Bellal Hossain, the informant, stated in his deposition that on 26.11.2002, on the basis of secret information, he along with his accompanying force went to the house of the accused petitioner and, after searching the house,

recovered 3 (three) bottles of Phensidyl. However, he categorically admitted that the accused petitioner was not present at the time of the alleged recovery.

P.W. 2 Md. Ayen Uddin stated in his deposition that on 26.11.2002, while he was going to the field, he saw many people and 4 four police personnel gathered in the house of the accused petitioner. He further stated that the police were writing something on the verandah of the house and thereafter gave him a paper and asked him to put his thumb impression thereon. He stated that the police showed him a bottle of Phensidyl.

P.W. 3 Rashidul Islam stated in his deposition that on 26.11.2002, while he was going to the field from his house, he saw many people in the house of the accused petitioner. When he reached the house, he saw that the police were writing something keeping 1 (one) bottle of Phensidyl in front of them. The police then asked him to sign the paper and he put his signature as instructed by the police.

P.W. 4 Inspector Sheikh Saidur Rahman, the Investigating Officer, stated that on 29.11.2002, after receiving charge of investigation, he visited the place of occurrence, prepared the sketch map, recorded the statements of witnesses under section 161 of the Code of Criminal Procedure, sent the sample to the laboratory for chemical examination and, after investigation, submitted charge sheet against the accused petitioner.

It appears that P.Ws. 2 and 3 are the seizure list witnesses. From a careful scrutiny of their depositions, it is evident that neither of them was present at the time of the alleged recovery of Phensidyl from the house of the accused petitioner. Rather, both of them stated that they put their signature or thumb impression on the seizure list at the instruction of the police. Therefore, their evidence does not prove that the alleged 3 three bottles of Phensidyl were recovered from the possession of the accused petitioner in their presence.

Recovery from the conscious and exclusive possession of the accused petitioner is a vital ingredient for sustaining a conviction under the relevant provisions of the Narcotics Control Act, 1990. In the present case, the informant himself admitted that the accused petitioner was not present at the time of recovery. The seizure list witnesses did not support the actual recovery in their presence. They merely stated that they signed or put thumb impression on the seizure list at the instruction of the police. In such circumstances, serious doubt arises as to whether the alleged contraband articles were in fact recovered from the conscious and exclusive possession of the accused petitioner.

In the case of *Saiful Islam Md. and another vs. The State*, reported in 10 MLR HC 308, it has been held that the legal burden of proof always remains upon the prosecution and that in all criminal cases the prosecution must prove the guilt of the accused beyond reasonable doubt. It was further held that presumption, conjecture and surmise cannot take the

place of evidence, and conviction on the basis of shaky and unreliable evidence is not proper or legal.

It is also well settled that where the prosecution case suffers from material contradiction, inconsistency or serious doubt, such evidence cannot safely be relied upon for maintaining a conviction.

In the present case, the prosecution failed to examine any neutral witness who could prove the alleged recovery from the possession of the accused petitioner. The seizure list witnesses did not support the actual recovery. The accused petitioner was admittedly absent at the time of the alleged recovery. The evidence on record, therefore, does not establish beyond reasonable doubt that the alleged Phensidyl was recovered from the conscious and exclusive possession of the accused petitioner.

On an overall consideration of the evidence and materials on record, I am of the view that the prosecution has failed to prove the charge against the accused petitioner beyond reasonable doubt. Both the Courts below failed to properly consider the serious infirmities in the prosecution case and wrongly convicted and sentenced the accused petitioner.

Accordingly, the Rule is made absolute.

The judgment and order dated 10.07.2007 passed by the learned Sessions Judge, Jhenidah in Criminal Appeal No. 26 of 2007 affirming the judgment and order of conviction and sentence dated 23.03.2006 passed by the learned Assistant Sessions Judge, 2nd Court, Jhenidah are hereby set aside.

The accused petitioner is acquitted of the charge levelled against him. He is discharged from his bail bond.

Send down the lower Court records at once.

Communicate this judgment and order to the concerned Court immediately.

Imam Sarwar/B.O