Present:

Mr. Justice Raziuddin Ahmed

Criminal Revision No.1112 of 2007

Rashed

------ Convict-Appellant-Petitioner

-Vs-

The State

------ Opposite Party

Mr. Md. Eunus Ali Akanda, Advocate

----For the Appellant

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 20.04.2026, 27.04.2026 and

Judgment on 03.05.2026

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, Dhaka to show cause as to why the judgment and order dated 29.04.2007 passed by the learned Additional Sessions Judge, 4th Court, Dhaka in Criminal Appeal No.805 of 2005 dismissing the appeal and upholding the judgment and order dated 04.07.2005 passed by the learned Metropolitan Magistrate, Dhaka in Mirpur Police Station Case No.19(4)97 corresponding to G.R. No.1354 of 1997 and T.R. No.28 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 on 04.04.1997 at about 15:50 hours one Md. Delowar Hossain, Constable, D.M.P., Dhaka, as informant, lodged a First Information Report with Mirpur Police Station stating, inter alia, that on 03.04.1997 at about 6:00 p.m., accused Ripon, Prince, Saju, Shipon, Mehedi, Gofran, Liton, Tipu, Babu, Kallol, Rashed and Moni were quarrelling in front of the Government Vagrant Reception Centre, Mirpur. The informant went there and asked them to leave the place. Thereupon, the accused persons became enraged, chased him up to the police barrack, entered therein and assaulted him indiscriminately. It was further alleged that they snatched away Tk. 1,700/- and a Casio wristwatch from his possession. Hearing the hue and cry, Constable Hafizur Rahman rushed to the place of occurrence and caught accused Md. Rashed, but the other accused persons subsequently managed to release him from his custody. Hence, the case was started.

After investigation, police submitted charge-sheet being Charge-sheet No. 691 dated 30.06.1998 against the accused-petitioner and 6(six) others under sections 143, 332 and 379 of the Penal Code.

The learned trial Court framed charge against the accused persons under sections 143, 332 and 379 of the Penal Code. The prosecution examined 2(two) witnesses out of 7(seven) charge-sheeted witnesses. The defence examined none.

Upon consideration of the evidence and materials on record, the learned Metropolitan Magistrate, Dhaka, by judgment and order dated 04.07.2005, convicted the accused-petitioner under section 143 of the

Penal Code and sentenced him to suffer simple imprisonment for 4(four) months.

Against the said judgment and order of conviction and sentence, the accused-petitioner preferred Criminal Appeal No. 805 of 2005 before the learned Metropolitan Sessions Judge, Dhaka, which was subsequently transferred to the learned Metropolitan Additional Sessions Judge, 4th Court, Dhaka. The learned appellate Court, by judgment and order dated 29.04.2007, dismissed the appeal and affirmed the judgment and order of conviction and sentence passed by the learned trial Court.

Being aggrieved by and dissatisfied with the judgment and order passed by the learned appellate Court, the accused-petitioner moved this Court in revision and obtained the present Rule on 09.09.2007 along with an order of bail.

Mr. Md. Eunus Ali Akanda, the learned Advocate appearing for the accused-petitioner, submits that the judgment and order passed by the learned appellate Court is illegal, improper and not sustainable in law. He further submits that this is a case of no legal evidence and both the Courts below committed error in relying upon the prosecution witnesses, whose evidence does not disclose any offence against the accused-petitioner. He lastly submits that the accused-petitioner was sentenced to suffer simple imprisonment for 4(four) months and has already suffered custody for a substantial period. Therefore, the ends of justice would be met if the sentence is reduced to the period already undergone.

Mr. Md. Asad Uddin, the learned Deputy Attorney General appearing for the State, opposes the Rule and submits that the accused-petitioner was apprehended from the place of occurrence and was specifically named in the First Information Report. He further submits that both the Courts below, upon proper assessment of the evidence on record, rightly convicted the accused-petitioner under section 143 of the Penal Code and, as such, there is no illegality, impropriety, misreading or non-consideration of evidence requiring interference by this Court in revisional jurisdiction.

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

It appears from the record that the occurrence took place on 03.04.1997 at about 6:00 p.m. in front of the Government Vagrant Reception Centre, Mirpur. The prosecution case is that the accused persons were quarrelling and fighting in front of the said place and, when Constable Delowar Hossain requested them to leave, they chased him up to the police barrack, entered therein and assaulted him. It was also alleged that Tk. 1,700/- and a Casio watch were snatched away from him.

P.W.1 Constable Hafizur Rahman stated in his deposition that on 03.04.1997 at about 6:00 p.m. he was on duty at the Mirpur Vagrant Reception Centre. At that time, two rival groups were fighting in front of the police barrack. Constable Delowar Hossain went there and asked them to stop fighting and leave the place. As a result, an altercation took place

between Delowar Hossain and the accused persons. At one stage, the accused persons chased Delowar Hossain up to the police barrack, assaulted him and snatched away Tk. 1,700/- and a Casio watch. P.W.1 further stated that, when he reached the place of occurrence, the accused persons fled away, but he managed to catch accused Rashed. He also identified the accused-petitioner in the dock.

P.W.2 Constable Shukur Ali also supported the prosecution case. He stated that when the accused persons were asked to stop fighting, they chased the police constable Delowar Hossain up to the police barrack, entered therein, assaulted him and snatched away Tk. 1,700/-. He further stated that Liton, Saju and Mehedi along with 10/12 others were involved in the incident.

It is true that out of 7(seven) charge-sheeted witnesses, the prosecution examined only 2(two) witnesses. However, the number of witnesses is not the determining factor. The Court is required to consider whether the evidence adduced is trustworthy, consistent and sufficient to prove the charge. In the present case, P.W.1 is a direct witness, who categorically stated that he caught the accused-petitioner from the place of occurrence and identified him in Court. His evidence has been materially supported by P.W.2.

The learned trial Court found that the evidence on record was not sufficient to prove the charges under sections 332 and 379 of the Penal Code against the accused persons beyond reasonable doubt. However, so far as accused-petitioner Rashed is concerned, the learned trial Court

found sufficient evidence to hold that he was a member of the unlawful assembly involved in the occurrence.

Section 143 of the Penal Code provides punishment for being a member of an unlawful assembly. To sustain a conviction under section 143, the prosecution must prove that the accused was one of five or more persons forming an unlawful assembly within the meaning of section 141 of the Penal Code. From the evidence of P.W.1 and P.W.2, it appears that the accused-petitioner was present with the group of accused persons at the time of occurrence and was apprehended from the place of occurrence. His name was also specifically mentioned in the First Information Report.

In exercising revisional jurisdiction, this Court does not ordinarily interfere with concurrent findings of fact unless there is apparent illegality, gross misreading or non-reading of evidence, perversity in appreciation of materials, or failure of justice. On scrutiny of the evidence and the judgments of the Courts below, I do not find any such illegality or infirmity in the conviction of the accused-petitioner under section 143 of the Penal Code.

Accordingly, the conviction of the accused-petitioner under section 143 of the Penal Code is maintained.

Now the question remains as to the sentence. The occurrence took place in the year 1997. The accused-petitioner has faced the agony of criminal proceedings for a long period. It further appears that the sentence awarded was simple imprisonment for 4(four) months and the accused-

petitioner has already undergone custody for a substantial period. Considering the facts and circumstances of the case, the nature of the offence, the long lapse of time and the period already undergone by the accused-petitioner, I am of the view that the ends of justice would be sufficiently met if the sentence is reduced to the period already undergone.

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

The judgment and order dated 29.04.2007 passed by the learned Metropolitan Additional Sessions Judge, 4th Court, Dhaka in Criminal Appeal No. 805 of 2005 affirming the judgment and order dated 04.07.2005 passed by the learned Metropolitan Magistrate, Dhaka is hereby maintained so far as the conviction of the accused-petitioner under section 143 of the Penal Code is concerned.

However, the sentence of simple imprisonment for 4(four) months is reduced to the period already undergone by the accused-petitioner.

The accused-petitioner is discharged from his bail bond.

Let the lower Court records be sent down at once.

Communicate this judgment and order immediately.

Imam Sarwar/B.O