Present:

Mr. Justice Raziuddin Ahmed

Criminal Revision No.1343 of 2007

Md. Akkas Ali

----Complainant-Petitioner

-Vs-

The State and another

---- Opposite Parties

Mr. Md. Khurshid Alam Khan, Senior Advocate

----For the Petitioner

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

Mr. Mohammad Moniruzzaman, A.A.G

---- For the Opposite Party No.1

No one appears

---- For the Opposite Party No.2

Heard on 24.02.2026, 26.02.2026, 04.03.2026, 08.03.2026, 09.03.2026 & Judgment on 12.03.2026.

On an application filed under section 435 read with section 439 of the Code of Criminal Procedure,1898 Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 18.07.2007 passed by the learned Additional Sessions Judge, 2nd Court, Dhaka acquitting opposite party No.2, in Metro. Criminal Appeal No.934 of 2005 after setting aside the judgment and order dated 27.07.2005 passed by the learned Metropolitan Magistrate, Dhaka should not be set aside and/ or such other or further order or orders passed as to this court may seem fit and proper.

The relevant facts, necessary for disposal of this Rule, are that the complainant-petitioner and accused-opposite party No. 2 are close

relatives. In the year 1996, accused-opposite party No. 2 came to the house of the complainant and informed him that an undisputed land was available for purchase and that both of them could purchase the same jointly. The accused showed certain deeds and documents relating to the land, described as C.S. Plot No. 39, S.A. Plot No.76, situated at Mouza-Ibrahimpur, Dhaka. The total area of the land was stated to be 06 decimals, and the total price was fixed at Tk. 8,00,000/-. It was agreed that the accused would purchase 03 decimals and the complainant would purchase 03 decimals.

Pursuant to the said representation, the complainant paid Tk. 60,000/- to the accused on 16.04.1996 in presence of witnesses. Thereafter, on 08.06.1996, the complainant further paid Tk. 2,40,000/- to the accused in presence of witnesses. The accused also received Tk. 63,000/- from the complainant for soil testing, earth filling and erection of boundary wall. Thus, the complainant paid a total sum of Tk. 3,63,000/- to the accused.

After payment of the said amount, the complainant requested the accused to take steps for execution of the sale deed. At that stage, the accused informed the complainant that there were disputes regarding the land and that it would take some time to resolve the matter. Having come to know about the disputed nature of the land, the complainant decided not to purchase the land and requested the accused to refund the money.

Thereafter, the accused issued a cheque dated 28.11.1999 for Tk. 50,000/- in favour of the complainant as part payment. The complainant

presented the cheque for encashment, but the same was dishonoured due to insufficient fund. Subsequently, an attempt was made by close relatives of both parties to settle the matter amicably. On 26.02.2000, the accused executed an undertaking on a non-judicial stamp of Tk. 150/-, admitting his liability and undertaking to repay the money by 31.08.2000. On 29.06.2000, the accused paid Tk. 50,000/- in cash to the complainant, but thereafter failed and refused to pay the remaining amount despite repeated demands.

Finding no other alternative, the complainant filed the instant case against accused-opposite party No. 2 under sections 420 and 406 of the Penal Code.

Upon receipt of the complaint, the learned Metropolitan Magistrate, Dhaka took cognizance of the offence and, in due course, framed charge against the accused under sections 420 and 406 of the Penal Code on 12.12.2001. The charge was read over and explained to the accused, who pleaded not guilty and claimed to be tried.

The prosecution examined 5 witnesses, while the defence examined 3 witnesses.

Upon consideration of the evidence and materials on record, the learned Metropolitan Magistrate, Dhaka, by judgment and order dated 27.07.2005, convicted accused-opposite party No. 2 under section 420 of the Penal Code and sentenced him to suffer rigorous imprisonment for 2 years and to pay a fine of Tk. 2,000/-, in default to suffer simple

imprisonment for 2 months. The accused was also convicted under section 406 of the Penal Code and sentenced to suffer rigorous imprisonment for 1 year.

Being aggrieved, the accused preferred Metro Criminal Appeal No. 934 of 2005 before the learned Metropolitan Sessions Judge, Dhaka, which was subsequently transferred to the learned Additional Metropolitan Sessions Judge, 2nd Court, Dhaka for hearing. The appellate Court, by judgment and order dated 18.07.2007, allowed the appeal and acquitted the accused from the charges.

Being aggrieved by the said judgment and order of acquittal, the complainant-petitioner moved this Court in revision and obtained the present Rule.

At the time of hearing, Mr. Md. Khurshid Alam Khan, learned Senior Advocate appearing for the complainant-petitioner, submits that the learned trial Court, upon proper appreciation of the evidence on record, rightly convicted the accused under sections 420 and 406 of the Penal Code, but the appellate Court, without proper assessment of the evidence, illegally acquitted the accused. He submits that the appellate Court, being the final Court of fact, failed to discharge its duty to reassess the evidence properly.

The learned Advocate further submits that the accused induced the complainant to part with a substantial amount of money by representing that the land was undisputed and would be purchased jointly. However,

after receiving the money, the accused purchased the entire land in his own name and thereafter refused to refund the complainant's money. He further submits that the issuance of a cheque for Tk. 50,000/-, which was dishonoured for insufficient fund, and the subsequent execution of the undertaking dated 26.02.2000 clearly demonstrate the dishonest intention of the accused.

He finally submits that the appellate Court failed to consider that the accused admitted receipt of money through the undertaking and that the materials on record clearly establish the ingredients of section 420 of the Penal Code. He, therefore, submits that the judgment and order passed by the appellate Court is liable to be set aside.

Mr. Md. Taherul Islam (Tawhid), learned Deputy Attorney General, appearing with Mr. Mohammad Moniruzzaman, learned Assistant Attorney General, for the State-opposite party No. 1, supports the Rule in part. He submits that the evidence on record clearly shows that the accused received Tk. 3,63,000/- from the complainant in connection with the purchase of land and subsequently failed to refund the money. He further submits that the issuance of a dishonoured cheque and execution of the undertaking support the prosecution case under section 420 of the Penal Code.

However, the learned Deputy Attorney General fairly submits that the evidence on record does not satisfactorily establish the necessary ingredients of section 406 of the Penal Code, particularly entrustment in the legal sense. He, therefore, submits that while the materials disclose a

case under section 420 of the Penal Code, the conviction under section 406 would not be sustainable.

No one appears on behalf of accused-opposite party No. 2, although the matter appeared in the list on several dates as part-heard matter and the names of the learned Advocates for opposite party No. 2 were specifically printed in the cause list.

I have heard the learned Advocate for the complainant-petitioner and the learned Deputy Attorney General for the State. I have also perused the revisional application, the judgments of the Courts below, the evidence of the witnesses and the materials on record.

The main questions for consideration are:

First, whether the appellate Court properly appreciated the evidence on record while acquitting the accused.

Second, whether the materials on record disclose the ingredients of section 420 of the Penal Code.

Third, whether the ingredients of section 406 of the Penal Code are present.

Fourth, what order may legally be passed by this Court in exercise of revisional jurisdiction against an order of acquittal.

P.W. 1, Md. Akkas Ali, the complainant, stated in his deposition that the accused, who is his close relative, proposed that they would jointly purchase the land in question. He stated that on 16.04.1996 he paid Tk.

60,000/- to the accused and on 08.06.1996 he further paid Tk. 2,40,000/-. He also paid Tk. 63,000/- for earth filling and construction of boundary wall. Thus, according to him, the accused received Tk. 3,63,000/-.

P.W. 1 further stated that when he requested the accused to execute the sale deed, the accused informed him that there were disputes regarding the land. Later, the complainant came to know that the accused had purchased the entire land in his own name. When the complainant demanded refund of the money, the accused issued a cheque for Tk. 50,000/-, which was dishonoured due to insufficient fund. Thereafter, the accused executed an undertaking dated 26.02.2000 on a non-judicial stamp, promising to repay the money within 31.08.2000. Although Tk. 50,000/- was subsequently paid, the remaining amount was not refunded.

P.W. 2, Mawlana Abdur Rahim, corroborated the prosecution case and stated that the accused received Tk. 3,63,000/- from the complainant for purchasing land, but neither purchased any land for the complainant nor returned the money. He further stated that the accused admitted receipt of the money, but subsequently refused to refund it.

P.W. 3, Md. Afzal Hossain Chowdhury, also supported the prosecution case. He stated that the accused received Tk. 3,00,000/- from the complainant and further received Tk. 63,000/- for erecting boundary wall. He further stated that when dispute arose regarding the land, the complainant refused to purchase it, but the accused purchased the entire land in his own name. He also proved the undertaking dated 26.02.2000, by which the accused promised to repay the money.

P.W. 4, Abdus Salam Mollah, stated that the complainant paid Tk. 3,00,000/- to the accused for purchasing land and another Tk. 63,000/-. He stated that the accused paid Tk. 50,000/- but did not pay the remaining amount. Although in cross-examination he stated that he heard about the transaction, his evidence supports the surrounding circumstances of the prosecution case.

P.W. 5, Abdul Khaleq, also stated that the complainant paid money to the accused and that the accused executed an undertaking promising to repay the amount by 31.08.2000, but failed to do so.

The defence examined 3 witnesses.

D.W. 1, Nazrul Islam, stated that he executed the agreement for sale and that Tk. 86,000/- paid as earnest money was returned to the complainant. However, in cross-examination he admitted that he did not know whether the accused received any additional money.

D.W. 2, Md. Haidar Hossain Chowdhury, stated that the complainant paid only Tk. 86,000/- as earnest money and that the said amount was returned by cheque and cash. However, in cross-examination he admitted that he did not know about the alleged payments of Tk. 60,000/-, Tk. 2,40,000/- and Tk. 63,000/-. He also stated that he did not know about the undertaking dated 26.02.2000.

D.W. 3, Shah A.N.M. Ahsan Habib Babu, stated that the complainant did not pay any money and that the case was falsely filed. But in cross-examination he admitted that he did not know the date of

occurrence and did not know about the payment of Tk. 60,000/-, Tk. 2,40,000/-, Tk. 63,000/- or the dishonoured cheque.

On careful scrutiny of the evidence, it appears that the prosecution witnesses have consistently stated that the accused received money from the complainant for the purpose of purchasing land jointly. Their evidence is materially supported by the subsequent conduct of the accused, namely issuance of cheque, dishonour of the cheque, execution of the undertaking and partial payment of Tk. 50,000/-. The defence evidence, on the other hand, does not effectively rebut the prosecution case regarding receipt of the substantial amount of money.

Section 420 of the Penal Code requires proof of cheating and dishonest inducement resulting in delivery of property. It is well settled that mere breach of contract does not constitute cheating. To bring a case within section 420, it must be shown that the accused had dishonest or fraudulent intention at the inception of the transaction. However, such intention may be inferred from the facts, circumstances and subsequent conduct of the accused.

In *Nasiruddin Mahmud and others Vs. Momtazuddin Ahmed and others*, 36 DLR (AD) 14, the Appellate Division held that to justify a prosecution for cheating, there must be initial intention to deceive. The principle is that subsequent failure to perform a promise, by itself, is not sufficient, unless the surrounding circumstances indicate that the promise was made dishonestly from the beginning.

In the present case, the accused induced the complainant to part with money by representing that the land was undisputed and would be purchased jointly. After receiving the money, the accused did not execute any sale deed in favour of the complainant. Rather, the evidence indicates that the accused purchased the entire land in his own name. The accused then issued a cheque which was dishonoured and subsequently executed an undertaking admitting liability. These facts, taken together, constitute strong circumstances from which dishonest intention may be inferred.

The appellate Court appears to have treated the matter as a mere civil dispute arising out of a land transaction. That approach is not correct. It is true that a transaction arising out of contract may give rise to civil liability. But where the materials disclose dishonest inducement and deception from the inception, criminal liability is not excluded merely because civil remedy may also be available.

In *State Vs. Md. Iqbal Hossain and others*, reported in 48 DLR (AD) 100, it was held that a transaction based on contract ordinarily gives rise to civil liability, but that does not preclude criminal consequences where the ingredients of a criminal offence are present. Similarly, in *Abdul Awal Vs. Waliullah*, reported in12 DLR 520, it was held that conviction under section 420 of the Penal Code does not debar the person cheated from filing a civil suit for recovery of money.

Therefore, the finding of the appellate Court that the dispute is purely civil in nature is not sustainable in law. The appellate Court failed to consider the vital circumstances of inducement, receipt of money,

purchase of the whole land by the accused, dishonour of cheque and execution of undertaking.

As regards section 406 of the Penal Code, the position is different. Section 406 provides punishment for criminal breach of trust, and the foundation of criminal breach of trust is entrustment of property or dominion over property, followed by dishonest misappropriation or conversion. The prosecution must prove entrustment in the legal sense. In the present case, the evidence mainly discloses dishonest inducement in connection with a proposed land purchase. The prosecution has not separately proved entrustment of property in such manner as is required under section 405 of the Penal Code. Therefore, the materials on record do not satisfactorily establish the ingredients of section 406 of the Penal Code.

Accordingly, the view taken by the learned Deputy Attorney General that section 406 is not attracted appears to be correct.

However, there remains a procedural limitation. This is a criminal revision arising from an appellate judgment of acquittal. Under section 439(4) of the Code of Criminal Procedure, the High Court Division, in exercise of revisional jurisdiction, cannot convert a finding of acquittal into one of conviction. Therefore, although this Court finds that the appellate Court failed to properly appreciate the evidence and misdirected itself in law, this Court cannot directly restore the conviction and impose or modify sentence in this revision.

In such circumstances, the proper course is to set aside the impugned appellate judgment and send the matter back to the appellate Court for fresh hearing and disposal in accordance with law, keeping in view the observations made herein.

In the result, the Rule is made absolute in part.

The judgment and order dated 18.07.2007 passed by the learned Additional Metropolitan Sessions Judge, 2nd Court, Dhaka, in Metro Criminal Appeal No. 934 of 2005 is maintained so far as it relates to the charge under section 406 of the penal Code, but is set aside to the extent of the charge under section 420 of the penal Code, which is remanded to the appellate court for rehearing and fresh decision in accordance with law.

The appellate Court shall rehear the appeal on the basis of the evidence and materials already on record and shall dispose of the same expeditiously, preferably within 6 months from the date of receipt of the lower Court records.

Since the matter is an old one, the appellate Court shall not grant unnecessary adjournments to either party.

Send down the lower Court records at once.

Communicate this judgment and order immediately.

I.Sarwar/B.O