

Present:
Mr. Justice Md. Abu Zafor Siddique

Criminal Appeal No.281 of 2002.

Md. Shahin

.....Appellant.

-Versus-

The State

.....Respondent.

None appears.

.....for the appellant.

Mr. Md. Yusuf Mahmud Morshed,
A.A.G.

.....for the State.

The 17th April, 2013.

This appeal is directed against the judgment and order of conviction and sentenced passed by the Metropolitan Special Tribunal No.7, Dhaka in Metropolitan Special Tribunal Case No.1889 of 2000 convicting the appellant under section 19(f) of the Arms Act.

The learned Assistant Attorney General at the very outset draw attention of this Court regarding a serious nature of fraud committed upon this Court by the appellant. He submits that by creating forged and fabricated impugned judgment and order, the appellant filed the instant appeal. The learned Assistant Attorney General placed the impugned judgment and order annexed with the memorandum of appeal and the original judgment and order lying with the L.C. record. He submits that the aforesaid

documents are completely different so far it relates to be quantum of sentence, conviction, manner of recovery as well as limitation.

It appears from the judgment and order annexed with the memorandum of appeal that on the basis of a FIR dated 01.09.2000 Mohammadpur P.S. Case No.01(9)2000 dated 01.09.2000 under section 19(f) of the Arms Act has been initiated against the convict-appellant for recovery of a Dager measuring 6 inch. The police submitted charge sheet on 29.09.2000. The trial Court proceeded with the trial wherein the prosecution examined as many as 7(seven) witnesses and the defence adduced none and the Court below convicted the appellant under section 19(f) of the Arms Act and sentenced him to suffer Rigorous Imprisonment for 2(two) years and also to pay fine thereon. Being aggrieved the appellant moved before this Court by way of appeal.

The said appeal was registered in due course by the section and thereafter the same was admitted by this Court on 18.02.2002. Subsequently on an application the appellant petitioner was enlarged on bail on 04.03.2002 for a period of 6(six) months and the same was extended in 2 occasions lastly on 20.11.2002. Thereafter the bail was not further extended. In due course the L.C. record was communicated from the trial Court and the same

was examined and the appeal was made ready for hearing and come up today's list for hearing.

No one appear on behalf of the appellant. It appears that the said appeal and bail petition was presented before this Court by the learned Advocate Mr. Mohammad Ali Zinnah as a filing lawyer.

I have perused the impugned judgment and order, Memorandum of appeal and L.C. record and heard the learned Assistant Attorney General. On perusal of the L.C. record it came to the notice of this Court that by creating forged document and by practicing serious fraud upon this Court the appeal was presented and the appellant was enlarged on bail and on the ground of short sentence. It is apparent from the L.C. record that the trial Court convicted and sentenced the appellant as follows;

“অতএব, আদেশ হইল যে, আসামী মোঃ শাহীন, পিতা-মৃত সিরাজুল ইসলাম খান কে অস্ত্র আইন এর ১৮৭৮ ১৯এ ধারায় আনীত অভি-যা-গর দা-য় দোষী সাব্যস্ত করিয়া একই আই-নর ১৯এ ধারায় ১০(দশ) বৎস-রর সশ্রম কারাদ-ন্ড দণ্ডিত করা হইল।

-জল পরওয়ানা ইস্যু করা হউক।

জন্দকৃত আলামত রাষ্ট্র কর্তৃক বা-জয়াপ্ত হই-বা।” (under lined by me)

But on perusal of the certified copy supplied by the appellant and duly accepted by the filing Advocate, it appears that the conviction and sentencing portion quoted as follows;

“অতএব, আদেশ হইল যে, আসামী মোঃ শাহীন, পিতা-মৃত সিরাজুল ইসলাম খান, সাং-২৪/৬, পশ্চিম আগারগাঁও ৬ষ্ঠ তলা গার্মেন্টস, থানা-মোহাম্মদপুর, জেলা-ঢাকা অস্ট্র আইন এর ১৯(চ) ধারায় আনীত অভি-যা-গর দা-য় দোষী সাব্যস্ত করিয়া এই আই-নর ১৯(চ) ধারায় ২ (দুই) বৎস-রর সশ্রম কারাদন্ড এবং ১,০০০/- (এক হাজার) টাকা জরিমানা অনাদা-য় আ-রা ৬(ছয়) মা-সর বিনাশ্রম কারাদন্ড করা হইল।” (under lined by me)

which is completely different and shows a clear and admitted fraud in serious nature has been committed upon this Court. It further appears that the appellant not only committed fraud but also created forged documents in connivance with others. It further appears from the L.C. record that a “Revolver” was recovered and the appellant was convicted under section 19A of the Arms Act but in the certified copy of the impugned judgment and order it appears that a “Dager” was recovered which is not only serious offence but needs to be dealt in accordance with law.

It further appears that the date of judgment as it appears in the L.C. record is quite different from the date mentioned in the certified copy annexed with the memorandum of appeal. It is very much evident that to avoid the question of limitation which is a special one in the case in hand the appellant in collusion with others manipulate the same which is also serious in nature. Apart from that as per the quantum of sentence the instant appeal is to be preferred before a Division Bench.

Considering the facts and circumstances, the appeal is dismissed for committing fraud and forgery with this Hon'ble Court and the bail granted to the appellant petitioner is hereby recalled.

Let the copy of this order be communicated to the trial Court at once and the trial Court is directed to ensure the arrest of the appellant petitioner to serve out the sentence as ordered by the trial court in course by taking the assistance from the Inspector General of Police (IGP) as well as the Commissioner of Dhaka Metropolitan police. Let a copy of this order be communicated to the Inspector General of police and the Commissioner Dhaka Metropolitan police to give full assistance to the Court below to secure the arrest of the appellant.

The trial Court is further directed to initiate immediate proceeding against the person(s) who are involved in creating the certified copy in question and to deal with them strictly as per law and Rule.

It is apparent that the bail application was affirmed by one Harun, son of Md. Mahmudul Alam, of Village-Noyatola, P.S. Ramna, District-Dhaka which is being duly authenticated by the learned Advocate as such the Registrar of this Court is directed to file a regular criminal case for forgery against the aforesaid

appellant, todbirkar and the persons involved with such practice of fraud.

Send down the L.C. record to the Court below by a special messenger at the cost of the office for necessary action and the section is directed to keep a photocopy of the entire L.C. record along with the memorandum of appeal and annexed judgment and order for further action by the Registrar.

(Md. Abu Zafor Siddique,J)