

Present:
Mr. Justice Yousuf Abdullah Suman

Criminal Revision No. 1012 of 2015

Md. Anisur Rahman @ Anis and others
 ... Convict-Appellant-Petitioners

-Versus-

The State
 ... Opposite party

Mr. Md. Rakibul Hasan, Advocate with
 Mr. Mohammad Sattar Mullah, Advocate
 ... for the Convict-Appellant-
 Petitioners

Mr. Md. Ahsanullah, D.A.G with
 Mr. Md. Giasuddin Gazi, A.A.G with
 Mr. Md. Shahadat Hossain (Adil),
 A.A.G.
 ... for the State

Heard on: 05.05.2026, 11.05.2026,
13.05.2026 and 17.05.2026.
Judgment on:20.05.2026.

Yousuf Abdullah Suman, J:

The Rule was issued calling upon the opposite party to show cause as to why the judgment and order of conviction and sentence dated 10.06.2015 passed by the learned Senior Sessions Judge, Panchagarh in Criminal Appeal

No. 61 of 2013 and Criminal Appeal No. 64 of 2013 allowing both the appeals and thereby affirming the judgment and order of conviction and sentence dated 10.10.2013 passed by the learned Senior Judicial Magistrate, Panchagarh in G.R. No. 113 of 2010 corresponding to Panchagarh Sadar Police Station Case No. 07 dated 06.06.2010 convicting the petitioners under Section 332 of the Penal Code and sentencing them to suffer rigorous imprisonment for 1 (one) year and to pay a fine of Tk. 5000/- (five thousand) in default to suffer rigorous imprisonment for a further period of 3(three) months, should not be set aside, and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution case in brief is that, on 06.06.2010, the victim police officer Md. Mizanur Rahman, an S.I. of Police, lodged an

FIR with the Panchagarh Police Station against the petitioners under sections 332/333/353/189/34 of the Penal Code alleging, *inter alia*, that on 04.05.2010 he, along with his forces, launched an operation at the village of the petitioners upon an allegation that the petitioners smoke cannabis therein. The informant saw them consuming cannabis at the house of the petitioner no.3, but failed to arrest them as, sensing the presence of Police, they fled away. The informant thereafter conducted his operation at the house of the petitioners on several occasions but failed to arrest them. One month later on 06.06.2010 at 10.30 am, while the informant-police officer was on duty at the Upazila Engineering Office, the petitioners launched a sudden attack upon him inflicting bleeding wounds on his body. They also ripped off his uniform. Hence, this case arose.

After conclusion of the investigation, Police submitted charge sheet against the petitioners. The case record was thereafter transmitted to the Court of Senior Judicial Magistrate for holding trial. The charge was framed against the petitioners under sections 332/353/189 of the Penal Code. The petitioners pleaded not guilty to the charge and claimed trial. The prosecution examined 17(seventeen) witnesses as P.Ws.1-17 and the defence examined none. The petitioners were examined under 342 of the Code of Criminal Procedure wherein they repeated their innocence.

Upon conclusion of the trial, the learned Senior Judicial Magistrate, Panchagarh convicted the petitioners under Section 332 of the Penal Code and sentenced them to suffer rigorous imprisonment for a period of 01 (one) year with a fine of Tk. 5,000/- (five thousand) on 10.10.2013.

Being aggrieved by and dissatisfied with the judgment and order dated 10.10.2013, the convict-petitioners preferred Criminal Appeal No. 61 of 2013 and Criminal Appeal No. 64 of 2013 before the court of learned Sessions Judge, Panchagarh who dismissed the appeal on 10.06.2015 and thereby affirmed the judgment and order of the trial court dated 10.10.2013.

Being aggrieved by this judgment and order dated 10.06.2015 passed by the learned Senior Sessions Judge, Panchagarh the convict-petitioners filed this revision and obtained the instant Rule.

Mr. Md. Rakibul Hasan, the learned Counsel appearing for the convict-petitioners, submits that, the offence under section 332 of the Penal Code has not been made out in the instant case in that the FIR and the prosecution evidence failed to establish any nexus or causal connection between the alleged

incident and the discharge of the informant's official duties. The alleged occurrence arose out of private quarrel rather than any act connected with the informant's official functions. In support of his contention, he relies on *D. Chattaiah vs. State of Andhra Pradesh* MANU/SC/0073/1978 wherein the Supreme Court of India held that, in the absence of any nexus or causal connection between the alleged incident and the informant's official duties, the essential ingredient of the offence under section 332 was not attracted. The court further found that, the incident had arisen out of a private quarrel and not in relation to the discharge of any official function. In our jurisdiction, in *Bashir Kha vs. Stae* [1998] 50 DLR 199, Hamidul Haque, J held that in order to convict under section 332 it is to be proved that a public servant was prevented from discharging his duties and

that hurt was caused with a view to prevent him from discharging such official duties.

With regard to the evidentiary deficiencies, the learned Counsel submits that, the conviction of the petitioners has been founded solely upon the testimony of interested police witnesses who are the colleagues of the victim-informant police officer, and thus are pocket witnesses. The evidence of the public witnesses materially contradicts with the version advanced by the police witnesses and creates doubt about the prosecution story as a whole. The prosecution evidence further suffers from material inconsistencies and contradictions concerning the time, place, and manner of alleged occurrence. Such discrepancies strike at the root of the prosecution case and render the evidence unreliable and unsafe for sustaining a conviction. Accordingly, the learned Counsel

submits, the prosecution having failed to discharge its evidential burden by adducing consistent, credible, and reliable evidence, the petitioners are entitled to the benefit of doubt and ought to be acquitted by setting aside the impugned judgment and order of conviction and sentence.

Mr. Md. Ahsanullah, the learned Deputy Attorney General appearing for the State, submits that the convict-petitioners were involved in the alleged offence which has been proved by the statements of the PWs and other materials on record. The court below rightly awarded the sentence in an appropriate manner and in accordance with laws. He, therefore, submits that the impugned judgment and order warrants no interference by this Hon'ble Court and as such prays for discharging the Rule.

Heard the learned Counsels for both sides, perused the application and the materials

appended thereto, including the judgment and order of both the courts below, along with the lower court records.

The record shows that, the victim-informant in this case is a police officer, an S.I. of Panchagarh Police Station, who stated in the FIR as well as deposed in the court as PW-1 that, the incidents occurred at 10.30 am. PW-2, an independent witness, on the other hand, deposed that the incidents occurred at 12.30 pm; PW-5, also an independent witness, testified that the occurrence took place at 12/1.00 pm; PW-6, also an independent witness, stated the time as 1.00 pm - whereas the FIR was lodged at 11.15 am. This court is therefore of the view that, these material contradictions strike at the root of the prosecution case. Our apex court held in *Shamsu Habib and others vs. State*, Criminal Appeal No. 58-61 of 2019, that, if any part of

a Criminal case becomes doubtful, it will render the whole case doubtful, and the accused shall get the benefit of this doubt.

Further, it appears from the record that, both the informant-police officer and the petitioners are from the same village. The learned Counsel for the petitioners at the time of hearing submits that the petitioners have a 17 years old daughter who was disturbed by the informant. Launching operation for cannabis is therefore, he submits, nothing but a sham operation inasmuch as no cannabis have ever been recovered, admittedly, from the place of operation. In addition, the record shows that the petitioner no.2 lodged a complaint against this victim-informant-police officer to the Superintendent of Police, Panchagarh. The story of the case as a whole is, therefore, manufactured and concocted, he contends.

As to the issue of whether the offence, arguably committed by the petitioners, does attract section 332 of our Penal Code, this court is convinced with the submissions advanced by the learned Counsel for the petitioners in that (a) that it is evident from the record that the petitioners did not attack the informant to deter him from discharging his official duties, (b) that the alleged occurrence arose out of a private quarrel and personal animosity, and (c) that the essential ingredient of section 332 i.e., the nexus and causal link between the alleged incident and the discharge of the informant's official duties, is thus conspicuously missing. This court therefore adopts the principles laid down in *D. Chattaiah vs. State of Andhra Pradesh* MANU/SC/0073/1978 and *Bashir Kha vs. State* [1998] 50 DLR 199 as referred by the learned Counsel for the petitioners.

In fine, though the petitioners' PC&PR is nil, police recorded them as of 'persons of bad characters' in addition to asserting 'nil', which demonstrates manipulation on the part of the prosecution. More so, as to the medical certificate, the record shows that, the prosecution submitted only a prescription and a ticket for outdoor patient having no seal, no sign, as is evident from Exhibit-5, whereas the allegations were of 'bleeding wounds'.

Having considered the case as a whole and in the light of the observations and findings delineated hereinabove, this court holds that there is no cogent reason to convict the petitioners under section 332 of the Penal Code, and due to the material contradictions in the facts of the case, the prosecution failed to bring home the charge against the

petitioners beyond reasonable doubt. Hence this court finds merit in the Rule.

In the result, the Rule is made absolute.

The judgment and order of conviction and sentence dated 10.06.2015 passed by the learned Senior Sessions Judge, Panchagarh in Criminal Appeal No. 61 of 2013 and Criminal Appeal No. 64 of 2013 allowing the appeals and thereby affirming the judgment and order of conviction and sentence dated 10.10.2013 passed by the learned Senior Judicial Magistrate, Panchagarh, in G.R. Case No. 113 of 2010 corresponding to Panchagarh Sadar Police Station Case No. 07 dated 06.06.2010 is hereby set aside.

The convict-petitioners 1) Md. Anisur Rahman @ Anis, 2) Most. Sara Ara Khatun @ Beuty and (3) Musa @ Numa are acquitted of the charge levelled against them.

The petitioners are discharged from their bail bonds.

Let the lower court records be sent down along with a copy of this judgment at once.