

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 934 of 2016

Md. Nasir Miah

...Convict-appellant

-Versus-

The State

...Respondent

Mr. Sharan Chandra Talukder, Advocate

...For the convict-appellant

Mr. Md. Anichur Rahman Khan, D.A.G with

Mr. Mir Moniruzzaman, A.A.G with

Mr. Md. Sarwar Alam Khan, A.A.G

...For the State

Heard on 07.01.2026 and 08.01.2026

Judgment delivered on 11.01.2026

This appeal under section 410 of the Code of Criminal Procedure, 1898 is directed challenging the legality and propriety of the impugned judgment and order dated 15.04.2015 passed by the Additional Sessions Judge, Court No. 3, Comilla in Sessions Case No. 463 of 2012 arising out of Kotwali Model P.S. Case No. 02 dated 01.12.2011 corresponding G.R. No. 951 of 2011 convicting the appellant under table 3(kha) of section 19(1) of the মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০ and sentencing him thereunder to suffer rigorous imprisonment for 2(two) years and fine of Tk. 1,000(one thousand), in default, to suffer imprisonment for 01(one) month.

The prosecution's case, in short, is that on 01.12.2011, on the way to serve the summons, the Assistant Inspector Nakul Chandra Biswas reached near the road in front of the DC Bunglalow, under Kotwali Thana, Comilla, and detained the accused Nasir Miah at 10.45 am. While the accused was driving a CNG, three wheeler auto, three persons fled away. Searching the said CNG, he found 400 bottles of Phensedyl in two travel bags, each containing 200 bottles, 300 pieces of labels of Phensedyl bottles, and 300 pieces of cork of Phensedyl bottles from the CNG and arrested the accused Nasir Mia

and seized those narcotics and other goods and lodged the FIR on 01.12.2011.

Sub-Inspector Md. Mohammad Shamsuzzaman was appointed as Investigating Officer of the case. During investigation, he visited the place of occurrence, prepared the sketch map and index, and recorded statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. After completing investigation, found the prima facie truth of the allegation against the accused Md. Nasir Miah and submitted charge sheet on 16.02.2012 under table 3(kha) of section 19(1) of the মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০. Thereafter, the case record was sent to the Sessions Judge, Comilla, who took cognizance of the offence against the accused and transferred the case to the Additional Sessions Judge, Court No. 3, Comilla for trial.

During the trial, charge was framed against the accused Md. Nasir Mia under table 3(kha) of section 19(1) of the মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০, which was read over and explained to him, and he pleaded not guilty to the charge and claimed to be tried following the law. During the trial, prosecution examined three (3) witnesses to prove the charge against the accused. After examination of the witnesses, the accused absconded. After concluding the trial, the trial Court by impugned judgment and order convicted the accused as stated above, against which he filed the instant appeal.

P.W. 1 Biswajit Shil stated that on 01.12.11 at 10.45, narcotics were recovered from a CNG kept in travel bag, and he signed the seizure list. Police detained the driver of the CNG. He proved the seizure list as exhibit 1 and his signature on the seizure list as exhibit 1/1. During cross-examination, he stated that he signed on white paper. He admitted that he saw the bag, which was under lock and key. He could not say which materials were kept in the bag.

P.W. 2 Nakul Chandra Biswas is the informant of the case. He stated that based on the GD No. 13 dated 01.12.2011, he was assigned to serve the summons. While he was discharging his duty at

9.40 on the road at the north side of the District Court, driver of the CNG was driving the CNG with three passengers at high speed. He instructed the driver of the CNG to stop, but he tried to flee. At that time, he chased the CNG and at 10 am detained the CNG in front of the DC, Bunglalow. At that time, three people fled away, and he detained the CNG driver Nasir Miah. In the presence of witnesses Biswajit and Hasan, he opened two travel bags found in the CNG and recovered total 400 bottles of Phensedyl, 200 bottles of Phensedyl in each bag. He also recovered 300 pieces of labels of Phensedyl and cork kept under the seat of the driver in a polythene bag. The CNG number is Tha-11-2546. He prepared the seizure list, and the witnesses signed the seizure list. He also signed the seizure list. Thereafter, he, along with the recovered Phensedyl and goods, along with the accused, went to Thana and lodged the FIR. He proved the FIR as exhibit 2 and his signature on the FIR as exhibit 2/1. He proved his signature on the seizure list as Exhibit 1/2. He sent 1 bottle of Phensedyl (100 M L). He proved 1 bottle of Phensedyl (100 M L) as material exhibit I. He denied the suggestion that the owners of the Phensedyl fled away. He affirmed that he recovered two bags from the footboard. He denied the suggestion that the accused was not aware of the recovered goods or that nothing was recovered from under the seat of the driver. He also affirmed that the label and cork are not produced in Court. He denied the suggestion that the real accused-persons fled away and the accused was falsely implicated in the case.

P.W. 3 Md. Samsuzzaman is the Officer-in-Charge of Kotwali Thana and the Investigating Officer of the case. He stated that he visited the place of occurrence, prepared the sketch map and index, sent 1 bottle of Phensedyl for the report of the chemical examiner, and recorded the statement of witnesses. After concluding the investigation, he found the prima facie truth of the allegation against the accused and submitted the charge sheet. He proved the sketch map

and index as exhibit 3 and his signature thereon as exhibit 3/1. He also proved the report of the chemical examiner as Exhibit 4. During cross-examination, he stated that he did not record any statement of witnesses other than the seizure list witnesses. He denied the suggestion that he did not visit the place of occurrence, or that he did not investigate the case correctly, or that he deposed falsely.

Learned Advocate Mr. Sharan Chandra Talukder, appearing on behalf of the appellant submits that the alleged Phensedyl was recovered from the footboard of the CNG and the passengers, owner of the Phensedyl, fled away and the alleged labels and corks of Phensedyl is not proved in the case which proved that the alleged recovery of labels and corks of Phensedyl allegedly kept under the seat of the driver is afterthought and untrue. The prosecution failed to prove the charge against the accused beyond all reasonable doubt, and the trial Court without legal evidence, illegally convicted the accused. He prayed for setting aside the impugned judgment and order passed by the trial Court.

Learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, appearing along with learned Assistant Attorney General Mr. Mir Moniruzzaman, on behalf of the state, submits that the accused Md. Nasir Miah is the driver of the CNG and the Phensedyl was recovered from possession of the accused and the trial Court on correct assessment and evaluation of the evidence, legally passed the impugned judgment and order. He prayed for dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Sharan Chandra Talukder, who appeared on behalf of the appellant, and the learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, who appeared along with learned Assistant Attorney General Mr. Mir Moniruzzaman on behalf of the state, perused the evidence, impugned judgment and order passed by the trial Court and the records.

On perusal of the evidence, reveals that on 01.12.2011 at about 10.00 am, 400 bottles of Phensedyl kept in two travel bags, 200 bottles in each bag, kept on the footboard of the CNG and 300 pieces of labels and corks of the bottles of Phensedyl kept under the seat of the driver of the CNG were allegedly recovered as stated by P.W. 2 in presence of seizure list witnesses. P.W. 1 Biswajit Shil, a witness of the seizure list, stated that on 01.12.2011 at 10.45 am, the narcotics kept in travel bags was recovered from CNG. There is a contradiction in the evidence of P.Ws 1 and 2 as to the time of recovery of the Phensedyl. Furthermore, P.W. 1 did not say anything as to the recovery of labels and corks of the bottles of Phensedyl allegedly kept under the seat of the driver. The labels and corks of the bottles of Phensedyl were also not proved in the case. Therefore, there is a doubt about the actual recovery of the labels and corks of the bottles of Phensedyl from the possession of the driver of the CNG.

P.W. 1, a seizure list witness, did not corroborate the evidence of P.W. 2 regarding the recovery of 400 bottles of Phensedyl from the footboard of the passenger of CNG. Another seizure list witness, Hasan, was not examined. Admittedly, the alleged Phensedyl kept in the two travel bags was recovered from the footboard of the passenger of the CNG. I am of the view that the two travel bags belonged to the three passengers of CNG who fled away at the time of detaining the CNG along with the accused Md. Nasir Miah. The prosecution failed to prove the report of the chemical examiner. In the absence of a report of the chemical examiner, it cannot be said that Phensedyl was recovered from the footboard of CNG.

I find merit in the appeal.

In the result, the appeal is allowed.

The impugned judgment and order passed by the trial Court against the appellant Md. Nasir Miah is hereby set aside.

Send down the lower Court's records at once.