

**Present:**

**Justice Md. Emdadul Haque Azad**

**Criminal Revision No.2291 of 2016**

**With**

**Criminal Revision No.2292 of 2016**

Jasim Ahmed ... Petitioner.

-Vs.-

The State and another ... Opposite parties.

**With**

**Criminal Revision No.2296 of 2016**

**With**

**Criminal Revision No.2299 of 2016**

Yeasmin Ahmed ... Petitioner.

-Vs.-

The State and another ... Opposite parties.

Mr. A. J. Mohammad Ali with  
Mr. Sabbir Hamza Chowdhury, Advocate

... For the petitioners.

Mr. Shahjada Al Amin Kabir, Advocate

... For the opposite party No.2.

Mr. Md. Rezaul Karim, D.A.G. with

Ms. Sathi Shahjahan, A.A.G.

... For the State.

Heard on: 11.06.2023, 03.08.2023,  
10.08.2023 & 09.10.2023.

**Judgment on the 10<sup>th</sup> October, 2023**

Criminal Revision Nos.2291 of 2016 and 2296 of 2016 are directed against the judgment and order dated 17.10.2016 passed by the learned Metropolitan Sessions Judge, Dhaka in Metro. Criminal Appeal No.958 of 2015 affirming the judgment and order of conviction and sentence dated 15.07.2011 passed by the learned Joint Sessions Judge,

Paribesh Adalat, Dhaka in Metropolitan Sessions Case No.9912 of 2013 arising out of C. R. Case No.357 of 2013 convicting the petitioners under Section 138 of the Negotiable Instruments Act, 1881 and sentencing each of them to suffer simple imprisonment for 10 (ten) months and also to pay a fine of Tk.1,41,78,864/- (One Crore Forty One Lac Seventy Eight Thousand Eight Hundred and Sixty Four Taka Only).

Criminal Revision Nos.2292 of 2016 and 2299 of 2016 are directed against the judgment and order dated 17.10.2016 passed by the learned Metropolitan Sessions Judge, Dhaka in Metro. Criminal Appeal No.959 of 2015 affirming the judgment and order of conviction and sentence dated 03.08.2015 passed by the learned Joint Sessions Judge, Paribesh Adalat, Dhaka in Metropolitan Sessions Case No.9913 of 2013 arising out of C. R. Case No.358 of 2013 convicting the petitioners under Section 138 of the Negotiable Instruments Act, 1881 and sentencing each of them to suffer simple imprisonment for 10 (ten) months and also to pay a fine of Tk.1,41,78,864/- (One Crore Forty One Lac Seventy Eight Thousand Eight Hundred and Sixty Four Taka Only).

Since facts and evidence on material points are same in all the cases, the instant four Rules issued in the revisions are heard together and disposed of by this single judgment.

The case of the complainant-opposite party No.2 Phoneix Finance and Investment Limited, in short, is that the company, of which the

accused-petitioner Jasim Ahmed and his wife Yeasmin Ahmed are Managing Director and Director respectively, obtained loan facilities from the company. In order to discharge part of the loan liability, the company issued two cheques in favour of the complainant-opposite party No.2 where accused-petitioner Jasim Ahmed signed those cheques as Managing Director of the company which were dishonoured by the bank concerned.

Thereafter, the complainant-opposite party No.2 maintaining all legal formalities as required under law filed the instant complaint cases under Section 138 of the Negotiable Instruments Act, 1881.

After completion of all formalities, the Trial Court found the convict petitioners guilty of the charge and convicted them under Section 138 of the Negotiable Instruments Act, 1881 and sentenced them as I have already stated above. Thereafter, the convict-petitioners upon depositing 50% of the cheque amount preferred the appeals before the lower Appellate Court which were dismissed as well.

Mr. A. J. Mohammad Ali, the learned Senior Advocate on behalf of the petitioners submitted that the convict-petitioners were also convicted for issuing other cheques in favour of the same complainant-opposite party Nos.2 against which the convict-petitioners preferred Criminal Revision Nos.2290 of 2016, 2293 of 2016, 2294 of 2016, 2295 of 2016, 2297 of 2016 and 2298 of 2016 before this Court. Upon hearing the

parties, a single bench of this Court acquitted the convict-petitioner Yeasmin Ahmed and at the same time after setting aside the imprisonment of Jasim Ahmed directed him to deposit the cheques amount. The learned Advocate for the petitioner could not differ with the said judgment passed by this Court.

Mr. Shahjada Al Amin Kabir, the learned Advocate appearing on behalf of the complainant-opposite party No.2 submitted that both the Courts below correctly passed the judgment and order of conviction and sentence against the convict-petitioners. He also submitted that the complainant-opposite party No.2 deposited the cheque in the concerned Bank for encashment but the same was dishonoured. Thereafter, the complainant-opposite party No.2 after completion of all legal formalities filed the instant case and he has succeeded to prove the case beyond reasonable doubt by adducing evidence, as such all the Rules are liable to be discharged.

I have carefully examined the relevant documents lying with Lower Court Records along with oral and documentary evidence adduced by both the sides. It appears from the record that the convict-petitioners were also convicted for issuing another three cheques in favour of the same complainant-opposite party No.2 against which the convict-petitioners preferred Criminal Revision Nos.2290 of 2016, 2293 of 2016, 2294 of 2016, 2295 of 2016, 2297 of 2016 and 2298 of 2016 before this

Court. Upon hearing the parties, a single bench of this Court acquitted the convict-petitioner Yeasmin Ahmed and at the same time after setting aside the imprisonment of Jasim Ahmed directed him to deposit the cheques amount. Considering the aforesaid facts and circumstances of the case, I am of the view that the conviction of petitioner Yeasmin Ahmed is not maintainable as she is not a signatory of the alleged cheque. I am of the also view that justice would be better served if the sentence of imprisonment of petitioner Jasim Ahmed is set aside and sentence of fine is upheld.

In view of the forgoing discussion, the order of the Court is as follows:

The sentence of convict-petitioner Yeasmin Ahmed passed in two cases giving rise to Criminal Revision Nos.2296 of 2016 and 2299 of 2016 is set aside and she is acquitted of the charge.

The conviction of the convict-petitioner Jasim Ahmed in two cases under Section 138 of the Negotiable Instruments Act, 1881 giving rise to Criminal Revision Nos.2291 of 2016 and 2292 of 2016 is upheld but the sentence is modified. The sentence of imprisonment awarded to him in the cases is set aside. The sentence of fine of Tk.1,41,78,864/- awarded in each of the cases totaling Tk.2,83,57,728/- is upheld. The convict-petitioner already deposited Tk.70,89,432/- in each cases totaling Tk.1,41,78,864/- in the Trial Court for preferring the appeal. He is directed

to pay remaining portion of fine of Tk.70,89,432/- to the complainant-opposite party No.2 in each of the cases totaling Tk.1,41,78,864/- within 6 (six) months from the date of receipt of this order, in default, he will suffer simple imprisonment for 6 (six) months in each of the cases. If the accused-petitioner does not pay the remaining portion of the fine as ordered or opts to serve out the period of imprisonment in lieu of payment of fine, he is not exempted from pay the same. In that event, the Court concerned shall realise the fine under the provisions of Section 386 of the Code of Criminal Procedure.

In the result, the Rules issued in Criminal Revision Nos.2296 of 2016 and 2299 of 2016 are made absolute and the Rules issued in Criminal Revision Nos.2291 of 2016 and 2292 of 2016 are hereby disposed of. The petitioners are discharged from their respective bail bonds.

Send down the Lower Court Records along with a copy of this judgment, at once.