

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Writ Petition No. 5315 of 2018

In the matter of:

An application under Article 102 of the constitution of the People's Republic of Bangladesh.

-And-

In the matter of :

Mrs. Shamima Ara Bashar

.....Petitioner

-Versus-

Bangladesh and others

.....Respondents

None appears

.....For the petitioner.

Mr. A.K.M Faiz, Senior Advocate with

Mr. Ashutosh Kumar Sana, Advocate

.....For the respondent No. 03

Mr. Nawroz Md. Rasel Chowdhury, D.A.G. with

Mrs. Afroza Nazneen Akther, A.A.G with

Mrs. Anna Khanom (Koli), A.A.G with

Mr. Al Mamun, A.A.G

..... For the respondent-government.

**Heard on 12.12.2023, 13.12.2023, 14.12.2023
and Judgment on 3rd January, 2024.**

Present:

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice SM Masud Hossain Dolon

In this application under article 102 of the constitution, the Rule was issued on 14.04.2018 in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the judgment and order dated

29.11.2017 passed by the Metropolitan Sessions Judge, Dhaka in Metro Sessions Case No. 440 of 2016 arising out of C.R. Case No. 12 of 2015 convicting petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 01 (one) year and also to pay a fine of Tk. 1,20,00,000/- (one crore twenty lacs) Annexure_D and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule the operation of the judgment and order dated 29.11.2017 was stayed for a period of 03 (three) months and the convict-petitioner was enlarged on bail for a period of 03 (three) months and was directed to repay the amount in question within a period of 03 (three) months.

This complaint-petition filed by the respondent No. 03 under section 138-A of the Negotiable Instruments Act, 1881. The matter was tried by the learned Metropolitan Sessions Judge, Dhaka but the convict petitioner was not present at the time of pronouncement of judgment and in the absence of the convict-petitioner the learned Metropolitan Sessions Judge, Dhaka vide impugned judgment and order dated 29.11.2017 convicted the petitioner under section 138 of the Negotiable Instrument Act, 1881 and sentenced her to suffer simple imprisonment for a period of 01 (one) year and also to pay a fine of Tk. 1,20,00,000/- (one crore twenty lacs) and also issued warrant of arrest. The convict-petitioner there after filed this writ petition and obtain Rule and a bail for 03 (three) months with a

condition that is direction upon her to repay the amount in question with a period of 03 (three) months from date. At the time of hearing learned Counsel for the respondent submits that there is no scope for quashing a criminal proceeding under the writ jurisdiction.

In support of his submission he referred 67 DLR (AD) 2015; Page137 where it is held that :-

“There is no scope for quashing a criminal proceeding under the writ-jurisdiction unless the vires of the law involved is challenged. The vires of the law involved in the case has not been challenged. Therefore, there is no scope for aggrandizement of jurisdiction of the High Court Division in quashing a criminal proceeding. Consequently, the High Court Division was not justified in quashing criminal cases in exercise of its power under Article 102 of the Constitution.”

At the time of hearing none appears on behalf of the petitioner before this court.

We have scrotinized the record it appears from the record that at the time of issuance of the Rule there was a direction upon the petitioner that to filed or repay the amount in question within a period of 03 (three) months from date which was never been complied the Rule and direction and the granting of bail was on 11.04.2018 but the convict-petitioner did not take any step upon the direction of this court.

Upon such the matter became infructuous. So, the Rule is discharged and the petitioner is directed to surrender before the Trial Court.

Communicate the order at once.

Mr. Justice SM Masud Hossain Dolon