

Mr. Justice Sheikh Abdul Awal

Criminal Revision No. 991 of 2019

Md. Omar Faruque Bani
.....Convict-petitioner.

-Versus-

The State and another.

.....Opposite parties.

Mr. Mohammad Abdul Karim, Advocate
.....For the Petitioner.

Mr. Md. Zishan Mahmud, Advocate.
..... For the Opposite party No.2.

Ms. Shahida Khatoon, D.A.G with

Ms. Sabina Perven, A.A.G with

Ms. Kohenoor Akter, A.A.G

.... For the Sate.

Heard on 05.05.2024, 06.05.2024 and

Judgment on 08.05.2024

Sheikh Abdul Awal, J:

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 26.02.2019 passed by the learned Additional Sessions Judge, Sherpur in Criminal Appeal No. 94 of 2017 disallowing the appeal and affirming the judgment and order of conviction and sentence dated 11.09.2017 passed by the learned Joint Sessions Judge, 2nd Court, Sherpur in Sessions Case No. 367 of 2016 arising out of C. R. Case No. 362 of 2015, convicting the accused-petitioner under Section 138 of the

Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple imprisonment for a period of 6(six) months and to pay a fine of Taka 1,19,642/- in default to suffer simple imprisonment for 01 (one) month more should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Mr. Mohammad Abdul Karim, the learned Advocate appearing for the convict-petitioner after placing a supplementary affidavit dated 29.04.2024 submits that during the pendency of the Rule, the convict-petitioner has already paid entire cheque's amount to the complainant-opposite party No.2. He further submitted that since the convict-petitioner has already paid entire cheque's amount, the Rule may kindly be made absolute upon recording compromise.

Mr. Md. Zishan Mahmud, the learned Advocate appearing for the complainant-Opposite party No.2, on the other hand, after placing an application dated 07.05.2024 submitted that during the pendency of the Rule, the convict-petitioner has paid entire cheque's amount to the complainant-opposite party No.2 (Annexure-I). He further submits that since the convict-petitioner has already paid entire cheque's amount to

complainant respondent No. 2, the Rule may kindly be absolute upon recording compromise.

Having heard the learned Advocate for both the sides and perused the supplementary affidavit dated 29.04.2024 and the application dated 07.05.2024.

Having regard to the submission made by the learned Advocate for both the sides, I am of the view that there is no reason not to accept the compromise entered into between the parties. The Negotiable Instruments Act, 1881 is silent about compromise of offences under the Act but the Act does not make any provision therein prohibiting such compromise. Since N.I. Act proceeding arises out of monetary transaction and the proceeding is a quasi civil and quasi criminal in nature, maximum sentence under the law is one year, I am of the view that the dispute between the parties under Negotiable Instruments Act proceeding has been resolved out of the Court by the parties on compromise and the same should be allowed by the Court at any stage of the proceeding even at the appellate or revisional stage.

In the Supreme Court of India, it has been consistently decided that the offence under Section 138 of the Negotiable Instruments Act being compoundable.

For the reasons stated above, I allow the prayer made on behalf of the contesting parties with the direction that compromise done by the parties is hereby accepted.

Accordingly, the Rule is made absolute by holding that since the matter has been compromised between the parties and the amount in terms of the said compromise has been deposited, the petitioner is entitled to acquittal.

The impugned judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Sherpur in Criminal Appeal No. 94 of 2017 disallowing the appeal and affirming the judgment and order of conviction and sentence dated 11.09.2017 passed by the learned Joint Sessions Judge, 2nd Court, Sherpur in Sessions Case No. 367 of 2016 arising out of C. R. Case No. 362 of 2015, convicting the accused-petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple imprisonment for a period of 6(six) months and to pay a fine of Taka 1,19,642/= in default to suffer simple imprisonment for 01 (one) month more is set-aside and the petitioner, Md. Omar Faruque Bani is acquitted of the charge under Section 138 of the Act.

The convict petitioner, Md. Omar Faruque Bani is discharged from his bail bond and the trial Court is

directed to allow the complainant-opposite party No.2 to withdraw the 50% of cheque's amount deposited in the Trial Court by the convict-petitioner for the purpose of preferring the Criminal appeal.

Send down the lower Court records at once.