

Mr. Justice Sheikh Abdul Awal

Criminal Revision No. 1458 of 2018

Md. Humayun Kabir Shahin
.....Convict-petitioner.

-Versus-

The State and another.

.....Opposite parties.

Mr. Md. Forhad Hossain, 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 25.04.2024, 08.05.2024 and

Judgment on 09.05.2024

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 06.02.2018 passed by the learned Additional Sessions Judge, 1st Court, Mymensingh in Criminal Appeal No. 417 of 2016 disallowing the appeal and affirming the judgment and order of conviction and sentence dated 17.10.2016 passed by the learned Joint Sessions Judge, 1st Court, Mymensingh in Sessions Case No. 1019 of 2016 arising out of C. R. Case No. 70 of

2016 (Fulpur), 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 2(two) months and to pay a fine of Taka 1,96,000/- 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. Md. Forhad Hossain, the learned Advocate appearing for the convict-petitioner and Mr. Md. Zishan Mahmud, the learned Advocate appearing for the complainant-opposite party No.2 after placing a hand writing application dated 08.05.2024 jointly submitted that during the pendency of the Rule, the parties have amicably settled the matter in which the convict-petitioner made a pay-order amounting to Taka 73,000/- (50% cheque's amount) in favour of the complainant-opposite party No.2 being No. POF 6716696 dated 02.05.2024 and the complainant-opposite party No.2 should have withdrawn the money amounting to Taka 73,000/- (50% cheque's amount) deposited by the convict-petitioner at the time of preferring the criminal appeal.

The learned Advocates for both the parties further jointly submitted that since both the parties have already made compromise over the dispute, the Rule may kindly

be made absolute upon recording compromise, offence under Section 138 of the Act may be compounded and thereby conviction of the petitioner is liable to be set-aside.

Perused the hand writing application of compromise filed under the joint signatures of the learned Advocates for both the parties and heard the learned Advocates and the Deputy Attorney General.

Having regard to the submission made by the learned Advocates for both the parties, 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 N.I. Act is one year, I am of the view that the dispute between the parties under Negotiable Instruments Act has been resolved out of 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 paid, the petitioner is entitled to acquittal.

The order of conviction and sentence dated 06.02.2018 passed by the learned Additional Sessions Judge, 1st Court, Mymensingh in Criminal Appeal No. 417 of 2016 disallowing the appeal and affirming the judgment and order of conviction and sentence dated 17.10.2016 passed by the learned Joint Sessions Judge, 1st Court, Mymensingh in Sessions Case No. 1019 of 2016 (Fulpur), 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 2(two) months and to pay a fine of Taka 1,96,000/-is set-aside and the petitioner, Md. Humayun Kabir Shahin is acquitted of the charge under Section 138 of the Act.

The convict-petitioner, Md. Humayun Kabir Shahin is discharged from his bail bond and the trial Court is directed to allow the complainant-opposite party No.2 to withdraw half of the cheque's amount deposited in the Trial Court by the convict-petitioner for the purpose of preferring this Criminal Revision.

The Rule stands disposed of in the above terms.

Send down the lower Court records at once.