

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CRIMINAL APPELLATE JURISDICTION)

**Present:**

Mr. Justice Md. Kamrul Hosssain Mollah

**Criminal Revision No.1867 of 2018**

Md. Ruhul Amin Likhon

.....convict-petitioner

-Versus-

The State and another

..... opposite-parties

No one appears

.....For the convict-petitioner

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. M. Masud Rana, Advocate

...For the complainant-opposite party No.2

**Heard on 05.11.2023 and**

**Judgment on: 06.11.2023**

**Md. Kamrul Hossain Mollah.J:**

This is an application under Section 439 read with section 435 of the Code of Criminal Procedure. This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 26.06.2018 passed by the learned Sessions Judge, Bogura in Criminal Appeal No.225 of 2018 dismissing the appeal and thereby upholding the judgment and order of conviction and sentence dated 03.08.2017 passed by the learned Joint Sessions Judge, 3<sup>rd</sup> Court, Bogura in Sessions Case No.441 of 2016 arising out of C.R. Case No.03 of 2016 (Sonatola), convicting the petitioner

under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 01(one) year and also to pay a fine of Tk.5,50,000/- should not be set-aside and or pass such other order or further order or orders as to this court may seem fit and proper.

At the time of issuance of the Rule this Court granted bail to the convict-petitioner for a period of 01(one) months and stayed the fine.

The relevant facts necessary for disposal of the Rule are as follows:-

The prosecution case, in short is that due to previous relation the convict-petitioner took loan from the complainant of Tk.5,00,000/-. The convict-petitioner issued a cheque in favour of the complainant being Cheque No.9170614 of Tk.5,00,000/- from the Sonali Bank Limited, Sonatola Branch, Bogura maintaining his account No.0020077018. The complainant presented the said cheque before the same Bank on 11.11.2015 for encashment, which was dishonoured on the same date for insufficient fund. Then the complainant issued a legal notice upon the convict-petitioner by registered post with AD on 12.11.2015 asking the petitioner to refund the money

within 30 days. As the petitioner did not take any step to refund the money within prescribed period. Thereafter, the complainant filed an complaint-petition before the learned Senior Judicial Magistrate, Cognizance Court No.01, Bogura as C.R. Case No.03 of 2016 (Sonatola).

The learned Court after examining the complainant opposite party No.2 under section 200 of the Code of Criminal Procedure took cognizance against the convict-petitioner under section 138 of the Negotiation Instruments Act, 1881 and issued a summon against the petitioner.

The petitioner after receiving the summons from the Court surrendered before the Court and enlarged on bail. Thereafter, the case was transferred before the learned Sessions Judge, Bogura and the same was registered as Sessions Case No.441 of 2016 and subsequently, the case was transferred before the learned Joint Sessions Judge, 3<sup>rd</sup> Court, Bogura for trial and disposal.

The learned trial Court framed charge on 29.06.2016 against the convict-petitioner under section 138 of the

Negotiable Instruments Act, 1881 and the charge could not be read over to the petitioner for his absconding.

At the time of trial the prosecution produced as many as 01(one) witness before the learned trial Court to prove the case. After conclusion of the witness the learned trial Court could not examine the convict-petitioner under section 342 of the Code of Criminal Procedure for his absconding.

After completion of evidence the learned trial Court found guilty the petitioner and the learned Court on perusal of the evidence on record and document convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 01(one) year and to pay a fine of Tk.5,50,000/- by his judgment and order of conviction and sentence dated 30.08.2017. Against the said judgment, the convict-petitioner filed Criminal Appeal No.225 of 2018 before the learned Sessions Judge, Bogura. After hearing the said Appeal the learned Sessions Judge, Bogura by judgment and order dated 26.06.2018 dismissed the aforesaid appeal and thereby affirmed the judgment and order of conviction and sentence dated 30.08.2017 passed by the learned Joint Sessions Judge, 3<sup>rd</sup> Court, Bogura.

Being aggrieved by and dissatisfied with the judgment and order dated 26.06.2018 passed by the learned Sessions Judge, Bogura in Criminal Appeal No.225 of 2018, the convict-petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

No one appears for the convict-petitioner to press the instant Rule.

On the other hand, Mr. M. Masud Rana, the learned Advocate appearing on behalf of the respondent No.2 submits that due to previous relation the convict-petitioner took loan from the complainant of Tk.5,00,000/-. The convict-petitioner issued a cheque in favour of the complainant being Cheque No.9170614 of 5,00,000/- from the Sonali Bank Limited, Sonatola Branch, Bogura maintaining his account No.0020077018. The complainant presented the said cheque before on the same Bank on 11.11.2015 for encashment, which was dishonoured on the same date for insufficient fund. Then the complainant issued a legal notice upon the convict-petitioner by registered post with AD on 12.11.2015 asking the petitioner to refund the money within 30 days. As the petitioner did not take any step to refund the money within prescribed

period. Thereafter, the complainant filed an complaint-petition before the learned Senior Judicial Magistrate, Cognizance Court No.01, Bogura as C.R. Case No.03 of 2016 (Sonatola). Thereafter, the case was transferred before the learned Sessions Judge Bogura and then after the same was transfer to the learned Joint Sessions Judge, 3<sup>rd</sup> Court, Bogura for trial and disposal as Sessions Case No.441 of 2016. After completion of evidence the learned trial Court found guilty the petitioner and the learned Court on perusal of the evidence on record and document convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 01(one) year and to pay a fine of Tk.5,50,000/- by his judgment and order of conviction and sentence dated 30.08.2017. Against the said judgment, the convict-petitioner filed Criminal Appeal No.225 of 2018 before the learned Sessions Judge, Bogura. After hearing the said Appeal the learned Sessions Judge, Bogura by judgment and order dated 26.06.2018 dismissed the aforesaid appeal and thereby affirmed the judgment and order of conviction and sentence dated 30.08.2017 passed by the learned Joint Sessions

Judge, 3<sup>rd</sup> Court, Bogura rightly. Accordingly, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and order of the Court's below, the submissions of the learned Advocate for the opposite party No.2, the papers and documents as available on the record.

It appears from the records that due to previous relation the convict-petitioner took loan from the complainant of Tk.5,00,000/-. The convict-petitioner issued a cheque to the complainant being Cheque No.9170614 of Tk.5,00,000/- from the Sonali Bank Limited, Sonatola Branch, Bogura maintaining his account No.0020077018. The complainant presented the said cheque before on the same Bank on 11.11.2015 for encashment, which was dishonoured on the same date for insufficient fund. Then the complainant issued a legal notice upon the convict-petitioner by registered post with AD on 12.11.2015 asking the petitioner to refund the money within 30 days. As the petitioner did not take any step to refund the money within prescribed period. Thereafter, the complainant filed an complaint-petition before the learned Senior Judicial Magistrate, Cognizance Court No.01, Bogura as C.R. Case

No.03 of 2016 (Sonatola). Thereafter, the case was transferred before the learned Sessions Judge Bogura and thereafter the same was transfer to the learned Joint Sessions Judge, 3<sup>rd</sup> Court, Bogura for trial and disposal as Sessions Case No.441 of 2016. After completion of evidence the learned trial Court found guilty the petitioner and the learned Court on perusal of the evidence on record and document convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 01(one) year and to pay a fine of Tk.5,50,000/- by his judgment and order of conviction and sentence dated 30.08.2017. Against the said judgment, the convict-petitioner filed Criminal Appeal No.225 of 2018 before the learned Sessions Judge, Bogura. After hearing the said Appeal the learned Sessions Judge, Bogura by judgment and order dated 26.06.2018 dismissed the aforesaid appeal and thereby affirmed the judgment and order of conviction and sentence dated 30.08.2017 passed by the learned Joint Sessions Judge, 3<sup>rd</sup> Court, Bogura rightly.

Now, let us discuss the evidence of prosecution witness Md. Soharab Hossen.



Md. Soharab Hossen as P.W.1 in his deposition stated that due to previous relation the convict-petitioner took loan from the complainant of Tk.5,00,000/-. The convict-petitioner issued a cheque to the complainant being Cheque No.9170614 of Tk.5,00,000/- from the Sonali Bank Limited, Sonatola Branch, Bogura maintaining his account No.0020077018. The complainant presented the said cheque before on the same Bank on 11.11.2015 for encashment, which was dishonoured on the same date for insufficient fund. Then the complainant issued a legal notice upon the convict-petitioner by registered post with AD on 12.11.2015 asking the petitioner to refund the money within 30 days. As the petitioner did not take any step to refund the money within prescribed period. He identified the petition and therein his signature as Exhibit-1 series, original dishonored Slip, Legal Notice and Postal Receipt- as Exhibit-2 series.

In the light of the above discussion, it is clear before me that the judgment and order dated 26.06.2018 passed by the learned Sessions Judge, Bogura in Criminal Appeal No.225 of 2018 rightly and is maintainable in the eye of law.

Accordingly, I do not find any cogent and legal ground to interfere with the impugned judgment and order dated 26.06.2018. Therefore, the instant Rule has no merit.

In the result, the Rule is discharged.

The judgment and order dated 26.06.2018 passed by the learned the learned Sessions Judge, Bogura in Criminal Appeal No.225 of 2018 is hereby upheld and confirmed.

Further, the convict-petitioner is hereby directed to surrender before the concerned Court below within 15(fifteen) days from the date of receipt of this judgment and order, failing which the learned concerned Court below will take necessary steps to secure him arrest.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.2,75,000/- to the complainant-opposite party No.1 (if he did not take the said amount) in this case.

The order of bail granted earlier by this Court is hereby cancelled and recalled.

Send down the lower Court records and communicate a copy of the judgment and order to the concerned Court below at once.

*Md. Anamu Hoque Parvej*  
*Bench Officer*