

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Criminal Revisional Juidiction)

Present

Madam Justice Kashefa Hussain

**Criminal Revision No. 654 of 2020**

Md. Mosharof Hossain Sarker

..... Convict-petitioner

-Versus-

The State

----- Opposite parties

Mr. Ruhul Amin, Advocate

.... for the convict-petitioner

Mr. Najmul Karim, Advocate

.... for the opposite party

Mr. Md. Mohiuddin Dewan, D.A.G with

Ms. Syeda Sabina Ahmed Molly, A.A.G

----- For the State.

Heard on: 12.07.2023, 20.07.2023,  
09.08.2023 and

**Judgment on 17.08.2023**

Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 02.02.2020 passed by the learned Additional Metropolitan Sessions Judge, Sylhet in Criminal Appeal No. 22 of 2019 disallowing the appeal and affirming the judgment and order of conviction and sentence dated 21.05.2018 passed by the learned Joint Metropolitan Sessions Judge, 2<sup>nd</sup> Court, Sylhet in Sessions Case No. 1578 of 2017 arising out of C.R. Case No. 387 of 2017

convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 10(ten) months and also to pay a fine of Tk. 19,88,640/- should not be set aside and/or such other or further order or orders passed as to this court may seem fit and proper.

The complainant opposite party No. 2 filed a case against the petitioner under Section 138 of the Negotiable Instrument Act, 1881 which case was heard as Sessions Case No. 1578 of 2017 arising out of C.R. Case No. 387 of 2017 by the Joint Sessions Judge, 2<sup>nd</sup> Court, Sylhet. The trial court upon hearing the case convicted the petitioner under Section 138 of the Negotiable Instrument Act, 1881 sentencing him to suffer simple imprisonment for 10 (ten) months and also to pay fine of Tk. 19,88,640/- by its judgment and order dated 21.05.2018. Being aggrieved by the judgment and order dated 21.05.2018 passed by the trial court the convict-accused as appellant filed Criminal Appeal No. 22 of 2019 which was heard by the learned Metropolitan Sessions Judge, Sylhet. Upon hearing the appeal the leaned Metropolitan Sessions Judge, Sylhet disallowed the appeal by its judgment and sentence dated 02.02.2020 and thereby upholding the judgment and order of conviction and sentence dated 21.05.2018 passed earlier.

Being aggrieved by the judgment and order of the courts below the convict-appellant petitioner filed the instant criminal revisional application which is instantly before this court for disposal.

Although the matter appeared in the cause list for several days as heard in part item but none appeared for the convict-appellant-petitioner. While learned Deputy Attorney General Mr. Md. Mohiuddin Dewan with Ms. Sayeda Sabina Ahmed Molly, A.A.G appeared for the opposite party No. 1 and the learned Advocate Mr. Najmul Karim represented the respondent-opposite party No. 2.

Learned Advocate for the complainant opposite party No. 2 vehemently opposes the Rule. He takes me to the judgment and the records and points out that there is no factual denial regarding the issuance of the cheque and all the events that subsequently followed. He points out to the materials and submits that from the documents produced as Cheque, Dishonor slip, Legal Notice, postal receipt etc. as exhibits it is clear that all the procedures were duly exhausted. He concludes his submissions upon assertion that the Rule bears no merits and ought to be discharged for ends of justice.

I have heard the learned advocate for the opposite party No. 2 perused the application and materials on records. I have examined the matters and the judgment of the court below. Truly enough I do not find any error of the complainant in following the procedure of Section 138 of the N.I. Act, 1881 from the beginning till the filing of the case. I have examined the exhibits which are the relevant documents. I do not find any inconsistency in exhausting the procedure as provided under Section 138 of the N.I. Act, 1881. I do not any factual denial anywhere in the records by the convict appellant either.

Therefore taking all facts into consideration I am of the considered view that the court's below correctly gave their order and needs no interference with. I do not find any merit in this Rule.

In the result, the Rule is discharged.

The accused-petitioner is directed to deposit the balance amount of cheque to the trial court within 45 days from the date of received of this judgment along with lower court records to be paid to the complainant opposite party in accordance with law.

The accused-petitioner is further directed to surrender before the trial court within 60 days from the same date for serving out the remaining sentence of imprisonment.

The complainant-opposite party is allowed to withdraw the 50% of the cheque amount which has been deposited by the accused-petitioner in the trial court through Chalan within 1(one) month from the date of receipt of this judgment.

Send down the Lower Court Records at once.

Communicate the judgment at once.

**Shokat (B.O.)**