

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Appeal No.8824 of 2020

Md. Zahirul Haque

.....convict-Appellant

-Versus-

The State and another

..... opposite-parties

Mr. Md. Toufiqul Islam, Advocate

.....For the convict-Appellant

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. Md. Abu Nasar, Advocate

.....For the respondent No.2

**Heard on 05.12.2023 and
Judgment on: 06.12.2023**

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred by appellant against the judgment and order of conviction and sentence dated 29.10.2019 passed by the learned Additional Metropolitan Sessions Judge, 1st Court, Dhaka in Metro Sessions Case No.3990 of 2019 arising out of C.R. Case No.1258 of 2018 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer imprisonment for a period of 04(four) months and also to pay a fine of Tk.20,00,000/- only.

At the time of admitting the appeal this Court granted bail to the appellant for a period of 01(one) year from date and stayed the realization of fine.

The relevant facts necessary for disposal of the Rule are that the convict-appellant gave a cheque No.IBV 7749914 dated 25.06.2018 an amount of Tk.20,00,000/-. The complainant company deposited the said cheque to the concerned bank for encashment, but it was dishonoured for insufficient fund on 23.07.2018. Thereafter, the complainant company issued legal notice to the appellant on 31.07.2018 for depositing the said amount in favour of Complainant Company which was received by the appellant on 06.08.2018, but he did not take any proper steps for paying the said amount to the complainant. Thereafter, the complainant company finding no other alternative filed a complaint-petition against the appellant under section 138 of the Negotiable Instruments Act, 1881 before the learned Chief Metropolitan Magistrate, Dhaka on 11.09.2018.

Thereafter, it was transferred to the learned Metropolitan Sessions Judge, Dhaka for trial and disposal, which was renumbered as Metro Sessions Case No.3990 of 2019 and further, it was transferred to the learned Additional Metropolitan Session Judge, 1st Court, Dhaka for disposal. After conclusion of the trial and hearing both the parties the

learned Additional Session Judge, 1st Court, Dhaka on perusal of the evidence on record and document convicted the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer imprisonment for a period of 04(four) months and also to pay a fine of Tk.20,00,000/- by his judgment and order of conviction and sentence dated 29.10.2019.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 29.10.2019 passed by the learned Additional Sessions Judge, 1st Court, Dhaka in Metro Sessions Case No.3990 of 2019 arising out of C.R. Case No.1258 of 2018 the convict-appellant filed this Criminal Appeal, before this Hon'ble High Court Division.

Mr. Md. Toufiqul Islam, the learned Advocate appearing for the convict-appellant by filing an application for compromise submits that an amicable settlement has been reached between the parties and the convict-appellant has paid the cheque amount to the complainant-respondent No.2. The complainant has no claimed against the convict-appellant if he be acquitted and the complainant got his claimed amount.

Accordingly, he prays for acquitting the convict-appellant and allowing the Appeal.

Mr. Md. Abu Nasar, the learned Advocate appearing on behalf of the complainant-respondent No.2 supported the submission of the learned Advocate for the appellant and submits that the convict-appellant paid the total cheque amount to the complainant and a peaceful compromise has been held between the parties and he has no objection to acquit the convict-appellant and allow the appeal.

I have perused the revisional application, the application for compromise, the impugned judgment and order of conviction and sentence the Court's below, the submissions of the learned Advocates for the parties, the papers and documents as available on the record.

It appears from the submissions of the learned Advocates for both the parties that an amicable settlement became between the parties and there is no claim to each other.

Moreover, the main object of this case is recovery of amount, which has been settled amicably between the parties.

In the light of the above discussion, it is clear before me that since the convict-appellant paid the claimed amount and an amicable settlement has been held between the parties and there is no any claim to each other. Therefore, the judgment and order of conviction and sentence dated 29.10.2019 passed by the learned Additional Metropolitan Sessions Judge, 1st Court, Dhaka in Metro Sessions Case No.3990 of 2019 is not maintainable against the convict-appellant and it will be fair to interference there.

Accordingly, I find cogent and legal ground in the submissions of the learned Advocates for the parties and to interfere with the impugned judgment and order of conviction and sentence dated 29.10.2019. Therefore, the instant Rule has merit.

In the result, the Criminal Appeal No.8824 of 2020 is allowed on the basis of compromise petition.

The impugned judgment and order of conviction and sentence dated 29.10.2019 passed by the learned Additional Metropolitan Sessions Judge, 1st Court, Dhaka in Metro

Sessions Case No.3990 of 2019 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 04(four) months and also to pay a fine of Tk.20,00,000/- is hereby set-aside and the convict-appellant be acquitted.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.10,00,000/- to the complainant-respondent No.2 (if he did not withdraw the said amount) in this case.

The order of bail granted at the time of issuance of the Rule is hereby recalled and cancelled and the order of stay of realization of fine is hereby vacated.

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

Md. Anamul Hoque Parvej
Bench Officer