

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 1802 of 2020

Md. Abul Kalam Azad

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

No one appears.

...For the convict-petitioner

No one appears

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

Heard on 08.05.2025 and 29.05.2025

Judgment delivered on 02.06.2025

On an application filed under section 439 read with section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 20.11.2019 passed by the Sessions Judge, Noakhali in Criminal Appeal No. 08 of 2019 affirming the judgment and order of conviction and sentence dated 08.11.2018 passed by the Joint Sessions Judge, Court No. 1, Noakhali in Sessions Case No. 73 of 2018 arising out of C.R. Case No. 420 of 2015 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 5(five) months and fine of Tk. 1,00,700(one lakh seven hundred) should not be set aside and/or such other order passed as this court may deem fit and proper.

The prosecution's case, in short, is that the convict-petitioner Md. Abul Kalam Azad obtained loan of Tk. 1,50,000 based on the sanction letter No. 11.2/2.45 dated 01.09.2013. As per the agreement, the said loan was required to be paid by 36 equal installments of Tk. 5,300. The convict-petitioner issued total 19 cheques on 13.08.2015 drawn on his Account No. 0062100010052 maintained with Bangladesh Development Bank Ltd, Noakhali Branch, Choumohuni for payment of Tk. 5,300 each. The complainant-bank presented the

said cheques on 16.08.2015 through the said branch of the Bangladesh Development Bank Ltd, Noakhali, for encashment, but those cheques were dishonoured with the remark 'insufficient funds'. The complainant-bank sent a legal notice on 25.08.2015 for payment of total Tk. 100,700 within 30(thirty) days from the date of receipt of the notice. The convict-petitioner received the notice on 03.09.2015, but he did not pay the cheque amount following the said legal notice. The officers of the bank also personally communicated with the convict-petitioner, but he refused to pay the cheque amount. It is stated that the convict-petitioner received the notice on 03.09.2015 and the cause of action arose on 04.10.2015. Consequently, the complainant bank filed the case on 29.10.2015.

During the trial, the charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881 and at the time of framing charge, he was absconding. The prosecution examined 1(one) witness to prove the charge against the accused. Since the accused was absconding, he was not examined under section 342 of the Code of Criminal Procedure, 1898.

After concluding the trial, the Joint Sessions Judge, Court No. 1, Noakhali, by judgment and order dated 08.11.2018, convicted the accused under section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer imprisonment for 5(five) months and fine of Tk. 1,00,700 against which the accused filed Criminal Appeal No. 08 of 2019 before the Sessions Judge, Noakhali, who, after hearing, by judgment and order dated 20.11.2019, affirmed the judgment and order of conviction and sentence passed by the trial Court against which the convict-petitioner obtained the Rule.

P.W. 1 Sourav Chowdhury is the Officer of Bangladesh Development Bank Ltd, Noakhali Branch, Choumohuni. He stated that he deposed based on the power of attorney. Md. Abul Kalam Azad took loan from the Bangladesh Development Bank Ltd, Noakhali Branch, Choumohuni. On 13.08.2015, the accused issued

total 19 cheques for payment of Tk. 5,300 each total Tk. 1,00,700. On 16.08.2015, those cheques were dishonoured for 'insufficient funds'. On 25.08.2015, the complainant bank sent a legal notice. The accused received the notice on 03.09.2015, but he did not pay the cheque amount. After filing the case, the complainant's officer who filed the case was transferred. His signature is known to him. P.W. 1 proved the complaint petition and the signature of the complainant as exhibits 1 series. He proved 19 cheques, 19 dishonour slips as exhibits 2 series, legal notice, AD, and postal receipt as exhibits 3 series, and power of attorney as exhibit 4. The defence did not cross-examine P.W. 1.

No one appears on behalf of either party.

On perusal of the evidence, it appears that the accused Md. Abul Kalam Azad issued 19 cheques on 13.08.2015, and the complainant bank presented those cheques on 16.08.2015 for encashment, but the said cheques were dishonoured for 'insufficient funds'. P.W. 1 proved the said cheques and dishonour slips as exhibits 2 to 2/36. The complainant-bank sent the legal notice on 25.08.2015 through registered post with AD. P.W. 1 proved the legal notice as exhibit 3, the postal receipt as exhibit 4/1, and the AD as exhibit 4/2. P.W. 1 proved the power of attorney as Exhibit 4. The above evidence depicts that the accused Md. Abul Kalam Azad issued 19 cheques on 13.08.2015 for payment of Tk. 5,300 each total Tk. 1,00,700 in favour of the complainant Bangladesh Development Bank Ltd, Noakhali Branch, Choumohuni, for payment of the installments, and after presentation, the said cheques were dishonoured. Despite the notice dated 25.08.2015 served on 03.09.2015 upon the accused Md. Abul Kalam Azad, he did not pay the cheque amount Tk. 1,00,700. It is found that the cause of action arises on 04.10.2015 for filing the case, and the complainant, complying with the procedures of clause (a) to (c) of section 138 and section 141(b) of the Negotiable Instruments Act, 1881 filed the case. During the trial, P.W. 1 proved the charge

against the accused beyond all reasonable doubt. Both the Courts below legally passed the impugned judgment and order of conviction.

Considering the gravity of the offence, I am of the view that the ends of justice would be best served if the sentence passed by the Courts below is modified as under;

The convict-petitioner Md. Abul Kalam Azad is found guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and he is sentenced thereunder to suffer imprisonment for 1(one) month and fine of Tk. 1,00,700(one lakh seven hundred).

The convict-petitioner is directed to surrender before the trial Court forthwith and deposit the fine amount within 30(thirty) days from the date.

The complainant, Bangladesh Development Bank Ltd, Noakhali Branch, Choumohuni, is entitled to get the fine amount Tk. 1,00,700(one lakh seven hundred).

In the result, the Rule is disposed of with a modification of the sentence.

However, there will be no order as to costs.

Send down the lower Court's records at once.