

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No.293 of 2021

Prime Edible Oil Limited

.....Complainant -petitioner

-Versus-

Md. Shamsul Alam and another

..... opposite-parties

Mr. A.B.M.Waliur Rahman Khan, Advocate

.....For the Complainant-petitioner

Mrs. Aleya Khandker, A.A.G and

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. S.M. Arifur Rahman, Advocate

.....For the convict-opposite party No.1

Heard on: 30.07.2023 and

Judgment on: 16.08.2023

Md. Kamrul Hossain Mollah.J:

This is an application under Section 439 read with section 435 of the Code of Criminal Procedure and this Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 25.01.2021 passed by the learned Judge of Druto Bichar Tribunal No.04 and Special Sessions Judge, Dhaka in Criminal Appeal No.445 of 2020 allowing the appeal and setting aside the judgment and order of conviction and sentence dated 27.02.2019 passed by the learned Joint Metropolitan Sessions Judge,

2nd Court, Dhaka in Metro Sessions Case No.8881 of 2014 arising out of C.R. Case No.417 of 2014 sending the case on remand for retrial and to dispose of the same within 06 months and directing the opposite party No.1 to withdraw the money being deposited through chalan in trial Court 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 stayed the operation of the judgment and order dated 25.01.2021 passed by the Druto Bichar Tribunal No.04 and the Special Sessions Judge, Dhaka in Criminal Appeal No.445 of 2020 so far as it relates to the portion of direction for holding retrial and withdrawal of deposited money by the accused-opposite party No.1 for a period of 01(one) year from date.

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

The prosecution case, in short is that the petitioner being the complainant on behalf of the Prime Edible Oil Limited filed the C.R. Case No.417 of 2014 before the Court of Chief Metropolitan Magistrate, Dhaka on 17.02.2014 under section 138 and 140 of the Negotiable Instruments Act, 1881 stating

inter alia that in order to make payment against due amounting Tk.4,00,00,000/- (four crore) the opposite party No.1 gave a cheque being No.3338538 amounting Tk.4,00,00,000/- dated 24.09.2013 from his CD A/C-10511070000051, which had been dishonoured on 28.11.2013 by First Security Islami Bank Limited, Dilkusha Branch, Dhaka due to insufficient fund and on 23.12.2013 a legal notice was served being registered with A/D to the opposite party No.1 to make payment of the same, but no payment was made, thus the instant case was filed on 17.02.2014 and the learned Metropolitan Magistrate, Dhaka took cognizance upon hearing the petitioner against the opposite party No.1 under section 138 of the Negotiable Instruments Act, 1881.

The case record having been ready for trial was sent to the Court of the Joint Metropolitan Sessions Judge, Court No.2, Dhaka, who framed charge against the opposite party No.1 under section 138 of the Negotiable Instruments Act, 1881 by his order dated 06.07.2015 rejecting the prayer made under section 265(C) of the Code of Criminal Procedure, which was read over to him who pleaded not guilty and claimed to be tried.

The learned trial Court examined the petitioner as P.W.1 and the opposite party No.1 as the D.W.1 on 10.01.2018. After closing of evidence, the opposite party No.1 was examined by the learned trial Court under section 342 of the Code of Criminal Procedure and he claimed himself innocent.

In the midst of trial the opposite party No.1 moved a revisional application being No.1916 of 2018 upon, which the High Court Division by order dated 05.08.2018 directed the trial Court to compare the hand writing and the signature appear on the disputed cheque along with the hand writing and signature of the present accused-petitioner under the provision of section 73 of the Evidence Act and accordingly, the learned trial Court by order dated 29.08.2018 directed the disputed cheque issuing Bank to produce the original signature of the opposite party No.1 in connection with CD A/C-10511670000051 on 29.10.2018. In the absence of the opposite party No.1 an application was moved on 29.10.2018 before the trial Court to examine his signature by CID or any expert agency and the learned trial Court after hearing both the sides vide order dated 29.10.2018 rejected the prayer and issued warrant of arrest against the opposite party No.1.

The learned trial Court after hearing the arguments and assessing evidence on record found guilty the accused-opposite party No.1 under section 138 of the Negotiable Instruments act, 1881 and sentenced him to suffer simple imprisonment for 01(one) year and also to pay a fine of Tk.4,00,00,000/- by the judgment and order dated 27.02.2019.

Thereafter, the accused-opposite party No.01 being aggrieved by and dissatisfied with the judgment and order dated 27.02.2019 passed by the Joint Metropolitan Sessions Judge, 2nd Court, Dhaka in Metropolitan Sessions Case No.8881 of 2014 preferred the Criminal Appeal No.445 of 2020 under section 408 of the Code of Criminal Procedure before the Metropolitan Sessions Judge, Dhaka on 14.06.2020 and the said appeal was heard by the Druto Bichar Tribunal No.04, and the Special Sessions Judge, Dhaka. The learned Judge of the Druto Bichar Tribunal No.4, Dhaka after hearing the parties passed the judgment and order dated 25.01.2021 allowing the said appeal and setting aside the judgment and order dated 27.02.2019 passed by the learned Joint Metropolitan Sessions Judge, 2nd Court, Dhaka in Metro Sessions Case No.8881 of 2014 and sent the record to the trial Court to hold re-trial and

make disposal within 06(six) months and also directed the accused opposite party No.1 to withdraw his money deposited through chalan in the trial Court.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 25.01.2021 passed by the learned Judge of Druto Bichar Tribunal No.04 and Special Sessions Judge, Dhaka in Criminal Appeal No.445 of 2020 corresponding to Metro Sessions Case No.8881 of 2014 arising out of C.R. No.417 of 2014 allowing the appeal and setting aside the judgment and order of conviction and sentence dated 27.02.2019 passed by the learned Joint Metropolitan Sessions Judge, 2nd Court, Dhaka in Metro Sessions CaseNo.8881 of 2014 convicting opposite party No.1 under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 01(one) year and to pay a fine of Tk.4,00,00,000/- and sending the record for retrial and to make disposal within 06(six) months and directing the opposite party No.1 to withdraw his money deposited through Chalan in trial Court, the complainant-petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

Mr. A.B.M. Waliur Rahman Khan, the learned Advocate appearing for the complainant-petitioner submits that the learned trial Court took steps according to the provisions of section 73 of the Evidence Act being directed by this Hon'ble Court and as such, the Appellate Court committed illegally in directing the trial Court to hold re-trial.

He further submits that there is no provision to examine the disputed signature by CID or any expert agency under section 73 of the Evidence Act and as such, the learned trial Court committed no illegality.

He next submits that the learned Appellate Court did not consider at all the evidence on record and since the judgment passed by the learned trial Court is based on legal evidence the reversal judgment passed by the Appellate Court is liable to be set-aside.

The learned Advocate lastly submits that in the instant case both the parties have settled the dispute between themselves out of compromise and upon hearing the compromise petition the Single Bench of this Hon'ble Court by his order dated 07.06.2022 allowed the complainant petitioner

to withdraw the 50% of the cheque amount Tk.2,00,00,000/- (two crore) which has been deposited by the convict-opposite party No.1 at the time of filing the Criminal Appeal No.445 of 2020 arising out of Metro Sessions Case No.8881 of 2014 corresponding to C.R. No.417 of 2014 through chalan within 01(one) month from the date of receipt of this order. The Hon'ble Single Bench further ordered directing the convict-opposite party No.1 to pay the balance amount of Tk.2,00,00,000/- (two crore) to the complainant within 01(one) year from the order dated 07.06.2022. Thereafter, on behalf of the complainant-petitioner an application was filed before the learned trial Court the Joint Metropolitan Sessions Judge, 2nd Court, Dhaka on 14.06.2022 praying for withdrawing the 50% of the cheque amount Tk.2,00,00,000/- (two crore). The learned trial Court upon hearing the application allowed the application filed by the complainant-petitioner by his order dated 16.06.2022 and complainant-petitioner received a cheque from the Chief Controller of Accounts of the People's Republic of Bangladesh amounting Tk.2,00,00,000/- (two crore) vide C.G.A. cheque being number 21 ऋ 4925803 dated 26.06.2022. In pursuance of the order dated 07.06.2022 passed from this

Hon'ble Court and compromise petition executed between the parties the convict-opposite party did not make any payment to the complainant-petitioner till now. Accordingly, he prays for making the Rule absolute.

On the other hand, Mr. S.M. Arifur Rahman, the learned Advocate appearing on behalf of the convict-opposite party No.1 by filing an affidavit in compliance submits that on 07.06.2022 this Hon'ble High Court Division directed the convict-opposite party No.1 to pay Tk.2,00,00,000/- (two crore) to the complainant-petitioner within 01(one) year from date in Criminal Revision NO.293 of 2021. Moreover, this Hon'ble Court allowed the Complainant-petitioner to withdraw the 50% of the cheque amount Tk.2,00,00,000/- (two crore), which has been deposited by the convict-opposite party No.1 at the time of filing appeal in Criminal Appeal No.445 of 2020 corresponding to Metro Sessions Case No.8881 of 2014 arising out of C.R. Case No.417 of 2014 through Chalan within 01(one) month from the date of receipt of this order. Subsequently, on 14.06.2022 the complainant-petitioner filed an application before the Joint Metropolitan Sessions Judge, 2nd Court, Dhaka for withdrawing the 50% of the cheque amount

Tk.2,00,00,000/- (two crore), which has been deposited by the convict-opposite party No.1 as per order dated 07.06.2022 passed by the Hon'ble High Court Division in Criminal Revision No.293 of 2021. Thereafter, on 16.06.2022 the Joint Metropolitan Sessions Judge, 2nd Court, Dhaka on scrutiny of the order dated 07.06.2022 passed by the Hon'ble High Court Division in Criminal Revision No.293 of 2021 and after hearing both the parties allowed the application filed by the petitioner for withdrawing the 50% of the cheque amount of Tk.2,00,00,000/- (two crore). Accordingly, the complainant-petitioner withdrew Tk.2,00,00,000/- (two crore) from the concern Bank. As per direction dated 07.06.2022 by the Hon'ble High Court Division, the convict-opposite party No.1 will pay the complainant-petitioner the rest of the amount Tk.2,00,00,000/- (two crore) on or before 6th June, 2023.

I have perused the revisional application, the impugned judgment and order of 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 records that the petitioner being the complainant on behalf of the Prime Edible Oil Limited filed the

C.R. Case No.417 of 2014 before the Court of Chief Metropolitan Magistrate, Dhaka on 17.02.2014 under section 138 and 140 of the Negotiable Instruments Act, 1881 stating that against due amount of Tk.4,00,00,000/- (four crore) the opposite party No.1 gave a cheque being No.3338538 amounting Tk.4,00,00,000/- dated 24.09.2013 from his CD A/C-10511070000051, which had been dishonoured on 28.11.2013 by First Security Islami Bank Limited, Dilkusha Branch, Dhaka due to insufficient fund and on 23.12.2013 a legal notice was served being registered with A/D with the opposite party No.1 to make payment of the same, but no payment was made, thus the instant case was filed on 17.02.2014 and the learned Metropolitan Magistrate, Dhaka took cognizance upon hearing the petitioner against the opposite party No.1 under section 138 of the Negotiable Instruments Act, 1881. Thereafter, the learned Joint Metropolitan Sessions Judge, Court No.2, Dhaka, framed charge against the opposite party No.1 under section 138 of the Negotiable Instruments Act, 1881 by his order dated 06.07.2015. The learned trial Court after hearing the complainant-petitioner and assessing evidence on record in the

absence of the accused-opposite party No.1 found guilty the accused-opposite party No.1 under section 138 of the Negotiable Instruments act, 1881 and sentenced him to suffer simple imprisonment for 01(one) year and also to pay a fine of Tk.4,00,00,000/- by his judgment and order dated 27.02.2019. Being aggrieved by and dissatisfied with the judgment and order dated 27.02.2019 passed by the Joint Metropolitan Sessions Judge, 2nd Court, Dhaka in Metropolitan Sessions Case No.8881 of 2014, the convict-opposite party No.1 preferred the Criminal Appeal No.445 of 2020 under section 408 of the Code of Criminal Procedure before the Metropolitan Sessions Judge, Dhaka and after hearing both the parties the learned Druto Bichar Tribunal No.04, and the Special Sessions Judge, Dhaka by his judgment and order dated 25.01.2021 allowing the said appeal and setting aside the judgment and order dated 27.02.2019 passed by the learned Joint Metropolitan Sessions Judge, 2nd Court, Dhaka in Metro Sessions Case No.8881 of 2014 and sent the record to the trial Court to hold re-trial and make disposal within 06(six) months and also directed the accused opposite party No.1 to withdraw his money deposited through chalan in the trial Court. Thereafter, the complainant-

petitioner filed the Criminal Revision No.293 of 2021 against the said judgment and order. Thereafter, on the basis of compromise petition filed by the parties on 07.06.2022 the Hon'ble High Court Division directed the convict-opposite party No.1 to pay the rest amount of dishonoured cheque of Tk.2,00,00,000/- to the complainant-petitioner within 01(one) year from date in Criminal Revision No.293 of 2021. Mr. S.M. Arifur Rahman, the learned Advocate appearing on behalf of the convict-opposite party No.1 by filing an affidavit in compliance submits that as per directions dated 07.06.2022 by the Hon'ble High Court Division, the convict-opposite party No.1 will pay the complainant-petitioner the rest of the amount Tk.2,00,00,000/- (two crore) on or before 6th June, 2023. But, it is found on record that in pursuance of the order dated 07.06.2022 passed from this Hon'ble Court and compromise petition executed between the parties the convict-opposite party No.1 did not make any payment to the complainant-petitioner till today i.e. on 16.08.2023.

In the light of the above discussion, it appears that the convict-opposite party No.1 without paying the rest amount Tk.2,00,00,000/- within 01(one) year, violated the order of

the Honourable High Court Division, it bears guilty mind. In the instant case, I think that both parties have settled the dispute between themselves out of Court and accordingly they filed the compromise petition and upon hearing both the parties and considering the compromise petition filed by the parties this Court passed the order dated 07.06.2022, so the judgment and order dated 25.01.2021 passed by the learned Druto Bichar Tribunal No.04, and the Special Sessions Judge, Dhaka has no force and that is not maintainable in the eye of law.

Accordingly, I find cogent and legal ground to interfere with the judgment and order dated 25.01.2021. Therefore, the instant Rule has merit.

In the result, the Rule is made absolute.

The judgment and order dated 25.01.2021 passed by the learned Druto Bichar Tribunal No.04, and the Special Sessions Judge, Dhaka in Criminal Appeal No.445 of 2020 is hereby set-aside and the judgment and order dated 27.02.2019 passed by the Joint Metropolitan Sessions Judge, 2nd Court, Dhaka in

Metropolitan Sessions Case No.8881 of 2014 is hereby confirmed.

The convict-opposite party No.1 is hereby directed to surrender before the concerned Court below and pay the rest amount of the dishonoured cheque within 15(fifteen) days from the date of this judgment and order. On the other hand, the concerned lower Court is hereby directed to secure the convict-opposite party No.1 arrest (if he does not surrender before the concerned Court below in time).

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

Md. Anamu Hoque Parvej
Bench Officer