

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Appeal No.8295 of 2021

Md. Belal Uddin

.....convict-Appellant

-Versus-

The State and another

..... opposite-parties

Mr. Mohammad Sajjadur Rahman, Advocate

.....For the convict-Appellant

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. Mohammad Mizanur Rahman, Advocate

.....For the respondent No.2

Heard and Judgment on: 27.02.2024

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred against the judgment and order of conviction and sentence dated 26.06.2016 passed by the learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram in Sessions Case No.2798 of 2014 arising out of C.R. Case No.1617 of 2013(Kotwali Zone) convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 06(six) months and also to pay a fine of Tk.6,00,000/- the complainant will get full amount of taka contained in judgment.

At the time of issuance of the Rule this Court granted bail to the appellant for a period of 04(four) months from date.

The relevant facts necessary for disposal of the Rule are that the convict-appellant took loan of Tk.10,00,000/- from the complainant and the complainant gave him Tk.6,00,000/- on 15.05.2012 with condition of the appellant will return the same to the complainant within 06(six) months and thereafter, when the complainant needs to money then the appellant gave him cheque being No.CA¹⁰/_C No.9457430 dated 17.04.2013 from current account No.9891 amount of Tk.6,00,000/-. The complainant deposited the same into the Sonali Bank Court hill Chattogram for encashment, which was dishonoured on 28.04.2013 due to insufficient fund. Thereafter, the complainant issued legal notice to the appellant on 13.05.2013 for depositing the said amount in favour of complainant which was received by the appellant on 20.05.2013, but he did not take any proper steps for depositing the said amount to the complainant. Thereafter, the complainant 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, Cognizance Court No.1, Chattogram on 02.07.2013.

Thereafter, it was transferred to the learned Metropolitan Sessions Judge, Chattogram for trial and disposal, which was renumbered as Sessions Case No.2798 of 2014 and further, it was transferred to the learned Additional Session Judge, 3rd Court, Chattogram for disposal. After conclusion of the trial and hearing both the parties the learned Additional Session Judge, 3rd Court, Chattogram 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 simple imprisonment for a period of 06(six) months and also to pay a fine of Tk.6,00,000/- by his judgment and order of conviction and sentence dated 26.06.2016.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 26.06.2016 passed by the learned Additional Sessions Judge, 3rd Court, Chattogram in Sessions Case No.2798 of 2014 arising out of C.R. Case No.1617 of 2013(kotwali Zone) the convict-appellant filed this Criminal Appeal, before this Hon'ble High Court Division.

Mr. Mohammad Sajjadur Rahman, the learned Advocate appearing for the complainant-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 making the Rule absolute.

Mr. Mohammad Mizanur Rahman, 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 absolute the Rule.

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, 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 26.06.2016 passed by the learned Additional Sessions Judge, 3rd Court, Chattogram in Sessions Case No.2798 of 2014 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 26.06.2016. Therefore, the instant Rule has merit.

In the result, the Criminal Appeal No.8295 of 2021 is allowed on the basis of compromise petition.

The impugned judgment and order of conviction and sentence dated 26.06.2016 passed by the learned Additional Sessions Judge, 3rd Court, Chattogram in Sessions Case No.2798 of 2014 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 06(six) months and also to pay a fine of Tk.6,00,000/- 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.3,00,000/- 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.

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