

**Present:**  
**Mr. Justice Md. Ataur Rahman Khan**

**Criminal Revision No. 645 of 2021.**

Md. Rafiqul Islam  
...Complainant -petitioner.  
-Versus-

The State and another  
.... Opposite parties.

No one appears for the complainant petitioner.

Mr. Shah Paran Chowdhury, Advocate.  
.. For the convict opposite party No. 2.

Ms. Anjuman Ara Begum, AAG  
Mr. Miah Sirajul Islam, AAGs  
..... For the State.

**Heard on: 09.10.2023, 29.10.2023, 07.11.2023.**

**And**

**Judgment on: 23.11.2023.**

This Rule under Section 439 read with section 435 of the Code Criminal Procedure is directed against the impugned Judgment and order of acquittal dated 04.02.2020 passed by the Sessions Judge, Khagrachhori, in Criminal Appeal No. 22 of 2018 allowed the Appeal setting aside the judgment and order of conviction and sentence dated 10.10.2017 passed by the Joint District and Sessions Judge, Khagrachhori, in S.T Case No. 75 of 2015 arising out of C.R Case No. 70 of 2014, convicted

the convict opposite party No. 2 under section 138 of the Negotiable Instrument Act, 1881 and sentenced him to suffer rigorous imprisonment for a period of 01 (one) year and to pay a fine of Tk. 10,00,000/- (ten lac) of which the complainant to get the fine money.

The complaint case, in brief, is that, On the basis of business profit sharing accused borrowed an amount of Tk. 10,00,000/- (ten lac) from the complainant against which the convict opposite party No. 2 issued an acknowledgement deed in favour of the complainant on 07.04.2011 through a non-judicial stamp valued at Tk. 150/-. Where it is mentioned that the accused will make the payment by February 2013 in the defection the accused was to pay 20,000/- per month as business profit. The accused issued a cheque of an amount of Tk. 10,00,000/- which has been dishonoured due to insufficient fund. Thereafter maintaining all of the required formalities the complainant lodged the instant case under section 138 of the Negotiable Instruments Act, 1881.

The learned Magistrate took cognizance and issued summons under Section 138 of the Negotiable Instruments Act, 1881 against the convict opposite party No. 1.

The case was transferred to the court of Sessions Judge, Khagrachhori, which was registered as Sessions Trial Case No. 75 of 2015. Thereafter, the case was again transferred in the court of learned Judge, Khagrachhori for trial and disposal, who frame charged under section 138 of the Negotiable Instrument Act, 1881 against the convict opposite party No. 2. The complainant petitioner was examined as complainant witness No. 1 and defence examined none. The Joint Sessions Judge, Khagrachhori after hearing convict the accused opposite party No. 2 by the judgment and order of conviction and sentence dated 10.10.2017 under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer rigorous imprisonment for a period of 01 (one) year and to pay a fine of Tk. 10,00,000/- (ten lac).

Being aggrieved by and dissatisfied with the Judgment and order of conviction and sentence dated 10.10.2017 passed by the Joint Sessions Judge, Khagrachhori, in S.T Case No. 75 of

2015 arising out of C.R Case No. 70 of 2014, the accused person preferred Criminal Appeal No. 22 of 2018 in the court of Sessions Judge, Khagrachhori, who after hearing allowed the appeal setting aside the judgment and order of conviction and sentence dated 10.10.2017 passed by the Joint Sessions Judge, Khagrachhori, in S.T Case No. 75 of 2015 arising out of C.R Case No. 70 of 2014.

Being aggrieved by and dissatisfied with the Judgment and order of acquittal dated 04.02.2020 passed by the Sessions Judge, Khagrachhori, in Criminal Appeal No. 22 of 2018, the complainant petitioner filed this Revision before this court and obtained Rule and direction not to return the deposit 50% cheque amount in favour of the opposite party No. 2.

No one appears for the complainant petitioner.

Mr. Shah Paran Chowdhury, the learned Advocate appearing on behalf of the accused opposite party No. 2 submits that the trial court after hearing without considering the evidence on record wrongly convicted the accused opposite party No. 2 under section 138 of the Negotiable

Instruments Act, 1881 and sentenced him to suffer rigorous imprisonment for a period of 01 (one) year and to pay a fine of Tk. 10,00,000/- (ten lac). The Sessions Judge, Khagrachhori after hearing on consideration of the evidence on record rightly acquitted the accused persons and allowed the appeal setting aside the judgment and order of conviction and sentence passed by Joint Sessions Judge, Khagrachhori. He further submits that the complainant falsely implicated the case out of enmity of grudge through the accused opposite party already paid full amount cheque money but the complainant did not gave the cheque in favour of the convict opposite party No. 2. He further submits that the cheque was issued after the statutory period for this reason the complainant petitioner could not entitled to get cheque money from the convict opposite party No. 2. He further submits that the Sessions Judge, Khagrachhori, rightly held that the complainant petitioner filed this case only ill motive to harass the convict opposite party and gain over Tk.10,00,000/- from the convict opposite party No. 2. He further submits that the complainant petitioner filed the case 145 days delay for this

reason the complainant petitioner is not entitled to get any benefit in this case. He further submits that the cheque was issued on the date of agreement deed but the complainant petitioner manipulated the deed and filed this case out of enmity of grudge and trying to gain over the benefit at Tk. 10,00,000/-. He further submits that the son of the convict opposite party was dealt with the matter and settled this matter out of the court but after the death of the son of the convict opposite party the complainant petitioner trying to again gain over at Tk. 10,00,000/- from the convict opposite party. Accordingly, he submits that the present Rule may be discharged for ends of justice.

Mr. Anjuman Ara Begum along with Mr. Miah Sirajul Islam, the learned Assistant Attorney Generals appearing on behalf of the respondent opposite party No. 1 submit that the accused opposite party No. 2 took loan at Tk. 10,00,000/- and issued a cheque at Tk. 10,00,000/- and agreement of payment but the accused opposite party No. 2 did not pay the same. The complainant deposited the cheque before the bank but which was dishonoured due to insufficient fund. The complainant

sent a legal notice but the accused opposite party No. 2 did not response. They further submit that the trial court after hearing on consideration of the evidence on record rightly convicted the accused opposite party No. 2 under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer rigorous imprisonment for a period of 01 (one) year and to pay a fine of Tk. 10,00,000/- (ten lac). They further submit that the Sessions Judge, Khagrachhori after hearing without consideration of the evidence on record wrongly acquitted and allowed the appeal setting aside the judgment and order of conviction passed by Joint Sessions Judge, Khagrachhori. Accordingly, they submit that the Rule may be discharged for ends of justice.

Heard the learned Advocate of accused opposite party and the learned Assistant Attorney Generals, perused the revisional application, impugned Judgment and order of acquittal dated 04.02.2020 passed by the Sessions Judge, Khagrachhori, in Criminal Appeal No. 22 of 2018 allowed the Appeal setting aside the judgment and order of conviction and sentence dated 10.10.2017 passed by the Joint

Sessions Judge, Khagrachhori, in S.T Case No. 75 of 2015 arising out of C.R Case No. 70 of 2014 and other necessary papers which are available in records. It appears from the records that the accused opposite party No. 2 took loan at Tk. 10,00,000/- when the complainant deposited the said cheque for encashment the cheque was dishonoured due to insufficient fund. The complainant sent a legal notice in favour of the convict opposite party No. 2 but the accused opposite party did not pay the cheque amount in favour of the complainant petitioner. The trial court after hearing without considering the evidence on record wrongly convicted the convict opposite party, though the agreement signature and the signature of the cheque was contradictory did not tale the same. It also appears from the records that the cheque was gave on the date of agreement in non-judicial stamp at TK. 150/- on 07.04.2011 but the complainant with ill motive filed this case on 28.12.2013 which is not tenable in the eye of law. The complainant filed this case after 145 days delay on the statutory period. The complainant by fraud practicing filed this case and unnecessarily the accused opposite party No. 2



was five months jail Hazat. The son of the convict opposite party No. 2 earlier settled the matter but all on sudden the son of the accused opposite party No. 2 was died, he was a student of the Dhaka University, the trial court without considering the relevant facts of the case wrongly convicted the convict opposite party No. 2. The Sessions Judge, Khagrachhori after hearing on consideration of the evidence on record and real facts of the case rightly acquitted the accused opposite party No. 2 which is sustainable in the eye of law.

On critical analysis of the aforesaid evidence on record, It transpires that the complainant petitioner could not proved the case beyond reasonable doubt. The cheque was issued on the date of agreement deed i.e 07.04.2011 and the complainant filed this case by inserting the date of 28.12.2013 after 145 days delay of the statutory period under section 138 of the Negotiable Instruments Act, 1881 and trying to fraud practice gained over at Tk. 10,00,000/- from the accused opposite party No. 2. The son of the accused opposite party No. 2 already settled the matter and paid the cheque money in favour of the complainant petitioner but suddenly the son of

the accused opposite party No. 2 died and he was a student of the Dhaka University. The complainant illegally again trying to get Tk. 10,00,000/- from the accused opposite party No. 2 which is not sustainable in the eye of law. The trial court without considering the relevant facts of the case wrongly convicted the accused opposite party No. 2 which is not sustainable in the eye of law. The Sessions Judge, Khagrachhori after hearing on consideration of the evidence on record and the real facts of the rightly acquitted the accused opposite party No. 2 which is sustainable in the eye of law.

So, in all fairness the complainant has not been able to prove the case beyond reasonable doubt. The Joint Sessions Judge, Khagrachhori after hearing without consideration of the evidence on record wrongly convicted and sentenced the convict opposite party No. 2 as mentioned above. The Sessions Judge, Khagrachhori after hearing on consideration of the evidence on record and the real facts of the case rightly acquitted the accused opposite party No. 2 which is just and sustainable in the eye of law which deserves no interference

by this court, I do hereby agree with the findings and decisions passed by the learned Sessions Judge, Khagrachhori.

I have gone through the privilege that the impugned judgment and order dated 04.02.2020 and I have reason to believe that the Sessions Judge, Khagrachhori after hearing rightly discuss the evidence of witness and also rightly apply its judicial mind.

Considering the above facts and circumstances of the case as well as evidence on records I hold and find that the learned Sessions Judge, Khagrachhori after hearing rightly acquitted the convict opposite party No.2 setting aside the judgment and order of conviction and sentence passed by the trial court is hereby by affirmed.

In the result, the Rule issued earlier is hereby discharged.

The impugned Judgment and order of acquittal dated 04.02.2020 passed by the Sessions Judge, Khagrachhori, in Criminal Appeal No. 22 of 2018 is hereby affirmed. The judgment and order of conviction and sentence dated

10.10.2017 passed by the Joint Sessions Judge, Khagrachhori, in S.T Case No. 75 of 2015 arising out of C.R Case No. 70 of 2014, convicted the convict opposite party No. 2 under section 138 of the Negotiable Instrument Act, 1881 and sentenced him to suffer rigorous imprisonment for a period of 01 (one) year and to pay a fine of Tk. 10,00,000/- (ten lac) are hereby set-aside.

Accordingly, the accused opposite party No. 2 Md. Tajul Islam son of late Maju Mia be acquitted from the charge leveled against him.

The order of stay realization of fine granted earlier by this court stands vacated.

Send down the L. C. records along with a copy of this Judgment to the Courts concerned immediately for information and necessary action.

A.B.O/ monir