

**IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION**

Present:

Mr. Justice Obaidul Hassan, *Chief Justice*
Mr. Justice Md. Ashfaul Islam
Mr. Justice Jahangir Hossain

**CRIMINAL PETITION FOR LEAVE TO APPEAL
NOS.1059-1061 OF 2024**

(From the orders dated 30.05.2024 passed by the High Court Division in Criminal Revision Nos.3178,3180 & 3179 of 2024 respectively)

Pubali Bank Limited

.....**Petitioner**
(In all the cases)

-Versus-

Chowdhury Shamim Hamid and another

.....**Respondents**
(In all the cases)

For the petitioner : Mr. A. M. Amin Uddin, senior Advocate with
(In all the cases) Mr. M. Ashraf Ali, Advocate instructed by Ms. Madhumalati Chowdhury Barua, Advocate-on-Record.

For the respondent : Mr. M. Sayed Ahmed, senior Advocate with
No. 1 Zulhas Uddin Ahmed, Advocate instructed by
(In all the cases) Mr. Md. Quamrul Islam, Advocate-on-Record.

For the respondent : Not represented.
No.2

(In all the cases)

Date of hearing and : **The 11th day of June, 2024**
judgment

JUDGMENT

Obaidul Hassan,C.J. All these Criminal Petitions for Leave to Appeal are being disposed of by this common judgment as all the cases are between the same parties and involve common questions of law.

All these Criminal Petitions for Leave to Appeal are directed at the instance of the petitioner-respondent No.1 in each case against the orders dated 30.05.2024 passed by the High Court Division in Criminal Revision Nos.3178, 3180 and 3179 of 2024 respectively enlarging him on bail in each case for a period of one month to enable him to deposit 50% of the total amount of cheque in preferring appeal against the sentence of the trial Court.

The facts necessary for disposal of these criminal petitions are that the petitioner, Pubali Bank Limited, Dorgagate Branch, Sylhet in each case filed cases being Kotwali C.R. Case Nos.844 of 2021, 241 of 2022 and 963 of 2021 before the Additional Chief Metropolitan Magistrate Court, Sylhet against the convict-respondent No.1 under Section 138 of the Negotiable Instruments Act, 1881 (for short Negotiable Instruments Act)contending, *inter alia*, that the respondent No.1 took total loan amounting Tk.18,00,00,000/-(eighteen crore only) from the complainant bank. As a part of payment of the said loan the respondent No.1 issued three separate cheques in each case amounting Tk.60,48,231/ (sixty lac forty eight thousand two hundred thirty one only) each on 19.07.2021, 20.07.2021 and 20.03.2021 respectively. Those cheques were presented before the bank on 19.07.2021, 12.12.2021 and 31.08.2021 respectively for encashment, but the same was dishonoured on the said dates in each case due to insufficient of fund. Thereafter, the complainant sent legal notice in each case to the respondent No.1 to make payment of the amount of cheque failing of which the complainant filed three separate cases under Section 138 of the Negotiable Instruments Act, 1881 against the respondent No.1. Subsequently those cases were transferred to the Metropolitan Sessions Judge, Sylhet and renumbered as Sessions Case Nos.573, 572 and 574 of 2023 respectively which were eventually sent to the Joint Metropolitan Sessions Judge, 1st Court, Sylhet for holding trial. The trial in each case was held *in absentia* of

the respondent No.1. Upon conclusion of evidence the trial Court vide judgments and orders dated 03.04.2024 sentenced and convicted the respondent No.1 in each case to suffer 1(one) year simple imprisonment and also to pay fine amounting Tk.60,48,231/ (sixty lac forty eight thousand two hundred thirty one only). Subsequently on 25.05.2024 the respondent No.1 was arrested and he filed three separate applications for bail in each case on 26.05.2024 under Section 426(2A) of the Code of Criminal Procedure, 1898 (for short Cr.PC) on condition of preferring appeal before the appellate Court. Upon hearing the bail applications the trial Court vide orders dated 26.05.2024 rejected the bail of the respondent No.1. Challenging the said orders the respondent No.1 filed Criminal Revisions being No.3178, 3180 and 3179 of 2024 before the High Court Division. Upon hearing the said cases the High Court Division vide orders dated 30.05.2024 enlarged the respondent No.1 on bail in each case for a period of 1(one) month, so that he can be able to deposit 50% of the cheque amount for preferring appeal against the judgments and orders of conviction and sentence passed by the trial Court.

Being disgruntled with the impugned orders dated 30.05.2024 passed by the High Court Division the complainant-petitioner in each case filed these Criminal Petitions for Leave to Appeal.

Mr. A. M. Amin Uddin, learned senior Advocate appearing for the petitioners in each case assailing the orders dated 30.05.2024 passed by the High Court Division contends that Section 138A of the

Negotiable Instruments Act stipulates for deposit of 50% of the total cheque amount before filing appeal against the order of sentence which is mandatory provision. The High Court Division has no jurisdiction to enlarge the respondent No.1 on bail under Section 426(2A) of the Code of Criminal Procedure on condition of filing appeal without deposit of the 50% of the total cheque amount. But the High Court Division most illegally passed the impugned orders and as such those are liable to be set aside.

On the other hand, Mr. M. Sayed Ahmed, learned senior Counsel appearing for the respondent No.1 contends that the High Court Division had given a breathing space by enlarging the respondent No.1 to enable him to deposit 50% of the total cheque money in filing appeal against the order of sentence awarded by the trial Court. The learned senior Counsel contends next that the Negotiable Instruments Act is a substantive law whereas the Code of Criminal Procedure is procedural law which will be applicable to decide the matter under Negotiable Instruments Act and as such the High Court Division did not commit any illegality in passing the impugned orders. The learned senior Counsel lastly prays for dismissal of the Criminal Petitions.

We have considered the submissions of the learned Counsels for both sides, perused the impugned orders passed by the High Court Division as well as the materials on record.

It surfaces from the record that in the cases in hand the respondent No.1 was arrested on 25.05.2024 and sought bail from the trial Court under Section 426(2A) of the Code of Criminal Procedure on condition of preferring appeal. However, he did not deposit 50%

of the total cheque money. The trial Court rejected the bail applications of the respondent No.1 on 26.05.2024 in each case against which the respondent No.1 again filed three Criminal Revisions under Section 439 read with Section 435 of the Code of Criminal Procedure before the High Court Division. The High Court Division vide impugned orders allowed the respondent No.1 to go on bail under Section 426(2A) of the Code Criminal Procedure for one month so that he can deposit 50% of cheque money for preferring appeal in each case. In the said backdrop, the moot issue in all the cases is whether a convict under Section 138(1) of the Negotiable Instruments Act is entitled to get bail under Section 426(2A) of the Code of Criminal Procedure without complying with the stipulated condition of depositing 50% of the total cheque money before preferring appeal against the order of sentence as prescribed under Section 138A of the Negotiable Instruments Act.

(underlines supplied by us)

Before delving into the said issue, it is apposite to extract Sections 138A, 138(1) of the Negotiable Instruments Act vis-à-vis the provisions of Section 426 of the Code of Criminal Procedure Section 138A of the Negotiable Instruments Act lays down the following-

“138A. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no appeal against any order of sentence under sub-section (1) of section 138 shall lie, unless an amount of not less than fifty per cent of the amount of the dishonoured cheque is deposited before

filing the appeal in the court which awarded the sentence.”

(underlines supplied by us)

Section 138(1) of the Negotiable Instruments Act provides that-

“138.(1)Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to thrice the amount of the cheque, or with both:

.....”

Section 426 of the Code of Criminal Procedure is as follows-

“426.(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court Division in the case of any appeal by a convicted person to a Court subordinate thereto.

(2A) When any person is sentenced to imprisonment for a term not exceeding one year by a Court, and an appeal lies from that sentence, the Court may, if the convicted person satisfies the Court that he intends to present an appeal, order that he be released on bail for a period sufficient in the opinion of the Court to enable him to present the appeal and obtain the orders of the Appellate Court under sub-section(1) and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(2B) Where High Court Division is satisfied that a convicted person has been granted special leave to appeal to the Appellate Division of the Supreme Court against any sentence which it has imposed or maintained, it may if it so thinks fit order that pending the appeal the sentence or order appealed against be suspended, and also, if the said person is in confinement, that he be released on bail.

(3) When the appellant is ultimately sentenced to imprisonment, or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.”

(underlines supplied by us)

Section 138A of the Negotiable Instruments Act stipulates that an amount of not less than fifty per cent of the amount of the dishonoured cheque shall be deposited by the convict in the Court which awarded the sentence under Section 138(1) of the Negotiable Instruments Act if he desires to prefer appeal against the said order of conviction. Again, according to Section 426(2A) of the Code of

Criminal Procedure where a person is sentenced to imprisonment not exceeding one year against which an appeal lies and the convict intends to prefer an appeal against the order of sentence the Court has the discretion to release the convict on bail for a period so as to enable him to present the appeal. However, so long as the convict is released on bail the sentence of imprisonment shall be deemed to be suspended.

But the crux of the contention is that whether the convict under Section 138(1) of the Negotiable Instruments Act can prefer appeal and get bail for some time if he does not comply with the mandatory provisions of Section 138A of the Negotiable Instruments Act as regards deposit of 50% of the total amount of cheque. Suffice it to say that the Negotiable Instruments Act is a special law and the legislature's intent behind the enactment of Section 138 of the Negotiable Instruments Act is to prevent the drawee from being defrauded of a negotiable instrument by a drawer of the same and ultimate object of the law is to instill trust in the mind of the people and maintain credibility in transacting business on negotiable instruments. When once certain conditions are stipulated under the special law the conditions have to be strictly complied with.

Section 138A of the Negotiable Instruments Act has a *non-obstante* clause which has an overriding effect over general provisions contained in the Code of Criminal Procedure as regards preferring appeal against the order of sentence. The *non-obstante* clause is a Latin

phrase meaning 'notwithstanding' which is used to indicate that a particular provision should take precedence over any conflicting provisions. It precludes the use of contrary interpretations from other statutes or laws. In the cases in hand, Section 138A of the Negotiable Instruments Act imposes a restriction on a convict as regards depositing 50% of the total cheque money before preferring appeal against the sentence. The condition of depositing the 50% of the total cheque money and preferring appeal both are dependent on each other. Thus, where there is no deposit of 50% of the cheque money by the convict under Section 138(1) of the Negotiable Instruments Act no appeal will lie. The pre-condition regarding deposit of 50% of the cheque money cannot be curtailed by application of general law.

It is settled that interpretation of a statute should be based on the object which the legislature intended to achieve. It has been observed by Indian Supreme Court in the case of M/S New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, AIR 1963 SC 1207 that-

"It is a recognized Rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonize with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning as well as a popular meaning, the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out

its object and reject which renders the exercise of its power invalid."

(underlines supplied by us)

It is manifest from the overall reading of the Negotiable Instruments Act that the legislature inserted the provision of deposit of 50% of the total cheque money before preferring an appeal in the Negotiable Instruments Act only to streamline the process of recovery of cheque money so that no person can deceive another as regards transactions over cheque. Therefore, the pre-condition of depositing 50% of the total cheque money while preferring appeal as enshrined in Section 138A of the Negotiable Instruments Act cannot be given a go-bye which according to the principle of interpretation of statute must be adhered to. The High Court Division is not given such latitude to allow a convict under Section 138(1) of the Negotiable Instruments Act to go on bail for some period on condition of preferring appeal against the sentence without depositing 50% of the total cheque money before preferring appeal. But the High Court Division by the impugned orders misconstrued the provisions of Section 138A of the Negotiable Instruments Act and as such those call for interference by this Division.

Of course, it is to be clarified that Section 435 of the Code of Criminal Procedure enables the High Court Division to examine the correctness, legality or propriety of any order passed by Court inferior to it. In the cases in hand, the High Court Division has the

revisional jurisdiction to examine the legality of the order of rejection of bail passed by the trial Court under Section 435 of the Code of Criminal Procedure. Moreover, the High Court Division in dealing with the revisional application has such power as enumerated in Section 439 of the Code of Criminal Procedure. However, in exercising such revisional power as enumerated under Section 439 of the Code of Criminal Procedure the High Court Division cannot dispense with the pre-condition of depositing 50% of the total cheque money before preferring appeal by the respondent No.1. It is to be noted that Section 426(2A) of the Code of Criminal Procedure is not contradictory with the provisions of Section 138A of the Negotiable Instruments Act. Rather the provisions of Section 426(A) of the Code of Criminal Procedure will be applicable subject to the fulfillment of condition stipulated under Section 138A of the Negotiable Instruments Act.

In the premises made above as well as for the foregoing reasons, the impugned orders dated 30.05.2024 passed by the High Court Division in Criminal Revision Case Nos.3178, 3180 and 3179 of 2024 are set aside.

However, upon deposit of 50% of the total cheque amount by the respondent No.1 in each case this judgment shall not preclude him from preferring appeal against the respective judgment pronounced by the trial Court. In case of deposit of 50% of the total

cheque amount in each case the Court below will be at liberty to enlarge the respondent No.1 on bail in connection with each case.

With the above observations, these Criminal Petitions for Leave to Appeal are **disposed of**.

C.J.

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