

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No. 2754 of 2022

Md. Shahadath Hossain

.... convict-petitioner

-Versus-

The State and another

.... opposite-parties

No one appears

.... For the petitioner

No one appears

.... For the opposite party No.1

Heard and Judgment on: 21.03.2024

Md. Kamrul Hossain Mollah.J:

This is an application under Section 439 read with section 435 of the Code of Criminal Procedure. This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order of conviction and sentence dated 05.06.2022 passed by the learned Additional District and Sessions Judge, Rangpur in Criminal Appeal No.68 of 2022 allowing the appeal in part and thereby modifying the judgment and order of conviction and sentence dated 10.02.2022 passed by the learned Joint Sessions Judge, 2nd Court, Rangpur in Sessions Case No.1615 of 2019 arising out of C.R. Case No.203 of 2019 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer

rigorous imprisonment for a period of 06(six) months instead of 01(one) year and also to pay a fine of Tk. 8,00,000/- 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 granted bail the convict-petitioner for a period of 01(one) year and stayed the realization of fine.

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

The prosecution case, in short is that, the convict-petitioner issued a cheque on 11.04.2019 for payment of dues of Tk.8,00,000/- in favour of the complainant. The said cheque was deposited by the complainant with the concerned Bank, for encashment which was dishonoured on 17.04.2019 for which he issued legal notice to the petitioner on 29.04.2019 to pay the money immediately, but no reply has been given by the petitioner. The complainant-opposite party No.1 finding no other alternative filed a complaint-petition against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 before the learned Judicial Magistrate, Cognizance Court, Mithapukur, Rangpur on 13.06.2019.

The learned Judicial Magistrate after receiving the petition of complaint examined the complainant under Section 200 of the Code of Criminal Procedure, 1898 and took cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 as well as registered the petition of complaint as C.R. Case No.203 of 2019 and issued summon against the convict-petitioner. On 01.10.2019 the petitioner voluntarily surrendered before the Court and obtained bail.

In the meantime, the case became ready for trial and accordingly the learned Magistrate transmitted the case record to the Court of learned Sessions Judge, Rangpur for trial and disposal and the learned Sessions Judge registered the case as Sessions Case No. 1615 of 2019. Further, it was transferred to the learned Joint Sessions Judge, 2nd Court, Rangpur for disposal. Thereafter, on 19.01.2020 the learned Joint Sessions Judge, 2nd Court, Rangpur framed charge against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 in which the petitioner pleaded not guilty and claimed to be tried.

The learned Joint Sessions Judge, 2nd Court, Rangpur examined the complainant as PW1 to prove the prosecution case, but defense examined none.

After closing the prosecution witness, the learned trial Court examine the convict petitioner under Section 342 of the Code of Criminal Procedure, where he pleaded not guilty and he claimed himself innocent.

After hearing both the parties and considering the materials on record, the learned Joint Sessions Judge, 2nd Court, Rangpur found guilty the convict-appellant under section138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 01(one) year and also to pay a fine of Tk.8,00,000/- by his judgment and order of conviction and sentence dated 10.02.2022.

Being aggrieved by and dissatisfied with the Judgment and order of conviction and sentence dated 10.02.2022 passed by the learned Joint Sessions Judge, 2nd Court, Rangpur in Sessions Case No.1615 of 2019 arising out of C.R. Case No.203 of 2019 the convict-petitioner filed Criminal Appeal No.68 of 2022 before the learned Sessions Judge, Rangpur.

Thereafter, it was transferred to the learned Additional District and Sessions Judge, Rangpur for disposal. After hearing the parties and considering the evidence on record, the learned Additional District and Sessions Judge, Rangpur allowed the appeal in part and thereby modifying the judgment and order of conviction and sentence dated 10.02.2022 passed by the learned Joint Sessions Judge, 2nd Court, Rangpur in Sessions Case No.1615 of 2019 arising out of C.R. Case No.203 of 2019 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer rigorous imprisonment for a period of 06(six) months instead of 01(one) year and also to pay a fine of Tk. 8,00,000/- by his judgment and order of conviction and sentence dated 05.06.2022.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 05.06.2022 passed by the learned Additional District and Sessions Judge, Rangpur in Criminal Appeal No.68 of 2022 allowing the appeal in part and thereby modifying the judgment and order of conviction and sentence dated 10.02.2022 passed by the learned Joint Sessions Judge, 2nd Court, Rangpur in Sessions Case No.1615 of 2019 arising out of C.R. Case No.203 of 2019 the convict-appellant filed this Criminal Revision before the Hon'ble High Court Division.

No one appears for the parties to press and oppose the instant Rule, when this matter was taken up for hearing although it appears in the daily cause list several times.

I have perused the revisional application, the impugned judgment and order of conviction and sentence of the Courts' below, the papers and documents as available on the record.

It appears from the records that the convict-petitioner issued a cheque on 11.04.2019 for payment of dues of Tk.8,00,000/- in favour of the complainant. The said cheque was deposited by the complainant with the concerned Bank, for encashment which was dishonoured on 17.04.2019 for which he issued legal notice to the petitioner on 29.04.2019 to pay the cheque money, but no reply has been given by the petitioner. The complainant-opposite party No.1 finding no other alternative filed a complaint-petition against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 before the learned Judicial Magistrate, Cognizance Court, Mithapukur, Rangpur on 13.06.2019 following all legal formalities. Further, it was transferred to the learned Joint Sessions Judge, 2nd Court, Rangpur for disposal. After hearing both the parties and considering the materials on record, the

learned Joint Sessions Judge, 2nd Court, Rangpur found guilty the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 01(one) year and also to pay a fine of Tk.8,00,000/- by his judgment and order of conviction and sentence dated 10.02.2022. Being aggrieved by and dissatisfied with the Judgment and order of conviction and sentence dated 10.02.2022 passed by the learned Joint Sessions Judge, 2nd Court, Rangpur in Sessions Case No.1615 of 2019 arising out of C.R. Case No.203 of 2019 the convict-petitioner filed Criminal Appeal No.68 of 2022 before the learned Sessions Judge, Rangpur. Thereafter, it was transferred to the learned Additional District and Sessions Judge, Rangpur for disposal. After hearing the parties and considering the evidence on record, the learned Additional District and Sessions Judge, Rangpur allowed the appeal in part and thereby modifying the judgment and order of conviction and sentence dated 10.02.2022 passed by the learned Joint Sessions Judge, 2nd Court, Rangpur in Sessions Case No.1615 of 2019 arising out of C.R. Case No.203 of 2019 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer rigorous imprisonment for a period of 06(six) months instead of 01(one) year

and also to pay a fine of Tk. 8,00,000/- by his judgment and order of conviction and sentence dated 05.06.2022.

Now, let us discuss the evidence of prosecution witness Md. Harun-Or Rashid.

Md. Harun-Or Rashid as P.W.1 in his deposition stated that the convict-petitioner issued a cheque on 11.04.2019 for payment of dues of Tk.8,00,000/- him. He deposited the said cheque to the concerned Bank, for encashment which was dishonoured on 17.04.2019 for which he issued legal notice to the petitioner on 29.04.2019, but the petitioner did not pay the cheque amount. For this reason, he filed this case. He identified the cheque, dishonored Slip, postal receipt, legal notice as Exhibit-1 series.

In the light of the above discussion, it is clear before me that the petitioner issued a cheque for Tk.8,00,000/-, but it was dishonoured for insufficient fund. Thereafter, the complainant served a legal notice to the petitioner on 29.04.2019, but the petitioner did not pay the said amount. For this reason, the complainant-opposite party No.1 filed this case following all legal formalities.

Therefore, the judgment and order of conviction and sentence dated 05.06.2022 passed by the learned Additional District and Sessions Judge, Rangpur in Criminal Appeal No.68 of 2022 rightly and is maintainable in the eye of law.

Accordingly, I do not find any cogent and legal ground to interfere with the judgment and order of conviction and sentence dated 05.06.2022. Therefore, the instant Rule has no merit.

In the result, the Rule is discharged.

The judgment and order of conviction and sentence dated 05.06.2022 passed by the learned the learned Additional District and Sessions Judge, Rangpur in Criminal Appeal No.68 of 2022 allowing the appeal in part is hereby upheld and confirmed.

Further, the convict-petitioner is hereby directed to surrender before the concerned Court below within 15(fifteen) days from the date of receipt of this judgment and order, failing which the learned concerned Court below will take necessary steps to secure arrest him.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.4,00,000/- to the complainant-opposite party No.1 (if he did not withdraw the said amount) in this case.

The order of bail granted earlier by this Court is hereby cancelled and recalled and the order of stay of realization of fine is hereby vacated.

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

Md. Anamul Hoque Parvej
Bench Officer