

In the Supreme Court of Bangladesh
 High Court Division
 (Criminal Revisional Jurisdiction)

PRESENT:

MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN

CRIMINAL REVISION NO. 4407 OF 2022

Happy..... Convict-petitioner

-Versus-

The State and anotherOpposite parties

Mr. Ellius Ahmad, Advocate

.....For the convict-petitioner

Mr. Md. Mahbubur Rahman, Advocate

.....For the complainant -opposite party No. 2

Mr. Md. Anichur Rahman Khan, DAG with

Mrs. Tashrifa Sultana Jali, AAG and

Mr. Md. Emdadul Hoque, AAG

.....For the state

Heard on: 11.01.2026, 21.01.2026 and 23.02.2026

Judgment on: The 21st of April, 2026

ABU TAHER MD. SAIFUR RAHMAN, J.

This Rule was issued at the instance of the convict-petitioner calling upon the opposite party to show cause as to why the judgment and order dated 16.10.2022 passed by the learned Senior Sessions Judge, Dhaka in Criminal Appeal No. 334 of 2021 dismissing the appeal and thereby affirming the

judgment and order of conviction and sentence dated 22.03.2021 passed by the learned Joint Sessions Judge, 7th Court, Dhaka in Sessions Case No. 1013 of 2017, arising out of C.R. Case No. 692 of 2015 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer rigorous imprisonment for 4 (four) months and also to pay a fine of **Tk. 3,50,000/-** shall not be set aside and/or such other or further order or orders to be passed as this Court may deem fit and proper.

For disposal of the Rule, the relevant facts, in brief, are that the accused-petitioner, in discharge of a legally enforceable liability of **Tk. 3,50,000/-** (Taka Three lac and fifty thousand) issued Cheque No. 5423924 dated 12.05.2015 drawn on his account maintained with Prime Bank Limited, Online Branch. The complainant presented the cheque through Prime Bank Limited, Jamgora Branch, for encashment, but the cheque was dishonoured on 29.07.2015 for insufficiency of funds. Thereafter, the complainant, through his learned Advocate, served a statutory notice upon the accused by registered post on 23.08.2015 demanding payment of the cheque amount within the time prescribed by law. Despite receipt of the notice, the accused failed to make payment within the statutory period, thereby rendering himself liable under section 138 of the Negotiable Instruments Act, 1881. Consequently, the complainant instituted the instant case.

The accused did not appear before the trial Court. Upon completion of the trial, the learned trial Court proceeded with the case in absentia and, by the judgment and order dated 22.03.2021, convicted and sentenced the accused under section 138 of the Negotiable Instruments Act, 1881. Being aggrieved, the accused preferred Criminal Appeal No. 334 of 2021 before the learned District and Sessions Judge, Dhaka which was dismissed, affirming the judgment and order of conviction and sentence passed by the trial Court. Challenging the concurrent findings of the Courts below, the accused has preferred the present Criminal Revision, in which the Rule was issued and realization of the fine was stayed. At the time of issuance of the Rule, this Court enlarged the accused on ad interim bail for a period of one year. The said order of bail was not extended thereafter.

Mr. Ellius Ahmad, the learned Advocate appearing for the convict-petitioner, submits that no summons was served upon the petitioner due to an incorrect address and consequently, she had no knowledge of the case. He further submits that the petitioner neither knew the complaint nor had any transaction with him. According to him, after her divorce the instant case was instituted by her former husband by way of a complainant with a view to harass the petitioner. Since the petitioner was denied an opportunity to contest the case, the

impugned judgement and order of conviction and sentence is liable to be set-aside

Mr. Md.Mahbubur Rahman, the learned Advocate appearing on behalf of the complainant–opposite party No. 2 submits that upon the through meticulous and judicious appeared of the evidence on record correctly found the accused petitioner guilty of the offence of charge and lawful convicted him which does not calls for any interference by this Court.

Mr. Md. Anichur Rahman Khan, the learned Deputy Attorney General concurs with the submissions made by the learned Advocate for opposite party No. 2.

Heard the learned Advocates for both sides and perused the enter materials on record.

The only issue for determination of this Rule is to see whether the impugned judgment and order of conviction and sentenced is sustainable in law in the list of evidence adduced the fact and circumstances of the case and the settled principle governing criminal jurisdiction.

On perusal of the materials on record, it appears that the instant C.R. Case was instituted on 21.10.2015 and 29.11.2015 was fixed for return of summons. After several adjournments, the summons was finally returned on 30.05.2016. Let us now examine the summons report, wherein the process server made the following report

“মহোদয়অধীনইংরেজী ০৫/০৩/২০১৬ ইং তারিখসমনে লিখিতআসামীর সাকিনে যাইয়া আসামীকে হাজিরপাইনাইতৎপক্ষেসমন রিসিভকরার মত কোন লোকপাইনাইতাইসমন খানি তাহারব্যবসা প্রতিষ্ঠানেরদরজাতলটকাইয়া জারী করিয়া মুলসমনহুজুরআদালতে ফেরতপ্রদানকরিলাম।”

On perusal of the report, it appears that the convict-petitioner was not found at the address mentioned in the petition of complaint. The learned Advocate for the petitioner submits that during her conjugal life, the petitioner resided with her husband at the said address. However, she was subsequently divorced by her husband on 09.05.2015, about five months prior to institution of the instant case on 21.10.2015 and thereafter she left her husband's house and went to her father's house at Manikganj, where she has been permanently residing.

It is further submitted that the petitioner had no knowledge of the instant case and that ultimately the learned trial Court convicted and sentenced her in her absence. After the judgment, she was arrested by the police from her father's residence on 05.08.2023.

It further appears that, after her divorce, the petitioner instituted Family Suit No. 332 of 2015 on 27.05.2015 against her husband for recovery of dower and maintenance, which was decreed on 29.10.2019. In the said suit, the petitioner's present and correct address was specifically mentioned. The said address, however, was not disclosed in the instant case. In

support of the aforesaid contention, the learned Advocate has produced a photocopy of the plaint of Family Suit No. 332 of 2015.

The learned Advocate further submits that during her conjugal life, the petitioner's cheque book remained in the custody of her husband and that the instant case under section 138 of the Negotiable Instruments Act, 1881 was instituted in the name of the complainant-opposite party No. 2 with a view to harass her.

It is apparent from the materials on record that the notice was sent to an address at which the petitioner was no longer residing and, consequently, she had no knowledge of the proceeding. In such circumstances, the petitioner was not afforded a reasonable opportunity to appear before the Court and contest the case. The subsequent trial and conviction in her absence, therefore, seriously prejudiced her defence.

In view of the above facts and circumstances, I find substance in the submissions advanced by the learned Advocate for the petitioner. In my view, the ends of justice would be met if the case is remanded to the trial Court for a fresh trial, thereby affording the petitioner an opportunity to appear and contest the case in accordance with law.

Accordingly, the Rule is made absolute.

The impugned judgment and order of conviction and sentence dated 16.10.2022 passed by the learned Senior Sessions Judge, Dhaka in Criminal Appeal No. 334 of 2021, dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 22.03.2021 passed by the learned Joint Sessions Judge, 7thCourt, Dhaka in Sessions Case No. 1013 of 2017, arising out of C.R. Case No. 692 of 2015 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing her to suffer rigorous imprisonment for **4 (four)** months and to pay a fine of **Tk.3,50,000/-** (Taka three lac and fifty thousand), as well as the judgment and order of conviction and sentence dated 22.03.2021 passed by the learned Joint Sessions Judge, 7thCourt, Dhaka in Sessions Case No. 1013 of 2017 are hereby set aside.

The case is hereby remanded to the learned trial Court for a fresh trial in accordance with law, after affording the petitioner a reasonable opportunity to appear and contest the case. The learned trial Court is directed to conclude the trial expeditiously, preferably within **6 (six)** months from the date of receipt of a copy of this order, in accordance with law

The convict-petitioner is directed to surrender before the concerned trial Court within **30 (thirty)** days from the date of receipt of a copy of this order. If the petitioner surrenders and

prays for bail, the learned trial Court shall consider such prayer for bail in accordance with law.

Let the Lower Court Records (LCR) be send down forthwith.

Let a copy of this judgment be communicated to the Court below at once.