

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No.1569 of 2022

Shamsul Alam Khan Ibrahim

.... convict-petitioner

-Versus-

The State and another

.... opposite-parties

No one appears

.... For the petitioner

No one appears

.... For the opposite party No.2

Judgment on merit on: 14.11.2023

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 10.11.2021 passed by the learned Sessions Judge, Tangail in Criminal Appeal No.91 of 2021 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 30.10.2019 passed by the learned Joint Sessions Judge, 1st Court, Tangail in Sessions Case No.544 of 2014 arising out of C.R. Case No.182 of 2014 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of

08(eight) months and also to pay a fine of Tk. 10,50,000/- 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 06(six) months.

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

The prosecution case, in short is that, the convict-petitioner took loan of Tk.10,00,000/- from the informant and issued a cheque being No.৭৩/10 1483751 amount of Tk.10,00,000/- on 18.12.2013. The said cheque deposited to the concerned bank and it was dishonoured on 30.03.2014 for insufficient fund. Thereafter, the complainant issued legal notice to the petitioner on 17.04.2014 to pay the cheque amount immediately, but no reply has been given by the petitioner. The complainant-opposite party No.2 finding no other alternative filed a complaint-petition against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 before the learned Senior Judicial Magistrate, Cognizance Court, Sakhipur, Tangail on 28.05.2014.

The learned Senior Judicial Magistrate after receiving the petition of complaint examined the complainant under Section 200 of the Code of Criminal Procedure 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.182 of 2014 (Sakhipur) and issued summon against the convict-petitioner. On 08.07.2014 the petitioner voluntarily surrendered before the Court and obtained bail.

Thereafter, the case was transferred to the Court of learned Sessions Judge, Tangail for trial and disposal and the learned Sessions Judge registered the case as Sessions Case No. 544of 2014. On 21.08.2014 the learned Sessions Judge, Tangail framed charge against the convict-petitioner and it was read over and explained the petitioner in which the petitioner pleaded not guilty and claimed to be tried. Further, it was transferred to the learned Joint Sessions Judge, 1st Court, Tangail for disposal.

The prosecution examined the complainant as PW1 to prove the case, but defense examined none.

After closing the examination of the prosecution witness, the learned trial Court examined 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, 1st Court, Tangail 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 08(eight) months and also to pay a fine of Tk.10,50,000/- by his judgment and order of conviction and sentence dated 30.10.2019.

Being aggrieved by and dissatisfied with the Judgment and order of conviction and sentence dated 30.10.2019 passed by the learned Joint Sessions Judge, 1st Court, Tangail in Sessions Case No.544 of 2014 arising out of C.R. Case No.182 of 2014(Sakhipur) the convict-petitioner filed Criminal Appeal No.91 of 2021 before the learned Sessions Judge, Tangail. After hearing the parties and considering the evidence on record, the learned Sessions Judge, Tangail dismissed the appeal and thereby affirmed the judgment and order of conviction and sentence dated 30.10.2019 passed by the learned Joint Sessions

Judge, 1st Court, Tangail in Sessions Case No.544 of 2014 arising out of C.R. Case No.182 of 2014(Sakhipur) convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 08(eight) months and also to pay a fine of Tk. 10,50,000/- by his judgment and order of conviction and sentence dated 10.11.2021.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 10.11.2021 passed by the learned Sessions Judge, Tangail in Criminal Appeal No.91 of 2021 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 30.10.2019 passed by the learned Joint Sessions Judge, 1st Court, Tangail in Sessions Case No.544 of 2014 arising out of C.R. Case No.182 of 2014(Sakhipur) 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 took loan of Tk.10,00,000/- from the informant and issued a cheque being No.৭৩/10 1483751 amount of Tk.10,00,000/- on 18.12.2013. The said cheque deposited to the concerned bank and it was dishonoured on 30.03.2014 for insufficient fund. Thereafter, the complainant issued legal notice to the petitioner on 17.04.2014 to pay the cheque amount immediately, but no reply has been given by the petitioner. The complainant-opposite party No.2 finding no other alternative filed a complaint-petition against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 before the learned Senior Judicial Magistrate, Cognizance Court, Sakhipur, Tangail on 28.05.2014 as C.R. Case No.182 of 2014 (Sakhipur) following all legal formalities. Thereafter, the case was transferred to the Court of learned Sessions Judge, Tangail for trial and disposal and the learned Sessions Judge registered the case as Sessions Case No. 544of 2014. Further, it was transferred to the learned Joint Sessions Judge, 1st Court, Tangail for disposal. After hearing both the parties and considering the materials on record, the learned Joint Sessions Judge, 1st Court, Tangail 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 08(eight) months and also to pay a fine of Tk.10,50,000/- by his judgment and order of conviction and sentence dated 30.10.2019. Being aggrieved by and dissatisfied with the Judgment and order of conviction and sentence dated 30.10.2019 passed by the learned Joint Sessions Judge, 1st Court, Tangail in Sessions Case No.544 of 2014 arising out of C.R. Case No.182 of 2014(Sakhipur) the convict-petitioner filed Criminal Appeal No.91 of 2021 before the learned Sessions Judge, Tangail. After hearing the parties and considering the evidence on record, the learned Sessions Judge, Tangail dismissed the appeal and thereby affirmed the judgment and order of conviction and sentence dated 30.10.2019 passed by the learned Joint Sessions Judge, 1st Court, Tangail in Sessions Case No.544 of 2014 arising out of C.R. Case No.182 of 2014(Sakhipur) convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 08(eight) months and also to pay a fine of Tk. 10,50,000/- by his judgment and order of conviction and sentence dated 10.11.2021.

Now, let us discuss the evidence of prosecution witness Md. Azadi Rahman Alim .

Md. Azadi Rahman Alim in deposition stated that the convict-petitioner issued a cheque being No.১৪৩/১০ 1483751 amount of Tk.10,00,000/- to the complainant on 18.12.2013. He deposited deposited the said cheque to the concerned bank and it was dishonoured on 30.03.2014 for insufficient fund. Thereafter, the complainant issued legal notice to the petitioner on 17.04.2014 to pay the cheque amount immediately, but no reply has been given by the petitioner. Thereafter, he filed this case.

It appears from the deposition of the Md. Azadi Rahman Alim (P.W.1) that in support of his allegation he filed the impugned cheque, dishonor slip, copy of legal notice, postal receipt, which were marked as exhibits.1-2 series.

In the light of the above discussion, it is clear before me that the petitioner issued a cheque of Tk.10,50,000/-, but it was dishonoured for insufficient fund on 30.03.2014. Thereafter, the complainant served a legal notice to the petitioner on 17.04.2014, but the petitioner did not pay the said

amount. For this reason, the complainant-opposite party No.2 filed this case following all legal formalities.

Therefore, the judgment and order of conviction and sentence dated 10.11.2021 passed by the learned Sessions Judge, Tangail in Criminal Appeal No.91 of 2021 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 10.11.2021. Therefore, the instant Rule has no merit.

In the result, the Rule is discharged.

The judgment and order of conviction and sentence dated 10.11.2021 passed by the learned the learned Sessions Judge, Tangail in Criminal Appeal No.91 of 2021 dismissing the appeal 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.5,25,000/- to the complainant-opposite party No.2 (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.

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