

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Criminal Revisional Juidiction)

Present
Madam Justice Kashefa Hussain

Criminal Revision No. 1520 of 2023

SEHEO, represented by Md. Golzar Hossain
..... Complainant -petitioner

-Versus-

The State and another

----- Opposite parties

Mr. Md. Sagir Hossain, Adv

.... for the complainant-petitioner

Mr. Md. Mohiuddin Dewan, D.A.G with

Ms. Syeda Sabina Ahmed Molly, A.A.G

----- For the State.

Heard on: 30.11.2023, 17.01.2024

and

Judgment on 24.01.2024

Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 11.04.2023 passed by the learned Sessions Judge, 3rd Court, Jhenaidah in Criminal Appeal No. 33 of 2022 allowing the appeal and reversing the judgment and order of conviction and sentence dated 01.12.2021 passed by the learned Joint Sessions Judge, 1st Court, Jhenaidah in Sessions Case No. 504 of 2018 arising out of C.R. Case No. 1171 of 2017 convicting the accused-opposite party No. 2 under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment

for 1(one) year and also to pay a fine of Tk. 2,75,780/- should not be set aside and/or such other or further order or orders passed as to this court may seem fit and proper.

The instant petitioner as complainant filed the case under Section 138 of the Negotiable Instrument Act, 1881 and such case was heard as Sessions Case No. 504 of 2018 arising out of C.R. Case No. 1171 of 2017 by the Joint Sessions Judge, 1st Court, Jhenaidah impleading the opposite party No. 2 as accused in the case. The trial court upon hearing the parties under Section 138 of the Negotiable Instrument Act, 1881 convicted the accused sentencing him to suffer simple imprisonment for 1(one) year and also to pay fine of Tk. 2,75,780/- by its judgment and order dated 01.12.2021. Being aggrieved by the judgment and order dated 01.12.2021 passed by the trial court the accused in the case filed Criminal Appeal No. 33 of 2022 which was heard by the learned Additional Sessions Judge, 3rd Court, Jhenaidah. Upon hearing the appeal the learned Additional Sessions Judge, 3rd Court, Jheaidah allowed the appeal by its judgment and sentence dated 11.04.2023 and reversed the judgment of the trial court and thereby acquitted the accused from the offence. Being aggrieved by the judgment and order of the appellate court

below the convict-appellant filed a criminal revisional application which is instantly before this Bench for disposal.

The complaint's case in short is that the complainant is an NGO and the accused was the Manager of the Said NGO of Jhakorgacha Branch, Jessore. The accused embezzled Tk. 2,75,780/- (two lac seventy five thousand seven hundred eighty) which was proved in audit report. The accused after confessing the audit report to pay the aforesaid amount issued a cheque being No. SB 4248017 amounting to Tk. 2,75,780/- (two lac seventy five thousand seven hundred eighty) on 30.08.2017 from his account lying with Pubali Bank Ltd, Meherpur Branch, Meherpur. Thereafter the complainant submitted the cheque to the relevant bank on 10.09.2017 for encashment but it was dishonored for insufficient fund. He sent a demand notice on 17.09.2017 through registered post but the accused on 17.09.2017 did not pay the borrowed money within the statutory thirty days. Hence the case.

The matter appeared in the list for several days before it was taken up for hearing. Learned advocate Mr. Md. Sagir Hossain appeared for the complainant petitioner but however none appeared for the accused opposite party.

Learned Advocate for the complainant petitioner submits that although the trial court correctly convicted the accused for committing offence under section 138 of the Negotiable Instrument Act, 1881 but the appellate court upon misreliance and misinterpretation of evidences came upon wrong finding and therefore the judgment of the trial court be upheld and the judgment of the appellate court be set aside. He submits that although the signature in the cheque is an admitted fact but the accused took a plea that he had given a blank cheque as a jamanat (security). He argues that the trial court correctly found upon evaluating evidence that the accused did not actually give any blank cheque and inserted the amount himself. He continues that however the appellate court in the absence of any evidence wrongly found that the accused gave a security blank cheque and did not insert any amount in the cheque. He points out to the materials and shows that it is clear that there is nothing on the evidence to show that he actually gave a blank cheque on his joining the organization. He draws upon exhibit-6 which is the joining letter. He points out that had there been any Rules to the effect, it would have been mentioned in the Rules of the organization. He contends that implying the necessity of giving a blank cheque during the joining of any employee, there is nothing from the materials to show that any

such Rules of depositing a security blank cheque by a prospective employee is necessary at the time of joining. He points out to exhibit-6 which is the joining letter wherefrom he shows that there is no mention of any security whatsoever blank cheque in the joining letter by the accused respondent here. He next points out to exhibit- Ka which is the same joining letter wherefrom he points out that exhibit- Ka (which is the joining letter produced by the accused respondent) mentions a blank cheque given by the accused respondent at the time of joining. He submits that upon comparison of exhibit- Ka which was produced by the complainant it is clear that exhibit-6 is an office document but exhibit-6 does not indicate any such clause. He continues that it is evident that the insertion of having given a blank cheque at the time of joining was only a result of subsequent tampering and manipulation on exhibit-Ka at a later time by the accused to defend his case. He next draws this bench's attention to the cross examination of the accused where he admits to have written the joining letter in his own hand. He takes me to the cross examination of the DW-1 accused wherefrom he shows that the DW-1 admitted that his যোগদান is written in his own hands. He persuades that it is clear that exhibit- Ka was manipulated at a subsequent time to defend his case. He contends that the trial court correctly found him

guilty of the offence but the appellate court upon total misapplication of mind came upon a wrong finding. He concludes his submissions upon assertion that the Rule bears merit and ought to be made absolute for ends of justice.

I have heard the learned advocate from both sides, perused the application and materials. It may be noted that the signature in the cheque is admitted. The complainant's contention is that the accused gave him a cheque of Tk. 2,75,780/- dated 30.08.2017 which was dishonored by the bank. The accused opposite party here admitted to the signature in the cheque but however he claims that he gave a blank cheque as security to the organization at the time of his joining. The trial court upon examination into the materials found that exhibit-Ka was a manipulated document upon comparison with exhibit-6. I have also examined exhibit-6 and exhibit-Ka. From exhibit-6 it is clear that there is no such mention of any blank cheque to be secured when a prospective employee joins the organization. Moreover from the materials it shows that there is nothing in the Rules of the organization which may indicate that a blank cheque is necessary to be deposited as a security by any prospective employee at the time of joining the organization. I have examined exhibit-Ka and exhibit-6 which are the same

joining letter. Nevertheless exhibit-Ka consist of a line mentioning a blank cheque secured by the organization from the accused opposite party. It is only evident that since exhibit-6 the joining letter which was produced by the complainant did not consist of any such necessity of blank cheque whatsoever, therefore it is clear that the accused opposite party subsequently manipulated and tampered with exhibit-Ka to defend his case. It is further clear that the accused also committed a fraud upon the court and tampered and manipulated Exhibit-Ka to defend his case. Upon examination of the oral evidence, from the cross examination of the DW-1 accused it shows that he admitted to writing the joining letter himself. The relevant portion is reproduced below:

“দুইট যোগদানপত্রের যাবতীয় লেখা আমার নিজের হাতের। দুইটা যোগদানপত্রে আমি একই দিনে অর্থাৎ ০৪.০৩.২০১৬ তারিখে নিজ হাতে লিখেছিলাম।”

It is crystal clear that the accused manipulated exhibit-Ka subsequently to defend his case. Regrettably the appellate court took a mistaken view and failed to evaluate the evidences correctly.

Under the facts and circumstances and foregoing discussions and after hearing the learned advocate for the complainant petitioner I find merit in the case.

In the result, the Rule is made absolute. The judgment and order dated 11.04.2023 passed by the learned Additional Sessions Judge, 3rd Court, Jhenaidah in Criminal Appeal No. 33 of 2022 is hereby set aside and the judgment and order of the conviction and sentence dated 01.12.2021 passed by the learned Joint Sessions Judge, 1st Court, Jhenaidah in Sessions Case No. 504 of 2018 arising out of C.R. Case No. 1171 of 2017 is hereby upheld.

The accused-opposite party No. 2 is directed to surrender before the trial court within 60(sixty) days from the same date for serving out the remaining sentence of imprisonment.

The complainant-petitioner is allowed to withdraw the 50% of the cheque amount which has been deposited by the accused-opposite party No. 2 in the trial court through Chalan within 1(one) month from the date of receipt of this judgment.

Send down the Lower Court Records at once.

Communicate the judgment at once.

Shokat (B.O.)