Present:

Mr. Justice Md. Khasruzzaman

Criminal Revision No. 711 of 2021

Khalikul Islam Sarder (Khalid)
....Convict-appellant-petitioner.
-Versus-
The State and another
...Opposite parties.
Mr. Sabyasachi Mondal, Advocate
… For the convict-petitioner.
Mr. Mohammad Abdul Karim, D.A.G. with
Mr. Md. Azgarul Islam, A.A.G. and
Ms. Mahfuza Akhter, A.A.G.
.....For the State.
Ms. Shamima Akter, Advocate with
Ms. Tasmin Akter, Advocate
... For the complainant-opposite party

Judgment on 06.05.2026

The Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order of conviction and sentence dated 31.10.2019 passed by the learned Sessions Judge, Khulna in Criminal Appeal No. 169 of 2015 dismissing the appeal with modifying the substantive sentence of 1 (one) year simple imprisonment is reduced to 3 (three)

months and the sentence of fine Tk. 3,00,000.00 (Three Lac) is reduced to Tk. 1,50,000.00 (One Lac and Fifty Thousand) and thereby affirming the judgment and order of conviction and modifying sentence dated 14.07.2015 passed by the learned Joint Sessions Judge, 3rd Court, Khulna in Sessions Case No. 1052 of 2013, arising out of C.R. Case No. 111 of 2013, convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 01 (one) year and also to pay a fine of Tk. 3,00,000.00 (Three Lac), should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

On 06.05.2013 one Mir Sabbir Hossain, as a complainant, instituted C.R. Case No. 111 of 2013 before the learned Additional Chief Judicial Magistrate, Khulna against the accused alleging commission of an offence punishable under section 138 of the Negotiable Instruments Act, 1881.

The prosecution case, in brief, is that the accused, being previously acquainted with the complainant, borrowed a sum of Tk. 1,50,000/- (One Lac and Fifty Thousand) from him for personal necessity and, in discharge of the said liability, issued a cheque bearing No. 5548087 dated 25.02.2013, drawn on Al-Arafah Islami Bank Limited, Chuknagar Branch, Dumuria, Khulna, for the aforesaid amount in favour of the complainant. The complainant presented the cheque for encashment on 25.02.2013, but the same was dishonoured on 26.02.2013 due to insufficiency of funds. Despite being informed of the dishonour, the accused failed to make payment. Consequently, the complainant issued a legal notice through his learned Advocate on 12.03.2013, demanding payment of the cheque amount within 30 (thirty) days of receipt thereof. The accused received the said notice on 13.03.2013 under his signature but failed to pay the cheque amount within the statutory period. Hence, the complainant instituted the case against the accused

under section 138 of the Negotiable Instruments Act, 1881.

After examining the complainant under section 200 of the Code of Criminal Procedure, the learned Additional Chief Judicial Magistrate, Khulna took cognizance of the offence under section 138 of the Negotiable Instruments Act, 1881 against the accused and issued summons directing him to appear before the Court. Pursuant thereto, on 17.07.2013 the accused appeared before the learned Additional Chief Judicial Magistrate, Khulna and prayed for bail, which was granted on the same day.

Subsequently, the case record was transmitted to the learned Sessions Judge, Khulna, whereupon it was registered as Sessions Case No. 1052 of 2013. After taking cognizance of the offence under section 138 of the Negotiable Instruments Act, 1881 against the accused, the learned Sessions Judge transferred the case to the learned Joint Sessions Judge, 3rd Court, Khulna for holding trial and disposal. Thereafter, on

24.03.2014 charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881. However, the charge could not be read over and explained to the accused as he had absconded, and the trial subsequently proceeded in his absence.

During the trial, the prosecution examined the complainant as P.W.1 in order to substantiate the charge brought against the accused. The defence did not cross-examine P.W.1 as the accused remained absconding. For the same reason, the accused could not be examined under section 342 of the Code of Criminal Procedure. On the other hand, the defence did not examine any witness or adduce any evidence in support of its case.

Upon conclusion of the trial, the learned Joint Sessions Judge, 3rd Court, Khulna, by judgment and order dated 14.07.2015, found the accused guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and accordingly convicted and sentenced him to suffer simple imprisonment for 01

(one) year and also to pay a fine of Tk. 3,00,000.00 (Three Lac), with a direction that the complainant would be entitled to get the cheque amount.

Being aggrieved by and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict-petitioner, as an appellant, preferred Criminal Appeal No. 169 of 2015 before the learned Sessions Judge, Khulna. Upon hearing the learned Advocates for both sides and considering the evidence and materials on record, the Appellate Court, by judgment and order dated 31.10.2019, dismissed the appeal but modified the sentence. The sentence of 1 (one) year simple imprisonment was reduced to 3 (three) months and the sentence of fine of Tk. 3,00,000.00 (Three Lac) was reduced to Tk. 1,50,000.00 (One Lac and Fifty Thousand), which was equivalent to the cheque amount. The complainant would get the entire fine.

Being further aggrieved by and dissatisfied with the aforesaid judgment and order dated 31.10.2019

passed by the Appellate Court, the convict-petitioner preferred the instant criminal revision and obtained the present Rule.

Mr. Sabyasachi Mondal, the learned Advocate appearing on behalf of the convict-petitioner, made his submissions on the facts and the law involved in the instant revision.

On the other hand, Ms. Shamima Akter, the learned Advocate appearing on behalf of the complainant-opposite party, submits that the convict-petitioner borrowed Tk. 1,50,000.00 (One Lac and Fifty Thousand) from the complainant and in discharge of the said liability, the accused issued the cheque to the complainant, which was subsequently dishonoured upon presentation for encashment. Consequently, the complainant, after complying with all the statutory requirements, instituted the instant case under section 138 of the Negotiable Instruments Act, 1881. She further submits that the complainant adduced both oral and documentary evidence in support of the

prosecution case and duly proved the relevant documents, which were marked as exhibits. She also submits that the prosecution successfully proved the charge against the convict-petitioner beyond reasonable doubt and that the Trial Court, upon proper appreciation of the evidence on record and consideration of the relevant facts and law, rightly convicted and sentenced the convict-petitioner. The said judgment and order of conviction was affirmed by the Appellate Court, but the sentence was modified and proved the petition of complaint and his signature thereon, which were marked as exhibit Nos. 1 and 1/1 respectively. She finally submits that the concurrent findings of the Courts below, being based on the evidence on record and sound appreciation of law, do not call for any interference by this Court in the exercise of its revisional jurisdiction.

Heard the learned Advocates for both sides, perused the revisional application, the impugned

judgments and orders passed by the Courts below, and the other relevant materials available on record.

The deposition of P.W.1 is set out below.

P.W. 1, Md. Mir Sabbir Hossain, in his examination-in-chief, deposed that the accused, Khalikul Islam Sardar, gave him a cheque on 23.02.2013 to repay the money owed to him. He presented the cheque to the bank, but it was dishonoured on 26.02.2013. He sent a legal notice to the accused on 12.03.2013. As the accused failed to make any payment, he instituted the case.

He identified the complaint petition as exhibit 1, his two signatures thereon as exhibit 1/1, 1/2, the dishonoured cheque as exhibit 2, the dishonour slip as exhibit 3, the legal notice as exhibit 4, the acknowledgment card as exhibit 5 and the postal receipt as exhibit 6.

P.W.1 was not cross examined by the defence, as the accused absconded.

Upon a careful examination and scrutiny of the evidence on record, it appears that the complainant, Md. Mir Sabbir Hossain, was examined as P.W.1 and, in his examination-in-chief, he categorically supported the prosecution case as narrated in the petition of complaint. He proved the petition of complaint and his two signatures thereon, which were marked as exhibit Nos. 1, 1/1 and 1/2 respectively. He further proved the dishonoured cheque and the cheque dishonour slip, which were marked as exhibit Nos. 2 and 3 respectively. The legal notice, acknowledgement due card and postal receipt were also proved and marked as exhibit Nos. 4, 5 and 6 respectively. It further appears from the records that P.W.1 was not cross-examined by the defence as he absconded and as such, his testimony remained unchallenged and uncontroverted. It further appears that the accused-petitioner was not present at the time of framing of charge and was not examined under section 342 of the Code of Criminal Procedure. Moreover, the defence did not adduce any evidence to

rebut or dislodge the prosecution case. Thus, the oral testimony of P.W.1, being supported and corroborated by the documentary evidence on record, lends substantial support to the material allegations made in the petition of complaint. In the absence of any cross-examination or evidence to the contrary, and there being nothing inherently improbable or inconsistent in his testimony, I find no cogent reason to disbelieve the evidence of P.W.1.

It is further submitted by the learned Advocate for the complainant-opposite party that the statutory legal notice was duly served upon the convict-petitioner by registered post with acknowledgement due in compliance with the provisions of sections 138(1)(b) and 138(1A) (b) of the Negotiable Instruments Act, 1881. It is evident from the materials on record, particularly the postal receipt and acknowledgement due card, that the notice was duly received by the convict-petitioner. Furthermore, the defence did not raise any objection regarding the

service of the said notice. In view of the aforesaid evidence and circumstances, I am satisfied that the statutory notice was duly served upon the convict-petitioner in accordance with law.

I have carefully examined the relevant provisions of section 138 of the Negotiable Instruments Act, 1881, in the light of the facts and evidence available on record. It appears from the evidence that the cheque was issued by the convict-petitioner in favour of the complainant towards repayment of the amount borrowed by him. The cheque was presented to the bank for encashment within the period prescribed by law but was returned unpaid with the endorsement "Insufficient Funds".

In this regard, section 118(a) of the Negotiable Instruments Act, 1881, provides that, until the contrary is proved, every negotiable instrument shall be presumed to have been made or drawn for consideration. Thus, once the execution of a cheque is admitted or proved, a rebuttable presumption arises in

favour of the holder that the cheque was issued for consideration, unless the drawer successfully rebuts such presumption by raising a probable defence.

In the instant case, the complainant's evidence regarding the advancement of the loan and the issuance of the cheque by the convict-petitioner towards repayment thereof remained uncontroverted. Furthermore, the statutory presumption under section 118(a) of the Act has not been rebutted by any evidence or circumstances brought on record by the defence. No probable defence has been established to discredit the complainant's claim or to rebut the presumption arising in favour of the holder of the cheque.

In view of the facts and circumstances of the present case, the dishonour of the cheque with the endorsement "Insufficient Funds", coupled with the unrebutted statutory presumption under section 118(a) of the Act, lends sufficient support to the complainant's case. Accordingly, the defence has failed to raise any

reasonable ground to displace the statutory presumption, and the prosecution under section 138 of the Negotiable Instruments Act, 1881, cannot be held to be unsustainable on the grounds urged by the convict-petitioner.

It further appears that the complainant, upon receiving information regarding dishonour of the cheque, issued the statutory demand notice within the prescribed period and that the notice was duly received by the convict-petitioner on 13.03.2013. Despite receipt of the notice, the convict-petitioner failed to make payment of the cheque amount within the statutory period of 30 (thirty) days. Thereafter, the complainant instituted the complaint on 06.05.2013, within the period prescribed by law. Thus, the necessary statutory requirements for maintaining a prosecution under section 138 of the Negotiable Instruments Act, 1881 appear to have been duly complied with. Therefore, I find that the complainant instituted the case after complying with the mandatory

requirements of law and that the proceeding was legally maintainable.

It also appears from the record that the Trial Court, upon an elaborate consideration of the facts and circumstances of the case, the oral and documentary evidence adduced by the prosecution and the relevant provisions of law, found the accused guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and accordingly convicted and sentenced him. The Appellate Court, upon independent consideration of the evidence and materials on record and examination of the findings arrived at by the Trial Court, affirmed the judgment and order of conviction but modified the sentence. The findings recorded by both the Courts below are supported by the evidence on record, and I do not find any material infirmity in their appreciation of the evidence relating to the issuance of the cheque, its dishonour, service of the statutory notice and failure of the convict-petitioner to make payment within the prescribed period.

It is well settled that the revisional jurisdiction of this Court is primarily intended to examine the legality, correctness and propriety of the findings, sentence or order passed by the Courts below and to prevent miscarriage of justice arising from any material illegality or irregularity. Ordinarily, this Court, while exercising its revisional jurisdiction, does not interfere with concurrent findings of fact recorded by the Courts below merely for the purpose of substituting its own appreciation of the evidence, unless such findings are shown to be perverse, contrary to the evidence on record or vitiated by any manifest illegality or material irregularity. In the instant case, the Trial Court as well as the Appellate Court have arrived at concurrent findings regarding the guilt of the convict-petitioner upon consideration of the evidence and materials available on record. Upon scrutiny of those findings, I do not find any misreading or non-consideration of material evidence warranting interference by this Court.

Having given my anxious consideration to the submissions advanced by the learned Advocates for both sides, the evidence and materials on record, the relevant provisions of law and the judgments and orders passed by the Courts below, I am of the considered view that the prosecution has successfully established the charge against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 beyond reasonable doubt. The Trial Court, upon proper appreciation of the evidence and application of the relevant law, rightly convicted the convict-petitioner, and the Appellate Court did not commit any error by modifying the sentence and thereby affirming the judgment and order of conviction.

Upon consideration of the evidence and materials on record, this Court finds no sufficient ground to interfere with the conviction of the accused-petitioner as affirmed by the learned Appellate Court. However, considering the facts and circumstances of the case, the nature of the offence, the amount involved and the

period of imprisonment already undergone by the accused-petitioner, this Court is inclined to extend a conditional benefit to the accused-petitioner in respect of the substantive sentence of imprisonment.

In the result, the Rule is discharged with modification of the sentence following manner.

The conviction of the accused-petitioner under section 138 of the Negotiable Instruments Act, 1881, as affirmed by the Appellate Court, and the sentence of fine of Tk. 1,50,000.00 (Taka one lac and fifty thousand) only are hereby maintained.

However, it is directed that if the accused-petitioner pays the cheque amount of Tk. 1,50,000.00 (One Lac and Fifty Thousand) to the complainant or arrives at an amicable settlement with the complainant within one month from the date of receipt of this judgment and order by the Trial Court, the substantive sentence of 3 (three) months simple imprisonment shall stand reduced to the period of imprisonment already undergone by the accused-petitioner.

Upon satisfactory proof of such payment or amicable settlement before the Trial Court, the Trial Court shall take necessary steps for the release of the accused-petitioner forthwith, if he is not wanted in connection with any other case.

In default of compliance with the aforesaid condition within the stipulated period, the sentence as modified by the Appellate Court shall remain operative and enforceable in accordance with law.

Send down the lower Courts' records.

Communicate the order.

(Md. Khasruzzaman, J:)