

Present:

Mr. Justice Md. Ataur Rahman Khan

Criminal Revision No. 1567 of 2021.

Nurul Huda Chawdhury (Ex-member
of Union Parishad)

...Convict petitioner.

-Versus-

The State and another

.... Opposite parties.

Mr. Md. Mahbubul Islam, Advocate

... For the petitioner.

Mr. Jugal Kishor Biswas, Advocate.

..... For the opposite party No. 2.

Mr. S.M Fazlul Haque, DAG with

Mrs. Anjuman Ara Begum, with

Mr. Miah Sirajul Islam, AAGs

... For the opposite party No.1.

Heard on: 09.08.2023, 20.08.2023.

And

Judgment on: 29.08.2023.

This Rule under Section 435 read with section 439 of the Code Criminal Procedure is directed against the Judgment and order dated 26.01.2021 passed by the Additional Session Judge, Cox's Bazar, in Criminal Appeal No. 229 of 2018 dismissed the

Appeal affirming the judgment and order of conviction and sentence dated 27.08.2018 passed by the Joint Session Judge, 1st Court, Cox's Bazar, in S.T Case No. 1125 of 2015 arising out of C.R Case No. 1335 of 2014, convicted the convict petitioner under section 138 of the Negotiable Instrument Act, 1881 and sentenced him to suffer simple imprisonment for a period of 02 (two) months and to pay a fine of Tk. 2,40,000/- (two lac forty thousand).

The complainant case, in brief, is that, the convict petitioner issued a cheque of Sonali Bank in favour of the complainant on 30.08.2014 of Tk. 2,40,000/-and the complainant presented the same on 17.09.2014 to the Islami Bank Cox's Bazar Branch but the same was dishonored due to insufficient fund. Thereafter, the complaint opposite party No.2 sent a legal notice on 06.11.2014 for payment of the cheque amount but the convict petitioner did not pay the cheque amount.

The learned Magistrate examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance against the convict petitioner under section 138 of the Negotiable Instrument Act, 1881.

Eventually, the C.R Case No. 1335 of 2014 was transferred in the court of Sessions Judge, Cox's Bazar and the same was registered as S.T Case No. 1125 of 2015. Again the case was transferred in the court of Joint Sessions Judge, 1st Court, Cox's Bazar. After hearing convicted the convict petitioner under section 138 of the Negotiable Instrument Act, 1881 and sentenced him to suffer simple imprisonment for 02 (two) months and to pay a fine of Tk. 2,40,000/-

The complainant examined 01 (one) witness to prove his case but the defence examined none.

Being aggrieved by and dissatisfied with the judgment and order of conviction sentence dated 27.08.2018 passed by the Joint Sessions Judge, Cox's Bazar the convict petitioner preferred criminal

appeal No. 229 of 2018 in the court of Sessions Judge, Cox's Bazar, which was heard by the Additional Sessions Judge, Cox's Bazar, who after hearing on consideration of the evidence on record rightly dismissed the criminal appeal affirming the judgment and order of conviction and sentenced passed by the court of Joint Sessions Judge, 1st Court, Cox's Bazar.

Being aggrieved by and dissatisfied with the Judgment and order dated 26.01.2021 passed by the Additional Session Judge, Cox's Bazar, in Criminal Appeal No. 229 of 2018, the convict petitioner filed this Revision before this court and obtained Rule, bail and stay realization of fine.

Mr. Md. Mahbubul Islam, the learned Advocate appearing on behalf of the convict petitioner submits that the Joint Sessions Judge, 1st Court, Cox's Bazar after hearing without considering the evidence and record and the real facts of the case wrongly convicted the convict petitioner. He further submits

that the Additional Sessions Judge, Cox's Bazar after hearing without considering the evidence on record wrongly dismissed the criminal appeal affirming the judgment and order of conviction and sentence passed by the Joint Sessions Judge, 1st Court, Cox's Bazar. He further submits that the ingredients of section 138 Negotiable Instrument Act, is absent in the case as and it is clear from the petition of complaint no cause of action in this case. He further submits that both the courts below failed to consider that the prosecution failed to prove the notice was duly served upon the convict petitioner by reliable and independent witness and as such it is clear no legal notice was served and there is no cause of action in this case. He further submits that it appears from evident that the convict petitioner and the complainant were business jointly and in the course of business some checks was in the possession of the complainant and after division of business the complainant filed this case against the

convict petitioner only for harassing him and the same does not come within the purview of section 138 of the Negotiable Instrument Act and the trial court failed to consider that if any amount was due to the convict petitioner the complainant may go to the civil court for realization the same but the learned judge without considering the same most illegally convicted the petitioner. He further submits that the convict petitioner and the complainant had join business and when the petitioner engaged another business and the complainant company filed this case only for harass the convict petitioner. Accordingly, he submits that the Rule may be absolute for ends of justice.

Mr. Jugal Kishor Biswas, the learned Advocate appearing on behalf of the complainant opposite party No. 2 submits that the Joint Session Judge, 1st Court, Cox's Bazar after hearing on consideration of the evidence on record rightly convicted and sentence the convict petitioner under section 138 of the

Negotiable Instrument Act, 1881 and sentenced the convict petitioner to suffer simple imprisonment for a period of 02 (two) months and to pay a fine of Tk. 2,40,000/- (two lac forty thousand). He further submits that the Additional Sessions Judge, Cox's Bazar after hearing on consideration of the evidence on record rightly dismissed the criminal appeal affirming the judgment and order of conviction and sentence passed by the trial court. He further submits that the convict petitioner issued a cheque of Sonali Bank in favour of the complainant on 30.08.2014 of Tk. 2,40,000/- (two lac forty thousand). He further submits that the complainant deposited the cheque on 17.09.2014 to the Islami Bank, Cox's Bazar for encashment but the cheque was dishonoured due to insufficient fund. On 06.11.2014 the complainant sent a legal notice to the convict petitioner but the convict petitioner did not pay the said cheque amount. Accordingly, he

submits that the Rule may be discharge for ends of justice.

Mr. S.M Fazlul Haque, the learned Deputy Attorney General and Mrs. Anjuman Ara Begum along with Mr. Miah Sirajul Islam, the learned Assistant Attorney Generals appearing on behalf of the opposite party –State adopted the submissions made by the learned Advocate appearing on behalf of the complainant opposite party No. 2 and submit that the Rule may be discharged for ends of justice.

Heard the learned Advocates of both sides, perused the revisional application, impugned Judgment and order dated 26.01.2021 passed by the Additional Session Judge, Cox's Bazar, in Criminal Appeal No. 229 of 2018 dismissed the criminal Appeal upholding the judgment and order of conviction and sentence dated 27.08.2018 passed by the Joint Session Judge, 1st Court, Cox's Bazar, in S.T Case No. 1125 of 2015 arising out of C.R Case No. 1335 of 2014 and other necessary papers are

available in records. It appears from the records that the accused petitioner issued a cheque of Sonali Bank in favour of the complainant on 30.08.2014 of Tk. 2,40,000/- (two lac forty thousand). On 17.09.2014 the complainant presented the same to the Bank, for encashment but the same was dishonoured due to 'insufficient fund'. The complainant sent a legal notice on 06.11.2014 to the convict petitioner but the convict petitioner did not pay the cheques amount to the complainant opposite party No. 2.

So, in all fairness the complainant has been able to prove the case beyond reasonable doubt. The Joint Sessions Judge, 1st Court, Cox's Bazar after hearing on consideration of the evidence on record rightly convicted and sentenced the convict petitioner. The Additional Sessions Judge, Cox's Bazar after hearing on consideration of the evidence on record and the real facts of the case rightly dismissed the criminal appeal upholding the

Judgment and order of conviction and sentence passed by learned trial court.

Considering the facts and circumstances of the case, I hold and find that the conviction under section 138 of the Negotiable Instrument Act, 1881 and sentenced him to simple imprisonment for 02 (two) months and pay of fine of Tk. 2,40,000/- (two lac forty thousand) is hereby maintained in criminal appeal No. 229 of 2018 upholding the judgment and order of conviction and sentence passed by the Joint Sessions Judge, 1st Court, Cox's Bazar, in ST case No. 1125 of 2015 arising out of C.R Case No. 1335 of 2014.

In the result, the Rule issued earlier is hereby discharged.

The impugned Judgment and order dated 26.01.2021 passed by the Additional Session Judge, Cox's Bazar, in Criminal Appeal No. 229 of 2018 dismissed the criminal Appeal upholding the judgment and order of conviction and sentence dated

27.08.2018 passed by the Joint Session Judge, 1st Court, Cox's Bazar, in S.T Case No. 1125 of 2015 arising out of C.R Case No. 1335 of 2014, convicted the convict petitioner under section 138 of the Negotiable Instrument Act, 1881 and sentenced him to suffer simple imprisonment for a period of 02 (two) months and to pay a fine of Tk. 2,40,000/- (two lac forty thousand) is hereby affirmed.

The bail bond furnished of the convict petitioner is hereby discharged.

Let the convict petitioner, Nurul Huda Chawdhury (Ex-Member of Union Parishad) son of Nurul Islam Chawdhury be directed to pay rest 50% cheque amount in favour of the complainant opposite party No.2 within 1(one) month from the date of receipts of this Judgment, if the convict petitioner pay the rest 50% cheque amount within time then the sentence will be set-aside, failing which the accused petitioner shall suffer simple imprisonment for a period of 02 (two) months and the law enforcing

agency to take him in custody in accordance with law.

The complainant opposite party is directed to withdraw the deposited 50% cheque amount from the concerned court as early as possible. The Joint Sessions Judge, 1st Court, Cox's Bazar also directed to allow withdraw the 50% cheque amount infavour of the complainant opposite party No. 2 in accordance with law.

Send down the L.C. records along with a copy of this Judgment to the Courts concerned immediately for information and necessary action.