

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 1946 of 2023

A.K.M. Joynul Abedin Khan

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

No one appears.

...For the convict-petitioner

Mr. Swapan Kumar Dutta, Advocate

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

Heard on 19.11.2023 and 28.11.2023

Judgment delivered on 05.12.2023

This Rule under Section 439 read with Section 435 of the Code of Criminal Procedure, 1898 was issued calling upon the opposite parties to show cause as to why the judgment and order dated 03.04.2023 passed by the Sessions Judge, Jhalakathi in Criminal Appeal No. 62 of 2022 affirming the judgment and order of conviction and sentence dated 13.04.2022 passed by the Joint Sessions Judge, Court No. 2, Jhalakathi in Session Case No. 101 of 2021 arising out of C.R. Case No. 247 of 2020 (Jhalakathi) convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple imprisonment for 1(one) year and to pay a fine of Tk. 42,00,000 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 prosecution case, in short, is that the complainant Md. Oliur Rahman (Hiru) is the Proprietor of Messers Rahman and Brothers and the convict-petitioner A.K.M. Joynul Abedin Khan is the Proprietor of Messers Quality Salt Industries and there is a business transaction between them. The convict-petitioner took loan of Tk. 42,00,000(forty-two lakh) for business from the complainant. On 23.08.2020, the convict-petitioner issued Cheque No. A100-J-A-3923202 drawn on his Account No. 2194901030036 maintained with Pubali Bank Limited, Jhalakathi Branch in favour of the complainant for payment of Tk. 42,00,000(forty two

lakh). The complainant presented said cheque on the same date for encashment through his Account No. 0063000003178 maintained with Uttara Bank, Jhalakathi for encashment which was dishonoured for 'insufficient fund' and was returned to the complainant on 24.08.2020. The complainant informed the matter to the accused and subsequently issued notice to the accused on 26.08.2020 through registered post with A/D but he did not pay the cheque amount. After that, the complainant filed the complaint petition on 07.10.2020.

After filing the complaint petition, the complainant was examined under Section 200 of the Code of Criminal Procedure, 1898 and the learned Magistrate was pleased to take cognizance of the offence against the accused under Section 138 of the Negotiable Instruments Act, 1881. The convict-petitioner voluntarily surrendered before the Court below and obtained bail. The learned Magistrate was pleased to transmit the records on 17.08.2021 to the Sessions Judge, Jhalakathi which was registered as Sessions Case No. 101 of 2021. After that, the Sessions Judge, Jhalakathi by order dated 22.11.2021 sent the case to the Joint Sessions Judge, Court No. 2, Jhalakathi for trial. During the trial, the charge was framed under Section 138 of the Negotiable Instruments Act, 1881 against the accused which was read over and explained to him and he pleaded not guilty to the charge and claimed to be tried following law. The prosecution examined 1(one) witness to prove the charge against the accused. During the trial, the accused was absconding and the trial was held in absentia.

After concluding the trial, the trial Court by judgment and order dated 13.04.2022 was pleased to convict the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer imprisonment for 1(one) year and a fine of Tk. 42,00,000(forty-two lacs) against which the accused filed Criminal Appeal No. 62 of 2022 before the Sessions Judge, Jhalakathi and the appellate Court by impugned judgment and order affirmed the judgment and order of conviction and sentence against which the convict-petitioner obtained the instant Rule.

P.W. 1 Md. Oaliur Rahman (Hiru) is the complainant. He stated that the accused A.K.M. Joynul Abedin Khan is the Proprietor of Messers

Quality Salt Industries and there was a business transaction between them. The accused took loan of Tk. 42,00,000(forty-two lakh) and issued a cheque on 23.08.2020 for payment of the loan. He presented the cheque on 23.08.2020 for encashment which was dishonoured on 24.08.2020 for 'insufficient funds'. After that, the complainant issued a legal notice on 26.08.2020 for payment of the cheque amount. After that, he filed the complaint petition. P.W. 1 proved the complaint petition as exhibit 1 and his signatures as exhibits 1/1-1/4. He proved the cheque as exhibit 2 and the dishonoured slip as exhibit 3. He also proved the postal receipt as exhibit 4 and the legal notice as exhibit 5. The defence did not cross-examine P.W. 1.

No one appears on behalf of the convict petitioner to press the Rule.

The learned Advocate Mr. Swapan Kumar Dutta appearing on behalf of the complainant-opposite party No. 2 submits that the convict-petitioner issued a cheque on 23.08.2020 for payment of Tk. 42,00,000(forty-two lakh) drawn on his account maintained with Pubali Bank Limited, Jhalakathi Branch and the complainant-opposite party No. 2 presented the said cheque on 23.08.2020 which was dishonoured on 24.08.2020 for 'insufficient fund'. After that, the complainant issued a legal notice on 26.08.2020 for payment of the loan amount but the convict-petitioner did not pay the cheque amount within time. Therefore, the accused committed an offence under Section 138 of the said Act and he prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Swapan Kumar Dutta who appeared on behalf of the complainant-opposite party No. 2, perused the impugned judgments and orders passed by the Courts below, evidence and the records.

On perusal of the records, it appears that the convict-petitioner issued Cheque No. A100-J-A-3923202 dated 23.08.2020 drawn on his Current Account No. 2194901030036 maintained in the name of Proprietor of Messers Quality Salt Industries with Pubali Bank Limited, Jhalakathi Branch in favour of the complainant for payment of Tk.

42,00,000(forty-two lakh). In the complaint petition, it has been stated that the accused A.K.M. Joynul Abedin Khan is the Proprietor of Messers Quality Salt Industries. P.W. 1 proved the said cheque as exhibit 2. The said cheque was presented on 23.08.2020 which was dishonoured on 24.08.2020 with a remarked 'insufficient funds.' P.W. 1 proved the dishonoured slip as exhibit 3. After dishonour of the said cheque, the complainant issued a legal notice on 26.08.2020 for payment of the cheque amount. The accused did not pay the cheque amount. P.W. 1 proved the postal receipt as exhibit 4 and the legal notice as exhibit 5. During the trial, the accused was absconding. The defence did not cross-examine P.W. 1.

There is a presumption under Section 118(a) of the Negotiable Instruments Act, 1881 that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. The presumption under Section 118(a) of the said Act is rebuttable. The accused neither adduced evidence nor cross-examined P.W. 1 to rebut the presumption under Section 118(a) of the said Act. Therefore I am of the view that the accused issued the cheque in favour of the payee-complainant for consideration. After service of notice in writing under Section 138(1)(b) of the said Act, the convict-petitioner failed to pay the cheque amount. Thereby the accused committed an offence under Section 138 of the Negotiable Instruments Act, 1881 and the complainant filed the case following all procedures provided in Section 138 of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the accused beyond all reasonable doubt and the trial Court on proper assessment of evidence legally passed the impugned judgment and order. There is no illegality in the impugned judgment and order passed by the appellate Court.

The impugned judgment and order of conviction passed by the Courts below are hereby maintained.

Considering the gravity of the offence, I am of the view that the ends of justice would be best served if the sentence passed by the Courts below is modified as under;

The accused A.K.M. Joynul Abedin Khan is found guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and he is sentenced to suffer imprisonment for 3(three) months and to pay a fine of Tk. 42,00,000(forty-two lakh). The fine imposed by this Court is recoverable following the law. The complainant is entitled to get the fine, if realised.

The trial Court is directed to pay the fine to the complainant forthwith, if realised.

In the result, the Rule is disposed of with modification of the sentence.

Send down the lower Court's records at once.