

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Revision No. 1582 of 2021

Md. Alamgir Siddiqui (Badsha)

...Convict-petitioner

-Versus-

Shah Mohammad Imran and another

...Opposite parties

Mr. Md. Aminul Islam, Advocate

...For the convict-petitioner

Mr. Md. Faridul Islam, Advocate

...For the complainant-opposite party No. 1

Heard on 12.11.2024 and 13.11.2024

**Judgment delivered on 14.11.2024**

On an application filed under Section 439 read with Section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite parties to show cause as to why the impugned order dated 19.03.2015 passed by the Sessions Judge, Jhenaidah in Criminal Appeal No. 80 of 2014 affirming the judgment and order dated 07.01.2013 passed by the Joint Sessions Judge, Court No. 1, Jhenaidah in Sessions Case No. 159 of 2012 arising out of Jhenaidah C.R. Case No. 517 of 2011 convicting the petitioner under Section 138 of the Negotiable Instrument Act and sentencing him to suffer rigorous imprisonment for 1(one) year and fine of Tk. 18,00,000 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.

The prosecution case, in short, is that the accused Md. Alamgir Siddiqui (Badsha) is the owner of a brick field and the complainant is a businessman. The accused took a loan of Tk. 6,00,000 from the complainant. He issued Cheque No. 18093949 on 12.07.2011 drawn on his Account No. 266 maintained with Sonali Bank Limited, Bunagati Bazar Branch for payment of Tk. 6,00,000. The complainant presented the said cheque which was dishonoured

on 02.08.2011 with a remark “insufficient funds”. On 03.08.2011 the complainant issued legal notice to the accused for payment of the cheque amount within 30(thirty) days which expired on 04.08.2011 but the accused did not pay the cheque amount. Thereby he committed offence under Section 138 of the Negotiable Instruments Act, 1881. The complainant filed the complaint petition on 12.09.2011.

During the trial, charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881. At the time of the framing charge, the accused was absconding. The prosecution examined 2(two) witnesses to prove the charge against the accused. Since the accused was absconding he was not examined under Section 342 of the Code of Criminal Procedure, 1898. After concluding the trial, the Joint Sessions Judge, Court No. 1, Jhenaidah by judgment and order dated 7.01.2013 convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer rigorous imprisonment for 1(one) year and a fine of Tk. 18,00,000.

Being aggrieved by and dissatisfied with the said judgment and order passed by the trial Court, the accused filed Criminal Appeal No. 80 of 2014 in the Court of Sessions Judge, Jhenaidah with an application for condonation of delay of 680 days. The Sessions Judge, Jhenaidah by the impugned order dated 19.03.2015 rejected the application filed under Section 5 of the Limitation Act for condonation of delay of 680 days and summarily dismissed the appeal against which the convict-petitioner obtained the Rule.

Learned Advocate Mr. Md. Aminul Islam appearing on behalf of the convict-petitioner submits that the convict-petitioner filed the criminal appeal before the Sessions Judge, Jhenaidah following the law and had given an explanation for delay of 680 days in filing the appeal which was unintentional and bonafide but the appellate Court below illegally rejected the said application and

summarily dismissed the appeal. He further submits that under Section 138 of the Negotiable Instruments Act, 1881 the trial Court is not legally empowered to award rigorous imprisonment but the trial Court most illegally awarded the sentence of rigorous imprisonment and imposed the fine thrice the amount of the cheque value. The learned Advocate also submits that the convict-petitioner paid 50% of the cheque amount through a pay order dated 20.10.2013 and in compliance with the order dated 09.03.2021 passed by this Court the convict-petitioner deposited the remaining 50% of the cheque amount to the trial Court.

Learned Advocate Mr. Md. Faridul Islam appearing on behalf of the complainant-opposite party No. 1 submits that the complainant received 50% of the cheque amount Tk. 3,00,000 after issuance of the Rule and he also had withdrawn 50% of the cheque amount before issuance of the Rule and the complainant-opposite party No. 1 also filed an affidavit on 22.02.2021 stating that he received the entire cheque amount.

I have considered the submission of the learned Advocate Mr. Md. Aminul Islam who appeared on behalf of the convict-petitioner and the learned Advocate Mr. Md. Faridul Islam who appeared on behalf of the complainant-opposite party No. 1, perused the evidence, impugned judgments and orders passed by the Courts below and the records.

On perusal of the judgment and order passed by the trial Court, it appears that the trial Court convicted the accused and sentenced him to suffer rigorous imprisonment for 1 year and a fine of Tk. 18,00,000 i.e. thrice the amount of the cheque value under Section 138 of the Negotiable Instruments Act, 1881. The trial Court is only empowered to award a sentence of imprisonment or with fine which may extend to thrice the amount of the cheque, or both. The trial Court is not legally empowered to award rigorous imprisonment.

The appeal against the judgment and order of conviction and sentence is a statutory right. In the application for condonation of delay, the convict-petitioner had given a reasonable explanation that the learned Advocate for the convict-petitioner did not inform him about the order passed by the appellate Court below for which it was delayed by 680 days in filing the appeal. The explanation given by the convict petitioner appears bonafide and unintentional. The appellate Court below illegally rejected the application filed under Section 5 of the Limitation Act for condonation of the delay of 680 days in filing the appeal. Therefore, the delay of 680 days in filing the appeal before the Sessions Judge, Jhenaidah is hereby condoned.

The impugned order passed by the appellate Court below is hereby set aside. The Sessions Judge, Jhenaidah is directed to dispose of the appeal considering the merit of the case within 6(six) months from the date of receipt of the judgment.

The appellate Court below is further directed to allow the complainant-opposite party No. 1 to withdraw 50% of the remaining cheque amount within 15(fifteen) days from the date of filing the application by the complainant-opposite party No. 1, if any.

The appeal is sent back on remand to the appellate Court.

In the result, the Rule is disposed of with the above observation and direction.

However, there will be no order as to costs.

Send down the lower Court's records at once.