

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No.3263 of 2022

Md. Wazir Ahmed Choudhury

.....convict-petitioner

-Versus-

The State and another

.....opposite-parties

Mr. Md. Abdus Saleque, Advocate

.....For the convict-petitioner

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. Md. Mansur Rahman Sarker, Advocate

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

Heard on 20.11.2023 and

Judgment on: 21.11.2023

Md. Kamrul Hossain Mollah.J:

This is an application under Section 439 read with section 435 of the Code of Criminal Procedure. This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order of conviction and sentence dated 01.08.2022 passed by the learned Sessions Judge, Joypurhat in Criminal Appeal No.26 of 2022 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 03.01.2022 passed by the learned Joint Sessions Judge, 2nd Court, Joypurhat in Sessions Case No.29 of 2020 arising out of C.R. Case No.371 of 2019(Ka) convicting the

petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 01(one) year and also to pay a fine of Tk.7,90,977/-, 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.

At the time of issuance of the Rule this Court granted bail to the convict-petitioner for a period of 06(six) months and stayed the realization of fine.

The relevant facts necessary for disposal of the Rule are as follows:-

The prosecution case, in short is that the convict-petitioner issued a cheque for paying the loan amount of Tk.7,80,977/- in favour of the complainant on 28.07.2019 and the complainant deposited the said cheque for encashment to the concerned bank, but it was dishonoured for insufficient fund on 29.07.2019 and on 30.07.2019 the complainant sent a legal notice and on 31.07.2019 the convict-petitioner received the said notice, but did not pay the due amount. Thereafter, the complainant finding no other alternative filed a complaint-petition against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 before the learned Judicial

Magistrate, Amoli Adalat 'Uma' Anchol, Joypurhat on 04.09.2019.

The learned Judicial Magistrate, Amoli Adalat 'Uma' Anchol, Joypurhat upon receiving the petition of complaint examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance against the petitioner under section 138 of the Negotiable Instruments Act, 1881 as C.R. Case No.371 of 2019(Ka) and issued summon against him and on 11.11.2019 the convict petitioner voluntarily surrendered before the learned Judicial Magistrate, Amoli Adalat 'Uma' Anchol, Joypurhat and obtained bail. The case was transferred to the learned Sessions Judge, Joypurhat for disposal, which was renumbered as Sessions Case No.29 of 2020. The learned Sessions Judge, Joypurhat sent the same to the learned Joint Sessions Judge, 2nd Court, Joypurhat for trial and disposal. The learned Joint Sessions Judge, 2nd Court, Joypurhat framed charge against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 on 30.01.2020, which was read over and explained to him who pleaded not guilty and claimed to be tried.

The prosecution examined only one witness as P.W.1 and the convict-petitioner examined none.

After closing the examination of the prosecution witnesses by the learned trial Court, the convict-petitioner was not examined under section 342 of the Code of Criminal Procedure, for his absconsion.

The learned Joint Sessions Judge, 2nd Court, Joypurhat after hearing the parties and perusing the evidence on record found guilty the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 01(one) year and also to pay a fine of Tk.7,90,977/- by his judgment and order of conviction and sentence dated 03.01.2022.

Thereafter, the convict-petitioner against the judgment and order of conviction and sentence dated 03.01.2022 filed Criminal Appeal No.26 of 2022 before the learned Sessions Judge, Joypurhat. The learned Sessions Judge, Joypurhat upon hearing the parties and upon considering the evidence on record dismissed the Criminal Appeal No.26 of 2022 and thereby affirmed the judgment and order of conviction and sentenced

dated 03.01.2022 passed by the learned Joint Sessions Judge, 2nd Court, Joypurhat in Sessions Case No.29 of 2020 arising out of C.R. No.371 of 2019(Ka) by his judgment and order dated 01.08.2022.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 01.08.2022 passed by the learned Sessions Judge, Joypurhat in Criminal Appeal No.26 of 2022, the convict-petitioner filed this Criminal Revision before this Hon'ble High Court Division.

Mr. Md. Abdus Saleque, the learned Advocate appearing on behalf of the petitioner submits that the learned Sessions Judge, Joypurhat erred in law and fact in upholding the judgment and order of conviction without considering the evidences on record and as such aforesaid judgment and order of conviction and sentence is liable to be set-aside.

He further submits that the impugned judgment and order of conviction of both the Courts are bad both in law and fact and the learned trial Court as well as the Appellate Court failed to consider the evidence of complainant-opposite party No.2.

The learned Advocate lastly submits that in upholding the impugned judgment and order of conviction of the trial Court the learned Sessions Judge is unjust, illegal and improper and without exercising his judicial mind passed the impugned judgment and order and as such the same is liable to be set-aside for the ends of justice. Accordingly, he prays for making the Rule absolute.

On the other hand, Mr. Md. Mansur Rahman Sarker, the learned Advocate appearing on behalf of the opposite party No.2 submits that the convict-petitioner issued a cheque for paying the loan amount of Tk.7,80,977/- in favour of the complainant on 28.07.2019 and the complainant deposited the said cheque for encashment to the concerned bank, but it was dishonoured for insufficient fund on 29.07.2019 and on 30.07.2019 the complainant sent a legal notice and on 31.07.2019 the convict-petitioner received the said notice, but did not pay the due amount. Thereafter, the complainant finding no other alternative filed a complaint-petition against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 before the learned Judicial Magistrate, Amoli Adalat 'Uma' Anchol, Joypurhat on 04.09.2019 as C.R.

Case No.371 of 2019(Ka) following all legal formalities. Thereafter, the case was transferred to the learned Sessions Judge, Joypurhat for disposal, which was renumbered as Sessions Case No.29 of 2020. The learned Sessions Judge, Joypurhat sent the same to the learned Joint Sessions Judge, 2nd Court, Joypurhat for trial and disposal. The learned Joint Sessions Judge, 2nd Court, Joypurhat after hearing the parties and perusing the evidence on record found guilty the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 01(one) year and also to pay a fine of Tk.7,90,977/- by his judgment and order of conviction and sentence dated 03.01.2022. Thereafter, the convict-petitioner against the judgment and order of conviction and sentence dated 03.01.2022 filed Criminal Appeal No.26 of 2022 before the learned Sessions Judge, Joypurhat. The learned Sessions Judge, Joypurhat upon hearing the parties and upon considering the evidence on record dismissed the Criminal Appeal No.26 of 2022 and thereby affirmed the judgment and order of conviction and sentenced dated 03.01.2022 passed by the learned Joint Sessions Judge, 2nd Court, Joypurhat in Sessions

Case No.29 of 2020 arising out of C.R. No.371 of 2019(Ka) by his judgment and order dated 01.08.2022 rightly, which is maintainable in the eye of law. Therefore, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and order of conviction and sentence of the Courts' below, the submission of the learned Advocate for both the parties, the papers and documents as available on the record.

It appears from the records and submissions of the learned Advocate for the opposite party No.2 that the convict-petitioner issued a cheque for paying the loan amount of Tk.7,80,977/- in favour of the complainant on 28.07.2019 and the complainant deposited the said cheque for encashment to the concerned bank, but it was dishonoured for insufficient fund on 29.07.2019 and on 30.07.2019 the complainant sent a legal notice and on 31.07.2019 the convict-petitioner received the said notice, but did not pay the due amount. Thereafter, the complainant finding no other alternative filed a complaint-petition against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 before the learned Judicial Magistrate, Amoli Adalat 'Uma' Anchol, Joypurhat on

04.09.2019 as C.R. Case No.371 of 2019(Ka) following all legal formalities.

Considering the deposition of the P.W.1 as complainant it appears that the P.W.1 (complainant) strongly supported the complaint-petition in his deposition and he identified his complaint-petition as exhibit-1, therein his signature as exhibit-1/1, dishonoured cheque as exhibit-2, the slip of the dishonoured cheque as exhibit-3, legal notice as exhibit-4, postal receipt as exhibit-4(1) and AD original copy as exhibit-4(2).

In the light of the above discussion, it is clear before me that the prosecution has succeeded to prove the case beyond all reasonable shadow of doubt. But, it is found that the total amount of cheque is Tk.7,80,977/- and at the time of filing the appeal the convict-petitioner deposited Tk.3,90,488.5/- through bank chalan, but the learned Court below sentenced the convict-petitioner for a period of 01 (one) year, which is seem to be very hash for the convict-petitioner. So, I think that justice will be best serve if the

sentence 01 year passed by the learned trial Court reduces to 06(six) months.

Accordingly, I find cogent and legal ground to interfere with the impugned judgment and order of conviction and sentence dated 01.08.2022 on the part of imprisonment only.

In the result, the Rule is discharged with modification of the judgment and order dated 01.08.2022.

The impugned judgment and order dated 01.08.2022 passed by the learned Sessions Judge, Joypurhat in Criminal Appeal No.26 of 2022 is hereby modified with this direction that the simple imprisonment for 01(one) year will reduce to simple imprisonment for 06(six) months and fine will be as remain.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.3,90,488.5/- to the complainant-opposite party No.2 (if he did not take the said amount) in this case.

The order of bail granted earlier by this Court is hereby cancelled and recalled and the order of stay of realization of fine is hereby vacated.

Send down the lower Court records along with a copy of the judgment and order to the concerned Court below at once.

Md. Anamul Hoque Parvej
Bench Officer