

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No.1917 of 2021

Azmal Hussain Khan (Shahin)

.....convict-petitioner

-Versus-

The State and another

..... opposite-parties

Mr. Mohammad Oli Miah, Advocate

.....For the convict-petitioner

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Heard and Judgment on: 17.12.2023

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 impugned judgment and order of conviction and sentence dated 08.11.2020 passed by the learned Additional Sessions Judge, 4th Court, Sylhet in Criminal Appeal No.396 of 2019 dismissing the appeal and thereby affirming the judgment and order of conviction of sentence dated 30.10.2018 passed by the learned Joint Sessions Judge, Additional Court, Sylhet in Sessions Case No.793 of 2018 arising out of Beanibazar C.R. Case No.156 of 2018 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.5,00,000/- 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.

At the time of issuance of the Rule this Court granted bail to the appellant for a period of 01(one) year.

The relevant facts necessary for disposal of the Rule are that the convict-petitioner took loan Tk.5,00,000/- from the complainant and issued a cheque being CD No.0833372 in favour of the complainant-opposite party No.2 on 11.03.2018. The complainant deposited the said cheque to the concerned bank for encashment, but, it was dishonoured for insufficient fund on 11.03.2018. Thereafter, the complainant served a legal notice to the appellant on 27.03.2018, but the convict-petitioner did not pay the cheque amount. Thereafter, the complainant-opposite party No.2 finding no other alternative filed a complaint-petitioner under section 138 of the Negotiable Instruments Act, 1881 against the convict-petitioner before the learned Judicial Magistrate Court, Amoli Adalat No.4, Sylhet as C.R. Case No.156 of 2018 (Beanibazar) on 21.05.2018 following all legal formalities and the said learned Judicial Magistrate Court, Amoli Adalat No.4, Sylhet took cognizance

against the petitioner under section 138 of the Negotiable Instruments Act, 1881 and issued summons.

Thereafter, it was transferred to the learned Senior Sessions Judge, Sylhet for disposal, which was renumbered as Sessions Case No.793 of 2018 and further, it was transferred to the learned Joint Session Judge, Additional Court, Sylhet for trial and disposal. After conclusion of the trial and hearing both the parties the learned trial Court on perusal of the evidence on record and documents convicted 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.5,00,000/- by his judgment and order of conviction and sentence dated 30.10.2018.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 30.10.2018 passed by the learned Joint Sessions Judge, Additional Court, Sylhet in Sessions Case No.793 of 2018 arising out of Beanibazar C.R. Case No.156 of 2018 the convict-appellant filed Criminal Appeal No.396 of 2019 before the learned Sessions Judge, Sylhet and thereafter, it was further transferred to the Court of learned Additional Sessions Judge,

4th Court, Sylhet for disposal. After hearing both the parties and upon considering the materials on record the Additional Sessions Judge, 4th Court, Sylhet dismissed the appeal and affirmed the judgment and order of conviction and sentence dated 30.10.2018 passed by the learned Joint Sessions Judge, Additonal Court, Sylhet in Sessions Case No.793 of 2018 arising out of Beanibazar C.R. Case No.156 of 2018 by his judgment and order of conviction and sentence dated 08.11.2020.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 08.11.2020 passed by the learned Additional Sessions Judge, 4th Court, Sylhet Criminal Appeal No.396 of 2019 dismissing the appeal the petitioner filed this Criminal Revision before this Hon'ble High Court Division.

Mr. Muhammed Oli Miah, the learned Advocate appearing for the petitioner by filing an application for compromise submits that an amicable settlement has been reached between the parties and the convict-petitioner has paid the cheque amount to the complainant-opposite party No.2. The complainant has no claimed against the convict-petitioner if he

be acquitted and the complainant got his claimed amount. Accordingly, he prays for acquitting the convict-appellant and making the Rule absolute.

I have perused the revisional application, the application for compromise, the impugned judgment and order of conviction and sentence the Court's below, the submissions of the learned Advocate for the petitioner, the papers and documents as available on the record.

It appears from the submissions of the learned Advocate for petitioner that an amicable settlement became between the parties and there is no claim each to other.

Moreover, the main object of this case is recovery of money, which has been settled amicably between the parties.

In the light of the above discussion, it is clear before me that since the convict-petitioner paid the claimed amount, an amicable settlement has been held between the parties and there is no any claim to each other, therefore, the judgment and order of conviction and sentence dated 08.11.2020 passed by the learned Additional Sessions Judge, 4th Court, Sylhet in Criminal Appeal No.396 of 2019 is not

maintainable against the convict-appellant and it will be fair to interference there.

Accordingly, I find cogent and legal ground in the submissions of the learned Advocate for the petitioner and to interfere with the impugned judgment and order of conviction and sentence dated 08.11.2020. Therefore, the instant Rule has merit.

In the result, the Rule is made absolute on the basis of the compromise application.

The impugned judgment and order of conviction and sentence dated 08.11.2020 passed by the learned Additional Sessions Judge, 4th Court, Sylhet in Criminal Appeal No.396 of 2019 dismissing the appeal and thereby affirmed the judgment and order of conviction and sentence dated 30.10.2018 passed by the learned Joint Sessions Judge, Additonal Court, Sylhet in Sessions Case No.793 of 2018 arising out of Beanibazar C.R. Case No.156 of 2018 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.5,00,000/- is hereby set-aside and the convict-appellant be acquitted.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.2,50,000/- to the

complainant-opposite party No.2 (if he did not withdraw the said amount) in this case.

The order of bail granted at the time of issuance of the Rule is hereby recalled and cancelled and the order of stay of realization of fine is hereby vacated.

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

Md. Anamul Hoque Parvej
Bench Officer