

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No.1506 of 2022

Md. Shafiul Bashar

.....convict-petitioner

-Versus-

The State and another

..... opposite-parties

Mr. Md. Nurul Islam, Advocate

.....For the convict-petitioner

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. Md. Shahadat Hossain Azad, Advocate

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

Heard and Judgment on: 29.01.2024

Md. Kamrul Hossain Mollah.J:

This is an application filed by the petitioner 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 25.02.2020 passed by the learned Metropolitan Sessions Judge, Chattogram in Criminal Appeal No.605 of 2018 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 17.05.2018 passed by the learned Joint Metropolitan Sessions Judge, 3rd Court, Chattogram in Sessions Case No.7878 of 2017 arising out of Complaint Register

(C.R.) Case No.582 of 2017(Kotwali Zone) convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 04(four) months and also to pay a fine of Tk.2,50,000/- 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 petitioner for a period of 06(six) months.

The relevant facts necessary for disposal of the Rule are that the convict-petitioner took loan of amount of Tk.2,50,000/- from the complainant and issued a cheque being No.CB/CD4887246 City Bank Limited through his account being No.1401261545001 dated 15.08.2016 an amount of Tk.2,50,000/- in favour of the complainant-opposite party No.2 on 15.08.2016. On 08.02.2017 the complainant deposited the said cheque to the concerned Bank for encashment, but it was dishonoured for insufficient fund on 08.02.2017. Thereafter, the complainant served a legal notice to the petitioner on 14.02.2017 and the petitioner received the same on 19.02.2017, but he 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

Metropolitan Magistrate Court, Chattogram as C.R. Case No.582 of 2017 (Kotwali Zone) on 22.03.2017 following all legal formalities and the said learned Metropolitan Magistrate Court, Chattogram took cognizance against the petitioner under section 138 of the Negotiable Instruments Act, 1881 and issued summons.

Thereafter, it was transferred to the learned Metropolitan Sessions Judge, Chattogram for disposal, which was renumbered as Sessions Case No.7878 of 2017 and further, it was transferred to the learned Joint Metropolitan Session Judge, 3rd Court, Chattogram 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 04(months) months and also to pay a fine of Tk.2,50,000/- by his judgment and order of conviction and sentence dated 17.05.2018.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 17.05.2018 passed by the learned Joint Metropolitan Sessions Judge, 3rd Court, Chattogram in Sessions Case No.7878 of 2017

arising out of C.R. Case No.582 of 2017(Kotwali Zone) the convict-petitioner filed Criminal Appeal No.605 of 2018 before the learned Metropolitan Sessions Judge, Chattogram. After hearing both the parties and upon considering the material on record the learned Metropolitan Sessions Judge, Chattogram dismissed the said appeal by his judgment and order of conviction and sentence dated 25.02.2020.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 25.02.2020 passed by the learned Metropolitan Sessions Judge, Chattogram in Criminal Appeal No.605 of 2018 the petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

Mr. Md. Nurul Islam, the learned Advocate appearing for the complainant-petitioner by filing an application for compromise submits that an amicable settlement has been reached between the parties and the convict-appellant 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-petitioner and making the Rule absolute.

Mr. Md. Shahadat Hossain, the learned Advocate appearing on behalf of the complainant-opposite party No.2 supported the submission of the learned Advocate for the petitioner and submits that the convict-petitioner paid the total cheque amount to the complainant and a peaceful compromise has been held between the parties and he has no objection to acquit the convict-petitioner and absolute the Rule.

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 Advocates for the parties, the papers and documents as available on the record.

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

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

In the light of the above discussion, it is clear before me that since the convict-appellant paid the claimed amount of cheque, 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 25.02.2020 passed by the learned Metropolitan Sessions Judge, Chattogram in Criminal Appeal No.605 of 2018 is not maintainable against the convict-petitioner and it will be fair to interference there.

Accordingly, I find cogent and legal ground in the submissions of the learned Advocates for the parties and to interfere with the impugned judgment and order of conviction and sentence dated 25.02.2020. 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 25.02.2020 passed by the learned Metropolitan Sessions Judge, Chattogram in Criminal Appeal No.605 of 2018 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 04(four) months and also to pay a fine of Tk.2,50,000/- is hereby set-aside and the convict-petitioner be acquitted.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.1,25,000/- 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.

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