

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

**Present:**

Mr. Justice Md. Kamrul Hosssain Mollah

**Criminal Revision No.1987 of 2022**

Md. Sirajul Islam

.....convict-petitioner

-Versus-

The State and another

.....opposite-parties

No one appears

.....For the convict-petitioner

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. Muhammad Ali Akkas, Advocate

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

**Heard and Judgment on: 30.08.2023**

**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 09.08.2021 passed by the learned Sessions Judge, Chapainawabganj in Criminal Appeal No.64 of 2019 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 10.01.2019 passed by the learned Joint Sessions Judge, 1<sup>st</sup> Court, Chapainawabganj in Sessions Case No.552 of 2015 arising out of C.R. Case No.220 of 2015(Nawab)

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.2,34,000/-, 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 convict-petitioner for a period of 01(one) year 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 took loan of Tk.2,34,000/- from the office of the opposite party No.2 and on 29.12.2014 the convict-petitioner gave a cheque for repaying the said loan amount and on 26.01.2015 the complainant deposited the said cheque for encashment, but it was refuse for insufficient of fund and then on 02.02.2015 the complainant sent a legal notice and on 10.02.2015 the convict-petitioner received the said notice, but did not pay the alleged amount. For this reason, the complainant filed the instant case against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881

before the learned Senior Judicial Magistrate, Amoli Adalat 'Ka' Anchol, Chapainawabganj, and hence the case.

The learned Senior Judicial Magistrate, Amoli Adalat 'Ka' Anchol, Chapainawabganj 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.220 of 2015(Nawab) and issued summon against him and the convict petitioner voluntarily surrendered before the learned Senior Judicial Magistrate, Amoli Adalat 'Ka' Anchol, Chapainawabganj and obtained bail. Thereafter the case was ready for hearing and transferred to the learned Sessions Judge, Chapainawabganj for disposal, which was renumbered as Sessions Case No.552 of 2015. The learned Sessions Judge, Chapainawabganj sent the same to the learned Joint Sessions Judge, 1<sup>st</sup> Court, Chapainawabganj for trial and disposal. The learned Joint Sessions Judge, 1<sup>st</sup> Court, Chapainawabganj framed charge against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 on 12.07.2017, which was read over 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 prosecution witnesses by the learned trial Court, the convict-petitioner was examined by the trial Court under section 342 of the Code of Criminal Procedure, where he pleaded not guilty and he claimed himself innocent.

The learned Joint Sessions Judge, 1<sup>st</sup> Court, Chapainawabganj 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.2,34,000/- by his judgment and order of conviction and sentence dated 10.01.2019.

Thereafter, the convict-petitioner against the judgment and order of conviction and sentence dated 10.01.2019 filed Criminal Appeal No.64 of 2019 before the learned Sessions Judge, Chapainawabganj. The learned Sessions Judge, Chapainawabganj upon hearing the parties dismissed the Criminal Appeal No.64 of 2019 and thereby affirmed the

judgment and order of conviction and sentenced dated 10.01.2019 passed by the learned Joint Sessions Judge, 1<sup>st</sup> Court, Chapainawabganj in Sessions Case No.552 of 2015 by his judgment and order dated 09.08.2021.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 09.08.2021 passed by the learned Sessions Judge, Chapainawabganj in Criminal Appeal No.64 of 2019, the convict-petitioner filed this Criminal Revision before this Hon'ble High Court Division.

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

On the other hand, Mr. Muhammad Ali Akkas, the learned Advocate appearing on behalf of the opposite party No.2 submits that the convict-petitioner took loan of Tk.2,34,000/- from the office of the opposite party No.2 and on 29.12.2014 the convict-petitioner gave a cheque for repaying the said loan amount and on 26.01.2015 the complainant deposited the said cheque for encashment, but it was refuse for insufficient of fund and then on 02.02.2015 the complainant sent a legal notice and on 10.02.2015 the convict-petitioner

received the said notice, but did not pay the alleged amount. For this reason, the complainant filed the instant case against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 before the learned Senior Judicial Magistrate, Amoli Adalat 'Ka' Anchol, Chapainawabganj as C.R. Case No.220 of 2015(Nawab). The case was transferred to the learned Sessions Judge, Chapainawabganj for disposal, which was renumbered as Sessions Case No.552 of 2015. The learned Sessions Judge, Chapainawabganj sent the same to the learned Joint Sessions Judge, 1<sup>st</sup> Court, Chapainawabganj for trial and disposal. The learned Joint Sessions Judge, 1<sup>st</sup> Court, Chapainawabganj 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.2,34,000/- by his judgment and order of conviction and sentence dated 10.01.2019. Thereafter, the convict-petitioner against the judgment and order of conviction and sentence dated 10.01.2019 filed Criminal Appeal No.64 of 2019 before the learned Sessions Judge, Chapainawabganj. The learned Sessions Judge, Chapainawabganj upon hearing the

parties dismissed the Criminal Appeal No.64 of 2019 and thereby affirmed the judgment and order of conviction and sentenced dated 10.01.2019 passed by the learned Joint Sessions Judge, 1<sup>st</sup> Court, Chapainawabganj in Sessions Case No.552 of 2015 by his judgment and order dated 09.08.2021 rightly. 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 the opposite party, 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.1 that the convict-petitioner took loan of Tk.2,34,000/- from the office of the opposite party No.2 and on 29.12.2014 the convict-petitioner gave a cheque for repaying the said loan amount and on 26.01.2015 the complainant deposited the said cheque for encashment, but it was refuse for insufficient of fund and then on 02.02.2015 the complainant sent a legal notice and on 10.02.2015 the convict-petitioner received the said notice, but did not pay the alleged amount. For this reason, the complainant filed the instant case against the convict-petitioner

under section 138 of the Negotiable Instruments Act, 1881 before the learned Senior Judicial Magistrate, Amoli Adalat 'Ka' Anchol, Chapainawabganj as C.R. Case No.220 of 2015(Nawab) 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, postal receipt, acknowledgement received, authorization letter as exhibit-4 series.

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.2,34,000/-, 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 03(three) months.

Accordingly, I find cogent and legal ground to interfere with the impugned judgment and order of conviction and sentence dated 09.08.2021 on the part of imprisonment only.

In the result, the Rule is discharged with modification of the judgment and order dated 09.08.2021.

The impugned judgment and order dated 09.08.2021 passed by the learned Sessions Judge, Chapainawabganj in Criminal Appeal No.64 of 2019 is hereby modified with this direction that the simple imprisonment for 01(one) year will reduce to simple imprisonment for 03(three) months and fine will be as remain.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.1,17,000/- 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.

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

*Md. Anamul Hoque Parvej*  
*Bench Officer*