

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 2207 of 2022

Md. Ariful Haque alias Ratan

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

Mr. S.M. Jahangir Alam, Advocate

...For the convict-petitioner

Mr. Bhabesh Chandra Mustafi, Advocate with

Mst. Shamsun Naher Begum, Advocate

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

Heard on 13.03.2025

Judgment delivered on 15.05.2025

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 judgment and order dated 11.05.2022 passed by Additional Sessions Judge, Gaibandha in Criminal Appeal No. 11 of 2020 affirming the judgment and order of conviction and sentence dated 25.11.2019 passed by the Joint Sessions Judge, Court No. 2, Gaibandha in Sessions Case No. 461 of 2018 arising out of C.R. No. 168 of 2018 convicting the petitioner under Section 138 of the Negotiable Instrument Act, 1881 and sentencing him thereunder to suffer rigorous imprisonment for 1(one) year and fine of Tk. 5,35,000 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution's case, in short, is that the complainant Md. Sujan Miah and the convict-petitioner Md. Ariful Haque alias Ratan are businessman and they were known to each other. On 29.10.2017, the convict-petitioner took a loan of Tk. 5,35,000(five lakh thirty-five thousand) from the complainant for business, and he undertook to pay the loan within 2(two) months, but he did not pay the said amount. When the complainant demanded money from the convict-petitioner,

he issued Cheque No. 8225181 on 02.01.2018 drawn on his Current Account No. 0100102726141 maintained with Janata Bank Limited, Tulsighat Branch for payment of Tk. 5,35,000(five lakh thirty five thousand). The complainant presented the said cheque on 11.02.2018 for encashment, which was dishonoured with the remark 'insufficient funds'. He sent the legal notice on 20.02.2018 to the convict-petitioner requesting him to pay the cheque amount within 30 days. The convict-petitioner received the said notice on 07.03.2018, but he did not pay the cheque amount. Consequently, he filed the case.

During the trial, the charge was framed against the convict-petitioner under Section 138 of the Negotiable Instruments Act, 1881, which was read over and explained to him, and he pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 1(one) witness to prove the charge against the convict-petitioner and he was absconding during the trial. After concluding the trial, the Joint Sessions Judge, Court No. 2, Gaibandha, by judgment and order dated 25.11.2019 convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer rigorous imprisonment for 1(one) year and fine of Tk. 5,35,000(five lakh thirty-five thousand) against which he filed Criminal Appeal No. 11 of 2020 before the Sessions Judge, Gaibandha. After hearing the appeal, the Additional Sessions Judge, Gaibandha by impugned judgment and order affirmed the judgment and order of conviction and sentence passed by the trial Court against which he obtained the Rule.

P.W. 1 Md. Sujan Miah is the complainant. He stated that the accused Md. Ariful Haque Ratan issued a cheque on 02.01.2018 for payment of Tk. 5,35,000 in his favour to pay the loan. He presented the cheque on 11.02.2018, but the same was dishonoured with the remark 'insufficient funds'. He sent the legal notice on 20.02.2018 to the accused and he received the said notice on 07.03.2018, but he did not pay the cheque amount. Consequently, he filed the case. He

proved the complaint petition as exhibit 1 and his signature on the complaint petition as exhibit 1/1, disputed cheque, dishonour slip, legal notice, postal receipt, and A/D as exhibit 2 series. The defence did not cross-examine P.W. 1.

Learned Advocate Mr. S.M. Jahangir Alam, appearing on behalf of the convict-petitioner, submits that the convict-petitioner Md. Ariful Haque alias Ratan issued a cheque in favour of the complainant for payment of Tk. 5,35,000(five lakh thirty-five thousand), but due to financial hardship, he could not pay the cheque amount in time after receipt of the legal notice on 07.03.2018. However, he submits that in the meantime, the convict-petitioner and the complainant-opposite party No. 2 settled the dispute out of Court and paid 50% of the cheque amount Tk. 2,67,500 on 27.04.2025 to the complainant and 50% of the cheque amount deposited by the convict-petitioner had been withdrawn by the complainant-opposite party No. 2. He prayed to make the Rule absolute accepting the compromise dated 27.04.2025.

Learned Advocate Mr. Bhabesh Chandra Mustafi, appearing on behalf of the complainant-opposite party No. 2, submits that the convict-petitioner issued the cheque for payment of Tk. 5,35,000(five lakh thirty five thousand) in favour of the complainant and he presented the said cheque complying the procedure of clause a of the proviso to Section 138 of the Negotiable Instruments Act, 1881 which was dishonoured on 11.02.2018 and he issued the legal notice on 20.02.2018 through registered post with AD and the convict-petitioner received the same on 07.03.2018 but did not pay the cheque amount in time and the convict-petitioner committed offence under Section 138 of the Negotiable Instruments Act, 1881 and complying with all the procedures under Section 138 and 141(b) of the Negotiable Instruments Act, 1881 the complainant filed the case. However, he admitted that in the meantime, he received the entire cheque amount and executed the agreement on 27.04.2025 regarding

the compromise made between the convict-petitioner and the complainant-opposite party No. 2.

I have considered the submission of the learned Advocates of both parties, perused the evidence, the impugned judgments and orders passed by the Courts below, the joint application sworn in on 29.04.2025 by both parties, and the records.

On perusal of the records, it appears that both the convict-petitioner Md. Ariful Haque alias Ratan and the complainant-opposite party No. 2 Md. Suján Miah filed a joint application for compromise sworn in on 29.04.2025 stating that in the meantime, the complainant-opposite party No. 2 received the entire cheque amount and executed a compromise on 27.04.2025. The Negotiable Instruments Act, 1881 is a special law and the offence under Section 138 of the Negotiable Instruments Act, 1881 is not compoundable. After filing the complaint petition, the Court is not empowered to dispose of the case considering the compromise made between the parties. The Court shall dispose of the case considering merit. Therefore, the Rule cannot be disposed of considering the compromise made between the parties.

On perusal of the evidence of P.W. 1, it appears that the convict-petitioner issued the Cheque No. 8225181 dated 02.01.2018 drawn on his account maintained with Janata Bank Limited, Tulsighat Branch in favour of complainant P.W. 1 Md. Suján Miah. The complainant presented the said cheque on 11.02.2018 for encashment, but the same was dishonoured on the same date with the remark 'insufficient funds'. P.W. 1 sent a legal notice through registered post with AD on 20.02.2018. The convict-petitioner received the notice on 07.03.2018. He proved the cheque as exhibit 1, dishonour slip, legal notice, postal receipt and A/D as exhibit 2 series. The complainant filed the case complying with the procedures of clauses (a) to (c) of Section 138, sub-section (1A) of Section 138, and Section 141(b) of the Negotiable Instruments Act, 1881. During the trial, P.W. 1 proved the charge against the accused beyond all reasonable doubt.

Considering the gravity of the offence and the facts and circumstances of the case, I am of the view that the ends of justice would be best served if the sentence passed by the Courts below is modified as under;

The convict-petitioner Md. Ariful Haque alias Ratan is found guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and he is sentenced thereunder to pay a fine of Tk. 5,35,000(five lakh thirty five thousand).

The complainant-opposite party No. 2 admitted that he received the entire cheque amount. Therefore, the convict-petitioner is not required to deposit the fine amount again.

In the result, the Rule is disposed of with modification of the sentence.

Send down the lower Court's records at once.