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

Present:
Mr. Justice Mamnoon Rahman

Criminal Revision No. 710 of 2022

Md. Alal Uddin

.....Convict-Appellant-Petitioner

-VERSUS-

The State and another

……. Opposite Parties

Mr. Md. Alamgir Hossen, Adv..
…… for the Petitioner
Mr. Mohammad Taifoor Kabir, DAG with
Mr. Md. Lokman Hossain, AAG
Mr. Md. Hatem Ali, AAG
…… For the Opposite Party No. 1
Mr. Sudipta Arjun, Advocate
… For the Complainant-Opposite Party no. 2

Heard & Judgment on: 14.11.2023

Rule was issued calling upon the opposite parties to show cause as to why the judgment and order of conviction and sentence dated 25.01.2022 passed by the learned Metropolitan Sessions Judge, Sylhet in Criminal Appeal No. 25 of 2022 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 27.08.2017 passed by learned Joint Metropolitan Sessions Judge, 2nd Court, Sylhet in Session Case No. 312 of 2017 arising out of C.R Case No. 912 of 2013 convicting the petitioner under section 138 of Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 10(ten) months with a fine of Taka

28,10,000/-(twenty eight lac ten thousand) should not be set aside and/or why such other or further order or orders as to this Court may seem fit and proper shall not be passed.

Mr. Babul Das Gupta, is the Complainant Opposite party No. 2.

Mr. Md. Alamgir Hossen, the learned Advocate appearing for the convict-petitioner, submits that the petitioner is in no way involved in the alleged offence and he has falsely been implicated in this case and the impugned judgment and order of conviction has been passed only on the basis of P.W-1 of the complainant-respondent-opposite party No. 2 and not by any independent/neutral witness and as such the same is liable to be set aside for the ends of justice.

Mr. Sudipta Arjun, the learned Advocate appearing for the Complainant-Opposite party No. 2 submits that the charge brought against the convict-petitioner under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'the Act, 1881') has been proved beyond reasonable doubt and therefore, the rule is liable to be discharged.

I have heard the learned Advocates for the petitioner as well as the Complainant-Opposite party No. 2 and perused the materials on record.

It appears from the petition of complaint, the deposition of PW1 (complainant) and the documentary evidences that the convict-petitioner issued two cheques in question in favour of the Complainant-Opposite party on 28.11.2012 and 10.06.2013

respectively for repayment of Tk. 14,05,000/- which he took from the complainant. The value of the cheques is Tk. 14,05,000/-. The cheques were dishonoured by the bank concerned on 26.05.2013 and 19.06.2013 respectively. The complainant sent the statutory legal notices to the convict-petitioner on 24.06.2013 and 04.07.2013 respectively. The value of the cheques were not paid to the complainant. The case was filed on 07.08.2013. P.W.1 proved the prosecution case.

I have no hesitation to hold that the complainant-opposite party has proved compliance of the procedure laid down in Section 138 of the Act, 1881 in filing the case. The case was filed within one month of the date on which the cause of action had arisen under clause (c) of the proviso to Section 138 of the Act, 1881. The complainant also proved consideration against which the cheque was drawn and he is the holder of the cheque in due course. Hence, in my view, the impugned judgment and order of conviction does not suffer from any illegality or infirmity. The trial Court correctly found that the convict-petitioner guilty of the charge.

Section 138 of the Act, 1881 provides that the offence of dishonour of cheque is punishable with imprisonment for a term which may extend to 1 (one) year, or with fine which may extend to thrice the amount of the cheque, or with both. Sub-section (2) of Section 138 provides, *"Where any fine is realised under sub-section (1), any amount up to the face value of the cheque as far as is*

covered by the fine realised shall be paid to the holder". Thus, the criminal proceeding under Section 138 serves two purposes: firstly, to punish the offender and secondly, to recover the value of the cheque. The object of adding sub-section (2) to Section 138 is to alleviate the grievance of the complainant. In the instant case, the value of the dishonoured cheques is Tk. 14,05,000/-. The convict-petitioner was fined at Tk. 28,10,000/- which requires interference by this court.

Now, I turn to the sentence of imprisonment. There can be no dispute in so far as the sentence of imprisonment is concerned that it should commensurate with the gravity of the crime. Court has to deal with the offenders by imposing proper sentence by taking into consideration the facts and circumstances of each case. It is not only the rights of the offenders which are required to be looked into at the time of the imposition of sentence, but also of the victims of the crime and society at large, also by considering the object sought to be achieved by the particular legislation. Considering the facts and circumstances of the case and the object of the law, I am of the view that the sentence of imprisonment would be a harsh sentence having no penal objective to be achieved. Hence, the sentence of imprisonment is set aside.

I note that the trial court has not passed any default order *i.e.* imprisonment in default of payment of the fine. When an offender is sentenced to fine only, the Court has the power to make a default

order under Section 388 of the Code of Criminal Procedure (in short the 'Cr.P.C.'). Section 423(1)(d) of the Cr.P.C. empowers the Appellate Court to pass any consequential or incidental order that may be 'just and proper'. Since, this Court has already set aside the sentence of imprisonment, it would be just and proper to pass a default order.

In view of the foregoing discussions, the order of the Court is as follows:

The conviction of the petitioner under Section 138 of the Act, 1881 is upheld, but the sentence is modified. The sentence of 10 (ten) months imprisonment is set aside. The sentence of fine of Tk. 28,10,000/- (Twenty eight lac ten thousand) is modified to Tk. 14,05,000/- (Fourteen lac and five thousand) which is equivalent to the value of the dishonoured cheques. The convict-petitioner has already deposited Tk. 7,02,500/- in the court below before filing the appeal. The court concerned is directed to give the said deposit to the complainant-opposite party No.2 forthwith. The convict-petitioner is directed to pay the remaining portion of the value of the dishonoured cheques *i.e.* Tk. 7,02,500/- to the complainant-opposite party No. 2 either in full or by installment within 4 (four) months from the date of receipt of this order, in default he will suffer simple imprisonment for 2 (two) months. If the convict-petitioner does not pay the remaining portion of the fine as ordered or opts to serve out the period of imprisonment in lieu of payment of fine, he is not exempted from

paying the same. In that event, the Court concerned shall realize the fine under the provisions of Section 386 of the Cr. P.C.

In the result, the rule is discharged with modification of sentence and with directions made above. The convict-petitioner is released from the bail bond.

Send down the lower Court's records (LCR) at once. Communicate the judgment and order to the Court concerned forthwith.

(Mamnoon Rahman,J:)