

In the Supreme Court of Bangladesh  
High Court Division  
(Criminal Miscellaneous Jurisdiction)

**Present**

**Mr. Justice Md. Jahangir Hossain**

**Criminal Revision No. 578 of 2023**

In the matter of:

Md. Hafizur

..... Convict Petitioner

Versus

The State and another

..... Opposite-parties.

Mr. Md. Golam Rossul with

Mr. SK. Eusuf Rahman, Advocates

.... For the petitioner

Mr. Md. Moniruzzaman Rana with

Mr. Rabiul Islam with

Ms. Sanjana Arvy, Advocates

..... For the opposite party

Mr. Md. Abdul Aziz Miah (Minto), DAG

.....For the State

**Heard on 02-03.08.2023; 06-07.08.2023 &  
10.08.2023**

**Judgment on 14<sup>th</sup> August, 2023**

**Md. Jahangir Hossain;J**

This Criminal Revision Case No. 578 of 2023 has been filed by the complainant petitioner under section 439 of the Code of Criminal Procedure.

The Rule was issued on 20.02.2023 as follows:

Let a Rule be issued calling upon the opposite parties to show cause as to why the judgment and order dated 02.11.2022 passed by the learned Additional Sessions Judge, 2<sup>nd</sup> Court, Rangpur in Criminal Appeal No. 69 of 2022 dismissed the appeal affirming the judgment and order of conviction and sentence dated 23.02.2021 passed by the learned Joint Sessions Judge, 1<sup>st</sup> Court, Rangpur in Sessions Case No. 1061 of 2015 convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer imprisonment for 06 (six) months and also to pay a fine of Tk. 13,20,000/- should not be set aside and / or such other or further order or orders passed as to this court may seem fit and proper.

At the time of issuance of the Rule convict-petitioner Md. Hafizur obtained ad-interim bail for a period of 01 (one) year from this court for the proper disposal of the Rule.

The short fact of the complaint is that the accused took an amount of Tk. 13,20,000/- (thirteen lac twenty thousand) as loan from the complainant for business purpose and subsequently in order to pay the said dues the accused-appellant-petitioner handed over a cheque to the complainant

on 24.06.2015 drawn to Sonali Bank. The said cheque was deposited to the Sonali Bank, Gonggachora Branch, Rangpur on 24.06.2015 for encashment but the same was bounced due to insufficient of fund. After that the complainant published a legal notice under section 138 of the Negotiable Instruments Act-1881 in daily newspaper namely “The Daily DabanoI” by describing all material allegations through his Advocate on 03.07.2015 and requested him to pay the dues within 30 days but the accused-appellant-petitioner did not pay the dues hence the case. It is in the record that the convict-petitioner voluntarily surrendered before the learned cognizance court and obtained bail on 26.08.2015. The case was fixed for charge hearing on 24.01.2016 on that day the accused-petitioner filed an application for discharging him stating inter alia that the notice was not duly served upon him. The newspaper is not a national newspaper. Upon such the accused-petitioner prayed for discharged him but the trial court after hearing both the parties framed charge against the accused-petitioner. Thereafter, the convict-appellant-petitioner filed the Criminal Revision No. 99 of 2006 before the learned Court of Session Judge, Rangpur. The matter was heard by the learned Additional District Judge,

Rangpur. Learned court was pleased to allow the revision and direct the trial court to hear the charge again by his judgment and order dated 05.06.2017. After receiving the judgment the learned trial court without considering the law point framed charge against the accused-petitioner under section 138 of the Negotiable Instruments Act. The accused-petitioner claimed that he is innocent and want to face trial. After trial the learned Joint Session Judge, 1<sup>st</sup> Court, Rangpur was pleased to convict the accused-petitioner under section 138 of the Negotiable Instruments Act and sentenced him to suffer imprisonment for a period of 06 (six) months and to pay a fine of Tk. 13,20,000/- (Thirteen Lac Twenty Thousand) by his judgment and order dated 23.02.2021. Thereafter, petitioner filed a Criminal Appeal being No. 69 of 2022 before the learned Court of Sessions Judge, Rangpur. After hearing the same the learned appellate court pronounced judgment on 02.11.2022 and pleased to reject the appeal and up hold the judgment passed by the learned trial court. Thereafter, the convict-petitioner surrendered before the learned trial court and filed an application for bail in condition to filing Criminal Revision before the Hon'ble High Court Division but the learned trial

Court rejected the application for bail and sent to the jail for serving sentence vide his order dated 06.02.2023. At the time of hearing learned Advocate Mr. S.K. Eusuf Rahman appeared on behalf of the convict-appellant-petitioner. Mr. S.K. Eusuf Rahman submits that the learned trial court without considering the vital aspect of law most whimsically framed charge against the convict-petitioner; being aggrieved for the unlawful charge the accused filed a Criminal Revision before the learned Session Judge, Rangpur. After hearing of both the parties the learned Session Judge allowed the Revision but unlawfully sent the record to the learned trial court again for framing charge and disposed of the case. He further submits that the provisions of Section 242 and 367 of the Criminal Procedure were not complied with in accordance with law.

He further submits that trial of the complaint case has been completed by the learned trial court but the accused-petitioner filed different applications for cross examination of the P.W and allowing time to him to place witnesses in favour of the accused-petitioner but the learned trial court did not allow the application and passed the judgment on 23.02.2021. He further submits that the learned Additional

Session Judge, 2<sup>nd</sup> Court, Rangpur in Criminal Appeal No. 69 of 2022 dismissing the petition of appeal and up hold the judgment without perusing the mandatory provision of law which is earlier done by the Negotiable Instruments Act. Lastly, he submits that both the learned courts without applying the judicial mind made miscarriage of justice.

In support of his submission he referred 63 DLR (AD) page-99 where it is held that – “The decree was passed without any service of summons or even without any attempt to do so. As such, it is a nullity in the eye of law and it is imperative upon any Court of law, which is in seisin of the matter, to hold so, even without invoking the provisions of section 19 of the Ain or Rule 13 of Order IX of the Code. Because Rule 13 envisages at least a service, even if not ‘duly’ and sub-section (1) of section 19 also envisages a service of summons upon the defendant.”

Further he referred 7 ALR High Court Division, page-129 where it is held that- “The notice has been served in the ‘Daily Sangram’ Newspaper which is not a National Newspaper having wide circulation and whether is a

violation of the provision as laid down under section 138(IA(c)).”

Upon such the learned Advocate submits that the notice was not properly served upon the accused-petitioner. As such he prayed for allow the Revision and set aside the impugned judgment and absolute the Rule.

On the other hand, the learned Advocate for the complaint petitioner opposite party Mr. Moniruzzaman Rana submits that in this case complainant prove his case before the learned trial court by adducing documentary and oral evidence. The Complainant issued a notice upon the accused-petitioner by postal. The postal notice has been proved before the learned trial court which is exhibited in the learned trial court as exhibit 2 and thereafter he requested the accused to pay his money and informed regarding the dishonor of the cheque by the bank which he mentioned in the complaint case and also produced oral evidence before the learned trial court which is clearly discussed by the learned trial court in the judgment. Moreover, the publication of notice in the daily Newspaper

of Rangpur namely "Daily Dabanol" which is exhibited as exhibit 2 series.

He further submits that the daily news paper is very renowned daily News Paper in Rangpur but in contrary the learned Advocate for the accused-petitioner submits that this News Paper is not national daily newspaper. The learned Advocate Mr. Moniruzzaman Rana further submits that at the time of framing charge 1<sup>st</sup> time accused filed a revision before the learned Court of Sessions Judge against his discharge application matter and framing charge but the learned Appellate Court pleased to allow the revision and also given direction to frame charge and disposed of the case. The accused-petitioner did not challenge that order of the learned Session Judge. The accused-petitioner by accepting the order of the learned Session Judge attends the learned trial court and face the trial irregularly. Different times he was absent and took bail by surrendering before the learned trial court in several times. After framing the final charge against the accused-petitioner he was within the seisin of trial and did not challenge framing the charge by the learned trial court. He did not cross-examine the P.W. 1 complainant of this case and several times he prayed for the



adjournment and learned court was pleased to allow his petition for time several times; but he was dragging the case at the time of examining under Section 342 of the Cr.PC.

The accused-petitioner prayed for trial before the trial court and he was examined by the trial court. The accused-petitioner on challenged the charge went upon to the Appellate Court that is the Session Court by filling revision. Upon such fact and circumstances this question is immaterial regarding the fact and story of notice in this case. Lastly he submits more over the complainant prove the matter regarding the postal notice and the notice in the newspaper. P.W. 1 proved that he also requested the accused-petitioner after issuance of the notice. Lastly he prayed for rejected the revision and up hold the judgment of the lower courts. In support of his submission he referred 11 SCOB (2019) HCD Page-59. The judgment was passed by one Division Bench presided by my lord Justice Obaidul Hassan and Justice Krishna Debnath where it is held that:-

“In absence of gazette notification of widely circulated national daily newspaper the concerned Court is the proper authority to see whether the demand notice requesting for

the payment of cheque money has been served through a daily newspaper, whether it is widely circulated or not. In the present case the accused petitioner knowing fully well about the demand of the complainant, he never met the demand of the complainant rather he took a plea of quashment of the proceeding on a technical point for non publication of the notice in the widely circulated newspaper. It was the duty of the accused petitioner to offer or to pay the cheque amount to the complainant after knowing of the fact of that cheque has been dishonored, at list during pendency of the case. The legislature's intension for enacting this law was to enable the drawer to make payment in favour of the drawee of the cheque amount. Since the petitioner on 18.02.2013 could come to know that the cheque he gave has been dishonored due to insufficient fund it was his duty to make payment in favour of the complainant but without doing so he has taken a plea of non publication of the notice in a widely circulated paper and came to the Court for quashing the proceeding. We are of the view that the petitioner had no intention to make payment of the cheque amount rather he took this plea of non publication of notice

in the widely circulated newspaper only to drag the case and to delay the payment in favour of the drawee.”

“In an unreported case being numbered Criminal Miscellaneous Case No. 33386 of 2015 (Mohammad Nasiruddin Monir Vs. The State and another) a Bench of our High Court Division comprising Mr. Justice Md. Habibul Gani and Mr. Justice Md. Akram Hossain Chowdhury has taken the similar view.”

We are fully agreeable with the view taken by our learned brothers in the aforementioned case. Since the names of widely circulated newspaper has not been published by the government by any gazette notification, the trial Court is the only competent authority to decide whether the newspaper wherein the notices demanding cheque money were published is a widely circulated newspaper or not for the purpose of initiating proceeding against the drawer regarding dishonor of cheque. Their Lordships also observed that it is true that the Negotiable Instruments Act is a special law and the provisions of the Act should be followed strictly. But the purpose and intention of the legislature in making law also should be taken into consideration while reading

and interpreting the law. The purpose of section 138 of the Negotiable Instrument Act regarding publishing demand notice in the widely circulated newspaper is not to frustrate a legitimate demand of a citizen, but to aiding the same.

We have gone through the record and the Lower Court Record and other exhibit materials with the record.

We are not in the seisin of challenging the procedural law under section 561A of the Code of Criminal Procedure. We are in the Revisional Court considering the law and fact all the matters. We have perused the both judgment of the learned Trial Court. The learned Trial Court observed that the legal notice in both the way served upon the accused-petitioner and in the trial he find out that the complainant also inform the accused-petitioner regarding the dishonor of the cheque by the bank and requested him to pay the money. Considering all the aspect the learned Trial Courts consider that the accused-petitioner issued the cheque and it was dishonored by the bank and he is avoiding to pay the money.

The same view has been taken by the learned Appellate Court. In both the judgment of the trial court and the appellate court define that the accused-petitioner issued

the cheque and aware about the dishonor of the cheque by the bank. The learned Appellate Court in his judgment stated that though it is in the knowledge of the accused-petitioner regarding the dishonor of the cheque and which is clearly proved in the learned Trial Court but the accused-petitioner take the technical ground for dragging the case and not to pay the money.

Now, the mote question arise in this case that, what is the purpose of this notice. The purpose of this notice is to only pay the money.

The learned Advocate for the complainant opposite party further referred 17 BLC (AD) Page-184.

It appears from the record that when the charge was framed against the accused-petitioner he filed an application for discharging him but the learned Trial Court rejecting his prayer framed charge against the accused. Challenging that order the accused filed revision before the learned Sessions Judge and the Judge allowed the revision and sent down to the trial court for framing newly charge against the accused-petitioner. 2<sup>nd</sup> time charge has been framed again against the accused-petitioner. At that time the accused-petitioner was

present in the court and prayed for trial. It further appears from the record at the time of trial complainant-petitioner gave oral evidence and other documents exhibited before the learned Court where the complainant as P.W. 1 stated that he served notice by his Advocate upon the accused-petitioner by postal and by the Newspaper. He also stated that after dishonoring cheque he informed the matter to the accused-petitioner and requested him to pay the cheque amount. It reveals at the time of trial several times this accused-petitioner filed an application for time and absent before the learned Court. Even the accused-petitioner did not cross examine the complainant while he receives the 2<sup>nd</sup> time charged frame against him. It clearly found that the accused obtain the order by allowing his revision case from the Session's Court that the Trial Court will frame charge a fresh newly. There after Trial Court again 2<sup>nd</sup> time framed new charge. Now question of notice come immaterial because accused cannot deny of his knowledge about the dishonor of the cheque.

Upon such facts and circumstances it is clear at the time of trial he never deny regarding the cheque. Now in this revision he is taking the technical difficulties and ground

regarding the notice. By no logic it can be said that the drawer of the cheque does not know the consequence if a cheque is return unpaid / dishonored for the reasons as providing in sub-section 1 of section 138 of the Act; because ignorance of law is not plea. The continues history of this case and trial period of this case shows that about the dishonor of this cheque has come to his knowledge when he was 1<sup>st</sup> time challenging the charge framing order before the Sessions Judge.

It was the duty of the accused-petitioner to offer of the pay the cheque amount to the complainant after knowing the fact of the cheque has been dishonored at list during pendency of the cheque. The legislature intention an acting this law was to unable the drawer to make payment in favour of the drawee of the cheque amount.

Upon such I am of the view that the petitioner had no intension to make payment of the cheque amount rather he took this plea of non publication of notice in the widely circulated Newspaper only to grave the case.

I have gone through the referred cases by the learned lawyer of the complainant opposite party. I am also fully

agreeable with the view taken by our Courts of the referred cases. The view express in Criminal Misc. Case No. 36422 of 2014 by my lord Justice Obaidul Hassan and My lord Justice Krishna Debnath and another Criminal Case No. 33386 of 2015 Division Bench comprising My lord Justice Habibul Goni and my lord Justice Akram Hossain Chowdhury has taken the similar view and this court is fully agreeable with the view taken by those Hon'ble Courts.

Upon such discussion I am of the view that there is no merit in the Rule. As such the Rule is discharged. The accused-petitioner is directed to surrender before the learned Trial Court within 30 (thirty) days and comply the order of the learned Trial Court.

Send down the judgment and lower court record be transmitted to the court below at once.