

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Appeal No.1093 of 2023

Sheikh Aktar Mia

.....convict-Appellant

-Versus-

The State and another

..... opposite-parties

Mr. Muhammad Huzzatul Islam Khan, Advocate

.....For the convict-Appellant

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mrs. Afroza Sultana, Advocate

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

Heard and Judgment on: 04.06.2024

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 impugned judgment and order of conviction and sentence dated 19.11.2018 passed by the learned Additional Sessions Judge, 1st Court, Chattogram in Sessions Trial Case No.2538 of 2016 arising out of C.R. Case No.54 of 2016 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 03(three) months and also to pay a fine of Tk.12,00,000/- 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 appellant for a period of 04(four) months.

The relevant facts necessary for disposal of the Rule are that the convict-petitioner issued a cheque in favour of the complainant-respondent No.2 on 22.12.2015. But it was dishonoured for insufficient of fund on 27.12.2015. Thereafter, the complainant served a legal notice to the appellant on 05.01.2016, but he did not pay the cheque amount. The complainant-respondent No.2 finding no other alternative filed a complaint-petitioner under section 138 of the Negotiable Instruments Act, 1881 against the convict-appellant before the learned Additional Chief Judicial Magistrate Court, Chattogram as C.R. Case No.54 of 2016 (Hathajari) on 15.02.2016 following all legal formalities and the said learned Additional Chief Judicial 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 Sessions Judge, Chattogram for disposal, which was renumbered as Sessions Case No.2538 of 2016 and further, it was transferred to the learned Additional Session Judge, 1st 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 document convicted the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 03(three) months and also to pay a fine of Tk.12,00,000/- by his judgment and order of conviction and sentence dated 19.11.2018.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 19.11.2018 passed by the learned Additional Sessions Judge, 1st Court, Chattogram in Sessions Trial Case No.2538 of 2016 arising out of C.R. Case No.54 of 2016 the convict-appellant filed this Criminal Appeal, before this Hon'ble High Court Division.

Mr. Muhammad Huzzatul Islam Khan, the learned Advocate appearing for the complainant-appellant 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-respondent No.2. The complainant has no claimed against the convict-

appellant if he be acquitted and the complainant got his claimed amount. Accordingly, he prays for acquitting the convict-appellant and making the Rule absolute.

Mrs. Afroza Sultana, the learned Advocate appearing on behalf of the complainant-respondent No.2 supported the submission of the learned Advocate for the appellant and submits that the convict-appellant paid the total cheque amount to the complainant and a peaceful compromise has been held between the parties and he has no objection to acquittal the convict-appellant 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 each to other.

Moreover, the main object of this case is recovery of amount, 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, an amicable settlement has been held between the parties and there is no any claim each to other, the judgment and order of conviction and sentence dated 19.11.2018 passed by the learned Additional Sessions Judge, 1st Court, Chattogram in Sessions Trial Case No.2538 of 2016 is not maintainable against the convict-appellant 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 19.11.2018. Therefore, the instant Rule has merit.

In the result, the Criminal Appeal No.1093 of 2023 is allowed.

The impugned judgment and order of conviction and sentence dated 19.11.2018 passed by the learned Additional Sessions Judge, 1st Court, Chattogram in Sessions Trial Case No.2538 of 2016 convicting the appellant under section 138 of

the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 03(three) months and also to pay a fine of Tk.12,00,000/- is hereby set-aside and the convict-appellant be acquitted.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.6,00,000/- to the complainant-respondent 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