

Present:
Mr. Justice Farid Ahmed
And
Mr. Justice Md. Atoar Rahman

Criminal Revision No.4462 of 2022.

Dost. Mohammed Raju
....Convict-appellant-petitioner.
- Versus -
The State and another
... Opposite parties.

Mr. Md. Obaidur Rahman with
Mr. N.K.M. Nazmul Hassan and
Ms. Asma Afroza, Advocates
..... For the petitioner.

Mr. Abdul Wahab, D.A.G with
Mr. Prince-Al-Masud with
Ms. Sabiha Yasmin with
Mr. Md. Ashikuzzaman Bablu,
A.A.Gs.... For opposite party No.1-
State.

Mr. Monjur Elahi Porag, Advocate
.... For opposite party No.2.

Heard and judgment on 19.06.2023.

Farid Ahmed, J.

This Rule was issued on an application under section 439 read with section 435 of the Code of Criminal Procedure calling upon the opposite parties to show cause as to why the order dated 03.10.2022 passed by the learned

Additional Metropolitan Sessions Judge, 3rd Court, Chattogram in Criminal Appeal No.69 of 2021 rejecting the application for production of the prosecution witness (P.W.1) for cross-examination and production of Bank statements along with some relevant documents before the learned appellate court in Criminal Appeal No.69 of 2021 now pending before the court of learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Relevant facts as stated in the application, in short, is that the opposite party No.2 as complainant filed a petition of complaint before the learned Chief Metropolitan Magistrate, Chattogram being C.R. Case No.1519 of 2024 against the petitioner under section 138 of the Negotiable Instruments Act, 1881 alleging, inter alia, that the petitioner issued different cheques all dated 27.10.2014 being No.0502097, for the amount of Tk.31,51,000/-, cheque being No.0502099 for the amount of Tk.53,74,000/-, cheque No.0502098 for an amount of 24,35,000/-and cheque No.0502096 for an amount of Tk.55,16,000/-, in total amount of BDT.1,64,76,000/- (Taka one crore sixty-four lac seventy-six thousand). Thereafter, the

opposite party No.2 placed the said cheque before the aforesaid Bank on 28.10.2014 for encashment; the same were dishonoured by the said Bank for the cause of insufficient fund and, hence, the opposite party No.2 served a legal notice upon the petitioner through his learned Lawyer on 02.11.2014 and instituted the aforesaid criminal case. (Certified copy of the petition of complaint being C.R. Case No.1519 of 2014 filed by the opposite party No.2 is annexed hereto and marked Annexure-“A”).

Learned Magistrate upon receiving the complaint petition filed under section 138 of the Negotiable Instruments Act found prima facie case and took cognizance and issued summons. The petitioner voluntarily surrendered before the court and obtained bail. Thereafter charge was framed and trial also concluded in absence of the accused-petitioner. After obtaining bail the petitioner did not re-appear before the court below to cross-examine the Bank officer i.e. the complainant of the complaint case.

The trial court upon considering the evidence on record and the deposition of the prosecution witness delivered the judgment convicting the petitioner under section 138 of the

Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for one year and to pay a fine of Tk.1,64,76,000/-.

Thereafter the petitioner depositing 50% of the cheque amount filed appeal being Criminal Appeal No.69 of 2021 and also filed an application for changing the complainant namely Tapan Chandra Nath instead of Md. Mizanur Rahman and that application was allowed. Then he filed another application for producing some papers connected with the transaction, description of the papers are as follows:-

“বিগত ২০১৩ সালের ৩টি মঞ্জুরীপত্র (Case to Case) এবং মঞ্জুরীপত্রের বিপরীতে এল/সি নং ১৬৮৮১৩০১০০০৬, এস/সি নং ১৬৮৮১৩০১০০০৭, এল/সি নং ১৬৮৮১৩০১০০২৪ সমূহ ওপেন করার পর হইতে সমস্ত মার্জিন, কমিশন, এফসিসি, অন্যান্য খরচ, পিএডি সুদ, এলটিআর সুদ উল্লেখ পূর্বক হিসাব বিবরণী।”

We find that the court below rejected the said application on the ground that, “উপযুক্ত হেতু না থাকায় নামঞ্জুর করা হলো”/ It is known to all, particularly the court should know what is relevant papers connected with the L/C or banking transaction. But in the instant case the court has fallen in misconception of law or out of ignorance he rejected the application for call for the records. Without referring the papers learned Advocate for

the appellant will face difficulty to cross-examine the complainant. Since the appeal is pending before the court below it is matter of right of the appellant to cross-examine the complainant referring the relevant documents. By depositing 50% of the cheque amount the appellant preferred the appeal. So he should get an opportunity to testing the P.Ws by way of cross-examination.

We feel that these documents are necessary for securing ends of justice and to bring the above noted papers from the Bank. The Bank should produce all these relevant papers before the court below for the interest of cross-examination of the complainant or perusing the court as well.

Considering the above circumstance we find merit in this Rule which must succeed.

In the result, the Rule is made absolute. The Order No.19 dated 03.10.2022 passed by the learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram is hereby set aside.

The court below is directed to allow the appellant to cross-examine the P.W.1 after receiving the documents mentioned in the said application. The Bank will produce all the

papers available to the Bank for the petitioner's inspection and cross-examination as well.

Communicate this judgment to the concerned court immediately.

Md. Atoar Rahman, J

I agree.

M.Islam.
B.O.