

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

**Present:**

Mr. Justice Md. Kamrul Hosssain Mollah

**Criminal Revision No.3344 of 2022**

Md. Ashraful Islam

.... complainant-petitioner

-Versus-

Md. Lutfor Rahman and another

.... opposite parties

Mr. Qazi Zahed Iqbal, Advocate

.... For the petitioner

Mr. Md. Tarikul Islam, Advocate

.... For the opposite party No.2

**Heard on 15.10.2023 and**

**Judgment on: 18.10.2023**

**Md. Kamrul Hossain Mollah.J:**

This is an application filed by the petitioner 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 judgment and order dated 19.07.2022 passed by the learned Additional Metropolitan Sessions Judge, Khulna in Metropolitan Criminal Appeal No.73 of 2021 allowing the appeal and thereby acquitted the opposite party No. 2 by setting aside the judgment and order of conviction and sentence dated 04.02.2021 passed by the learned

Joint Metropolitan Sessions Judge, 2<sup>nd</sup> Court, Khulna in Metropolitan Sessions Case No.604 of 2016 arising out of Daulatpur C.R. Case No. 370 of 2015 under section 138 of the Negotiable Instrument Act, 1881 convicting the opposite party No. 2 under section 138 of the Negotiable Instrument Act, 1881 and sentenced him to suffer simple imprisonment for a period of 06(six) months and to pay a fine of Tk. 40,00,000/- (forty lac) of the cheque amount 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 the opposite party No. 2 is directed to surrender before the concerned Court within a period of 15 days from the date of receipt of the order, failing which the concerned Court below is directed to secure him arrest and enlarged him on bail to the satisfaction of the concerned Court below.

The relevant facts necessary for disposal of the Rule are as follows:-

The prosecution case in short is that the opposite party No.02 gave a cheque to the complainant petitioner being No.

C8052276 on 02.08.2015 on the current account No. 2412901023943 maintain by him with Pubali Bank Limited, Daulotpur Branch, Khulna of Tk.40,00,000/- (forty lac) the complainant-petitioner presented the cheque in the same bank for encashment, but the cheque was dishonoured on 22.05.2018 for insufficient fund in the account. The complainant-petitioner made a demand for the payment of the cheque amount of money by giving the appellant a legal notice by publishing notice in the daily Bhorer Dak dated 15.09.2015, but he did not pay said amount of cheque. For this reason, the complainant-petitioner filed a complaint-petition before the learned Metropolitan Magistrate Court, Khulna against the acquitted-opposite party No.2 on 18.10.2015.

After filing the complaint petition the learned Metropolitan Magistrate Court took cognizance under section 138 of the Negotiable Instruments Act, 1881 as C.R. Case No.370 of 2015 against the opposite party No.02 and the opposite party No. 02 enlarged bail of this instant case.

The case was transferred to the learned Metropolitan Sessions Judge, Khulna for trail and it was renumbered as Metropolitan Sessions Case No. 604 of 2016 and the case was

also transferred to the learned Joint Metropolitan Sessions Judge, 2<sup>nd</sup> Court, Khulna for disposal.

On 14.11.2016 the learned trial Court was framed charge of this instant case against the opposite party No.02 under Section 138 of the Negotiable Instruments Act, 1881. The charge so framed was read over and explained to the convict-petitioner to which he pleaded not guilty and claims to be tried. Thereafter, during the period of trial, the prosecution produce One witness as P.W.1 and defence examined 03 D.Ws.

After conclusion of the trial the opposite party No.2 was examined under section 342 of the Code of Criminal Procedure and he claimed himself innocent.

The learned Judge of the trial Court after hearing the parties and perusing the evidence on record found guilty the opposite party No.2 under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 06(six) months and also to pay a fine of Tk.40,00,000/- (forty lac) by his judgment and order of conviction and sentence dated 04.02.2021.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 04.02.2021 the opposite party No.2 filed Criminal Appeal No.73 of 2021 before the learned Metropolitan Sessions Judge, Khulna. Thereafter, it was transferred to the learned Additional Metropolitan Sessions Judge, Khulna for disposal. After hearing the learned Additional Metropolitan Sessions Judge, Khulna allowed the Appeal and thereby acquitted the opposite party No.02 by setting aside the judgment and order of conviction and sentence dated 04.02.2021 by his judgment and order dated 19.07.2022.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 19.07.2022 passed by the learned Additional Metropolitan Sessions Judge, Khulna in Criminal Appeal No.73 of 2021, the complainant-petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

Mr. Qazi Zahed Iqbal, the learned Advocate appearing on behalf of the complainant-petitioner submits that the opposite party No.02 gave a cheque to the complainant petitioner being No. C8052276 on 02.08.2015 on the current account No. 2412901023943 maintain by him with Pubali Bank Limited,

Daulotpur Branch, Khulna of Tk.40,00,000/- (forty lac) the complainant-petitioner presented the cheque in the same bank for encashment, but the cheque was dishonoured on 22.05.2018 for insufficient fund in the account. The complainant-petitioner made a demand for the payment of the cheque amount of money by giving the appellant a legal notice by publishing notice in the daily Bhorer Dak dated 15.09.2015 but he did not pay said amount of cheque. For this reason, the complainant filed C.R. Case No.370 of 2015 following all legal formalities. Thereafter, and the case was also transferred to the learned Joint Metropolitan Sessions Judge, 2<sup>nd</sup> Court, Khulna for disposal. The learned Judge of the trial Court after hearing the parties and perusing the evidence on record found guilty the opposite party No.2 under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 06(six) months and also to pay a fine of Tk.40,00,000/- (forty lac) by his judgment and order of conviction and sentence dated 04.02.2021 rightly, which is maintainable in the eye of law. Accordingly, he prays for upholding the judgment and order of conviction and sentence dated 04.02.2021 passed by the learned trial Court and making the Rule absolute.

Mr. Md. Tariqul Islam, the learned Advocate appearing on behalf of the opposite party No.2 submits that the defence witnesses (DWs) gave the testimonies supporting the defence case. They stated that the shop of the opposite party No.2 had been looted and his valuable documents and cheque had been taken away at the time of vandalizing of his shop. The complainant could not produce any document or adduce any other evidence in support of the transaction and he did not elaborate the nature of the transaction which creates a doubt as to passing off consideration to him against which the cheque was issued. The learned trial Court ought to have given the opposite party No.2 the benefit of doubt not as a matter of grace but as a matter of right, otherwise the century old golden rule on benefit of doubt, consistently honoured throughout the sub-continent loses all its meaning and significance. After hearing the learned Additional Metropolitan Sessions Judge, Khulna allowed the Criminal Appeal No.73 of 2021 and thereby acquitted the opposite party No.02 by setting aside the judgment and order of conviction and sentence dated 04.02.2021 by his judgment and order dated 19.07.2022 rightly,

which is maintainable in the eye of law. Therefore, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and order of conviction and sentence of the Courts' below, the submissions of the learned Advocates for the parties, the papers and documents as available on the record.

It appears from the record that the opposite party No.02 gave a cheque to the complainant petitioner being No. C8052276 on 02.08.2015 on the current account No. 2412901023943 maintain by him with Pubali Bank Limited, Daulotpur Branch, Khulna of Tk.40,00,000/- (forty lac) the complainant-petitioner presented the cheque in the same bank for encashment, but the cheque was dishonoured on 22.05.2018 for insufficient fund in the account. The complainant-petitioner made a demand for the payment of the cheque amount of money by giving the appellant a legal notice by publishing notice in the daily Bhorer Dak dated 15.09.2015 but he did not pay said amount of cheque. For this reason, the complainant filed C.R. Case No.370 of 2015 following all legal formalities. Thereafter, and the case was also transferred to the learned Joint Metropolitan Sessions Judge, 2<sup>nd</sup> Court, Khulna for disposal.



The learned Judge of the trial Court after hearing the parties and perusing the evidence on record found guilty the opposite party No.2 under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 06(six) months and also to pay a fine of Tk.40,00,000/- (forty lac) by his judgment and order of conviction and sentence dated 04.02.2021. Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 04.02.2021 the opposite party No.2 filed Criminal Appeal No.73 of 2021 before the learned Metropolitan Sessions Judge, Khulna. Thereafter, it was transferred to the learned Additional Metropolitan Sessions Judge, Khulna for disposal. After hearing the learned Additional Metropolitan Sessions Judge, Khulna allowed the Appeal and thereby acquitted the opposite party No.02 by setting aside the judgment and order of conviction and sentence dated 04.02.2021 by his judgment and order dated 19.07.2022.

In the light of the above discussion, it is clear before me that the opposite party No.2 gave cheque amount of Tk.40,00,000/- to the complainant, but the cheque was dishonoured on 22.05.2018 for insufficient fund. The

complainant-petitioner made a demand for the payment of the cheque amount of money by giving the appellant a legal notice by publishing notice in the daily Bhorer Dak dated 15.09.2015, but he did not pay said amount of cheque. For this reason, the complainant filed the present case against the opposite party No.2 following all legal formalities in time. The complainant as P.W.1 in his deposition supported his case and his petition was marked as exhibit-1, the cheque in question was marked as exhibit-2, the cheque return memo as exhibit-3 and the legal notice as exhibit-4 and proved his case beyond all reasonable doubt. So, after hearing the learned Joint Metropolitan Session Judge, 2<sup>nd</sup> Court, Khulna rightly passed the judgment and order of conviction and sentence dated 04.02.2021 in Metropolitan Sessions Case No.604 of 2016 arising out of Daulatpur C.R. Case No.370 of 2015. On the other hand, the learned Additional Metropolitan Sessions Judge, Khulna without considering the facts and circumstances of the case passed the judgment and order dated 19.07.2022 in Metropolitan Criminal Appeal No.73 of 2021 illegally, which is not maintainable in the eye of law and it will be fair to interference there.

Accordingly, I find cogent and legal ground in the submissions of the learned Advocate for the petitioner and to interfere with the impugned judgment and order of conviction and sentence dated 19.07.2022. Therefore, the instant Rule has merit.

In the result, the Rule is made absolute.

The impugned judgment and order of conviction and sentence dated 19.07.2022 passed by the learned Additional Metropolitan Sessions Judge, Khulna in Metropolitan Criminal Appeal No.73 of 2021 allowing the appeal is hereby set-aside and the convict-petitioner will be suffer simple imprisonment for a period of 06(six) months and also to pay a fine of Tk.40,00,000/- (forty lac).

Further, the acquitted-opposite party No.2 is hereby directed to surrender before the concerned Court below within 15(fifteen) days from the date of receipt of this judgment and order, failing which the learned concerned Court below will take necessary steps to secure him arrest.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.20,00,000/- to the complainant-petitioner (if he did not withdraw the said amount) in this case.

Send down the lower Court records along with a copy of the judgment and order to the concerned Court below at once.

*Md. Anamul Hoque Parvej*  
*Bench Officer*