

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

**Present:**

**Mr. Justice Md. Shohrwardi**

**Criminal Revision No. 3483 of 2022**

**Md. Shahin Mia**

...Convict-Petitioner

-Versus-

The State and another

...Opposite parties

Mr.Md. Abdul Quddus Tarafder, Advocate

...For the convict-petitioner

Mr. Bivuti Tarofder, Advocate with

Ms. Nishat Mahmood, Advocate

.....For the opposite party No. 1

Mr. S.M Golam Mostofa Tara, DAG with

Mr A. Mannan, AAG with

.....for the State.

Heard on 23.08.2023 and 24.08.2023

**Judgment delivered on 31.08.2023**

This Rule under Section 439 and 435 of the Code of Criminal Procedure, 1898 was issued calling upon the opposite parties to show cause as to why the judgment and order of conviction and sentence dated 30.05.2022 passed by the Jananirapatta Bighnakari Aparadh Daman Tribunal and Special Sessions Judge, Cumilla in Criminal Appeal No. 73 of 2022 (15/2022) affirming those dated 19.09.2021 passed by Joint Session Judge, Court No. 2, Cumilla in Sessions Case No. 1441 of 2020 arising out of CR Case No. 116 of 2020 (Daudkandi) convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple imprisonment for 6(six) months and to pay a fine of Tk. 11,00,000 should not be set aside and/or such other or further order of orders passed as to this court may seem fit and proper.

The prosecution case, in short, is that the accused Md. Shahin Mia obtained CC loan of Tk. 10,00,000 from the complainant National Bank Ltd, Gouripur Branch. Subsequently, the accused issued cheque No. N.D.C/H 3061069 dated 09.01.2020 drawn on his Account No. 1119002483184 maintained with National Bank Ltd, Gouripur Branch for payment of Tk. 11,00,000. The complainant presented the said cheque on the same date for encashment through the National Bank Ltd, Gouripur Branch which was returned unpaid on the same date with the remark “insufficient fund”. After that, the complainant issued legal notice on 21.01.2020 upon the accused for payment of cheque amount and the accused received the said notice on 22.01.2020 but he did not pay the cheque amount. Consequently, the complainant filed the complaint petition on 05.03.2020.

After taking cognizance, the accused voluntarily surrendered before the Court below and thereafter the case was sent to the Sessions Judge, Cumilla and the case was registered as Sessions Case No. 1441 of 2020. The learned Sessions Judge by order dated 01.11.2020 was pleased to transfer the case to Joint Sessions Judge, Court No.2, Cumilla who by order dated 30.11.2020 framed charge against the convict petitioner under section 138 of the Negotiable Instruments Act, 1881. The prosecution examined one witness to prove the charge. At the time of examination of the prosecution witness, the accused was absconding. After concluding the trial, the trial court by impugned judgment and order dated 19.09.2021 convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer imprisonment for 06(six) months and to pay a fine of Tk. 11,00,000.

Being aggrieved by, and dissatisfied with the said judgment and order passed by the trial court, the convict petitioner preferred Criminal Appeal No. 73 of 2022 to the Sessions Judge, Cumilla and the Appellate Court below after hearing the parties by impugned judgment and order

affirmed the judgment and order passed by the trial Court against which the convict petitioner obtained the instant Rule.

The learned Advocate Mr. Md. Abdul Quddus Tarafder appearing on behalf of the convict petitioner submits that both the parties settled the dispute out of court and paid the cheque amount to the complainant Bank. Therefore, he prayed for making the Rule absolute.

The learned Advocate Mr. Bivuti Tarofder appearing on behalf of the complainant opposite party submits that both the parties settled the dispute out of court and the bank also received the pay order valued at Tk. 5,50,000 and the complainant is willing to withdraw the remaining 50% of the cheque amount deposited by the convict petitioner before filing the appeal.

I have considered the submission of the learned Advocates of both parties, evidence of prosecution witness, the impugned judgment and order passed by the courts below and the records.

On perusal of the records, it appears that the convict petitioner issued cheque No. N.D.C/H 3061069 dated 09.01.2020 drawn on his account No. 1119002483184 maintained with National Bank Ltd, Gouripur Branch in favour of complainant bank for payment of Tk. 11,00,000. The complainant presented the cheque on the same date but the cheque was returned unpaid with the remark "insufficient fund". The complainant proved the said cheque as exhibit-2 and the dishonour slip as exhibit-3. After that, the complainant issued a legal notice on 21.01.2020 to the accused through registered post with AD. He proved the postal receipt with AD as exhibit-4 and the legal notice as exhibit-5. However, the convict petitioner did not pay the cheque amount within the statutory period as mentioned in section 138 (1)(c) of the Negotiable Instruments Act, 1881.

The Negotiable Instruments Act, 1881 is a special law and the offence under section 138 of the said Act is not compoundable.

Therefore, the parties are not entitled to compromise the dispute out of court.

There is a presumption under section 118(a) of the Negotiable Instruments Act, 1881 that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. The presumption under Section 118 (a) is rebuttable. The accused neither adduced evidence nor cross-examined P.W. 1 to rebut the presumption under Section 118(a) of the said Act. Therefore, I am of the view that the accused issued the cheque in favour of the payee-complainant for consideration. After service of notice in writing the accused failed to pay the cheque amount. Thereby the accused committed an offence under Section 138 of the Negotiable Instruments Act, 1881 and the complainant filed the case following all procedures provided in Section 138 of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the accused beyond all reasonable doubt and the trial Court on correct assessment of evidence legally passed the impugned judgment and order.

Since the convict petitioner paid the remaining cheque amount out of court, I am of the view that ends of justice would be best served, if the sentence passed by the trial court is modified as under:

The convict petitioner Md. Shahin Mia is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and he is sentenced to pay a fine of Tk. 11,00,000.

The complainant opposite party No. 1 is entitled to withdraw the remaining 50% of the cheque amount deposited by the convict-petitioner before filing the appeal.

The trial Court is directed to allow the complainant opposite party to withdraw 50% of the cheque amount deposited by the convict petitioner forthwith.

In view of the above observation, findings and reasoning the Rule is disposed of with modification of the sentence.

Send down the lower Court's records at once.