IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CRIMINAL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 3517 of 2022

Md. Selim Mahmud
….convict-petitioner
-Vs-
The State and another
….respondents
No one appears
….For the petitioner.
Mr. Mohammad Zahangir Alam, Advocate
……..For the opposite party No.2
Mr. Md. Anichur Rahman Khan, DAG with
Mr. Sultan Mahmood Banna, AAG with
Mr. Mir Moniruzzaman, AAG
..… For the State
Heard on 14.08.2025, 21.08.2025

Judgment delivered on: 27.08.2025

On an application under section 439 read with section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order of conviction and sentence dated 23.02.2021 passed by the Additional Metropolitan Sessions Judge, Court No. 3, Chattogram in Criminal Appeal No. 91 of 2000 affirming the judgment and order of conviction and sentence dated 09.07.2019 passed by the Joint Metropolitan Sessions Judge, Court No. 6, Chattogram in Sessions Case No. 5813 of 2017 arising out of C.R. Case No. 4 of 2016 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him

thereunder to suffer imprisonment for 01(one) year and fine of Tk. 20,00,000 should not be set aside and/or such other or further order or orders passed as to this court may seem fit and proper.

The prosecution's case, in short, is that the accused Md. Selim Mahmud issued account payee Cheque Nos. 7898139 and 7898138 on 18.08.2016 drawn on his Account No. 20503610100056917 maintained with Islami Bank Bangladesh, Kadamtali, Chattogram, for payment of Tk. 500,00 and Tk. 1500,000, respectively, total Tk. 20,00,000 in favour of the complainant Neamat Ali for payment of the liability. The complainant presented the said cheques on 01.11.2016 for encashment, but those cheques were dishonoured with the remark, "insufficient funds". After that, the complainant sent a legal notice on 03.11.2016 making a demand under section 138(b) of the Negotiable Instruments Act, 1881 to the accused for payment of the said cheques amount within 30 days, but he did not pay the cheques amount. Consequently, the complainant filed the complaint petition on 02.1.2017.

During the trial, charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881, which was read over and explained to the accused, and the defence cross-examined P.W. 1. After examination of the prosecution witness, the accused absconded, for which he was not examined under section 342 of the Code of Criminal Procedure, 1898. After concluding the trial, the trial court, by impugned judgment and order dated 09.07.2019, convicted the accused under section 138 of the Negotiable Instruments Act, 1881, and sentenced him to suffer

imprisonment for one year and fine of Tk. 20,00,000 against which he filed Criminal Appeal No. 91 of 2020, and the appellate court, by impugned judgment and order, affirmed the judgment and order passed by the trial court against which the accused obtained the Rule.

P.W. 1 Md. Neamot Ali is the complainant. He stated that the accused Md. Selim Mahmud Zihad issued two cheques on 18.08.2016 in his favour for payment of Tk. 15,00,000 and Tk. 500,000, total Tk. 20,00,000, which were dishonoured on 01.11.2016 with the remark “insufficient funds”. On 03.11.2016, he sent a legal notice to the accused, and he received the notice on 07.11.2016, but the accused did not pay the cheque amount within the time, and he filed the case on 02.01.2017. He proved the complaint petition as exhibit-1 and his signatures on the complaint petition as exhibit-1/1, the disputed cheques as exhibit-2 series, dishonour slips as exhibit-3 series, and the legal notice as exhibit-4, postal receipt as exhibit-5, and AD as exhibit-6. During cross-examination, he affirmed that there were business transactions between the accused and him. He denied the suggestion that the accused issued those cheques for purchasing land. He denied the suggestion that he took total Tk. 2700,000 to purchase the land, or that the accused did not receive any money, or that he deposed falsely.

No one appears on behalf of the convict petitioner.

The learned Advocate Mr. Mohammad Zahangir Alam, appearing on behalf of the opposite party No. 2, submits that the accused issued two cheques on 18.08.2016 in favour of the

complainant for payment of Tk. 15,00,000 and Tk. 500,000, total Tk. 20,00,000, which were dishonoured on 01.11.2016 with the remark “insufficient funds”. On 03.11.2016, the complainant sent a legal notice to the accused, and he received the notice on 07.11.2016, but the accused did not pay the cheque amount within the time. Consequently, the complainant filed the case on 02.01.2017 following the provision made in clauses a to c of the proviso to sections 138, 138(1A), and 141(b) of the said Act. By cross-examining P.W. 1, the defence affirmed that the accused took the money from the complainant, and the prosecution proved the charge against the accused beyond all reasonable doubt, and the courts below, on correct assessment and evaluation of the evidence, arrived at a right decision as to the guilt of the accused. He prayed for the discharge of the Rule.

I have considered the submission of the learned Advocate Mr. Mohammad Jahangir Alam, who appeared on behalf of the opposite party No. 2, perused the evidence, impugned judgment and order passed by the trial court, and the records.

On perusal of the evidence, it reveals that the accused Md. Selim Mahmud issued cheque Nos. 7898139 and 8798138 on 18.08.2016 for payment of Tk. 1500,000 and Tk. 500,000 respectively drawn on his Account No. 20503610100056917 maintained with IBBL, Chattogram Branch, in favour of the complainant P.W. 1 Neamat. P.W. 1 proved the said cheques as exhibits- 2 and 2(1). He presented the cheque on 01.11.2016 for encashment, but those cheques were dishonoured with the remark “insufficient funds”. P.W. 1 proved the dishonour slips as exhibits 3

and 3(1). The complainant sent a legal notice on 03.11.2016 for payment of Tk. 20,00,000 through registered post with AD. P.W. 1 proved the legal notice dated 03.11.2016 as exhibit-4, the postal receipt as exhibit-5, and the AD as exhibit-6. It reveals that the accused received the notice on 07.11.2016. P.W. 1 stated that despite the service of notice upon the accused, he did not pay the cheque amount. Consequently, he filed the case on 02.01.2017.

The evidence discussed hereinabove depicts that on 01.11.2016 the complainant presented the cheques dated 18.08.2016 (exhibits-2 and 2(1)) complying with the procedure under clause a of the proviso to section 138 of the Negotiable Instruments Act, 1881 and after that, he also made demand on 03.11.2016 sending legal notice through registered post with AD incompliance with the provision made in clause b of the proviso to section 138 and sub-section 1(A) of section 138 of the said Act. The accused received the notice on 07.11.2016, but he did not pay the cheque amount. Consequently, the complainant filed the case on 02.01.2017, complying with the procedure provided in clauses a to c of the proviso to section 138, sub-section 1(A) of section 138 and section 141(b) of the said Act. During the trial, P.W. 1 proved the charge against the accused beyond all reasonable doubt, and courts below legally passed the impugned judgments and orders on correct assessment and evaluation of the evidence.

Considering the gravity of the offence, I am of the view that the ends of justice would be best served if the sentence passed by the trial court is modified as under;

The accused Md. Selim Mahmud is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881, and he is sentenced thereunder to suffer imprisonment for 6 (six) months and fine of Tk. 20,00,000.

The complainant is entitled to get the fine amount.

In the result, the Rule is disposed of with modification of the sentence.

The trial court is directed to allow the complainant to withdraw 50% of the cheque amount deposited by the accused before filing the appeal within 7 (seven) days from the date of filing the application, if any.

The convict petitioner is directed to surrender forthwith and to pay the fine within 30 (thirty) days from the date.

However, there will not order as to costs.

The trial court is directed to do the needful.

Send down the lower Court’s record at once.