

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Criminal Revisional Juidiction)

Present

Madam Justice Kashefa Hussain

**Criminal Revision No. 817 of 2023**

Md. Abdul Mannan Mia

..... Convict-petitioner

-Versus-

The State and another

----- Opposite parties

Mr. Mohammad Mostafezur Rahman Miah, Adv

.... for the convict-petitioner

Mr. Md. Humayun Kabir, Advocate

.... for the opposite party No. 2

Mr. Md. Mohiuddin Dewan, D.A.G with

Ms. Syeda Sabina Ahmed Molly, A.A.G

----- For the State.

Heard on: 20.07.2023, 02.08.2023

and

**Judgment on 17.08.2023**

Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 10.01.2023 passed by the learned Sessions Judge, Narayagonj in Criminal Appeal No. 148 of 2022 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 14.02.2021 passed by the learned Joint Sessions Judge, 2<sup>nd</sup> Court, Narayangonj in Sessions Case No. 1318 of 2020 arising out of C.R. Case No. 306 of 2017 convicting the petitioner

under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 1(one) year and also to pay a 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 complainant opposite party No. 2 filed a case against the petitioner under Section 138 of the Negotiable Instrument Act, 1881 which case was heard as Sessions Case No. 1318 of 2020 arising out of C.R. Case NO. 306 of 2017 by the Joint Sessions Judge, 2<sup>nd</sup> Court, Narayangonj. The trial court upon hearing the case convicted the petitioner under Section 138 of the Negotiable Instrument Act, 1881 sentencing him to suffer simple imprisonment for 1(one) year and also to pay fine of Tk. 20,00,000/- by its judgment and order dated 14.02.2021. Being aggrieved by the judgment and order dated 14.02.2021 passed by the trial court the convict-accused as appellant filed Criminal Appeal No. 148 of 2022 which was heard by the learned Sessions Judge, Narayangonj. Upon hearing the appeal the leaned Sessions Judge, Narayangonj dismissed the appeal by its judgment and sentence dated 10.01.2023 thereby upholding the judgment and order of conviction and sentence dated 14.02.2021.

Being aggrieved by the judgment and order of the courts below the convict-appellant petitioner filed the instant criminal revisional application which is instantly before this court for disposal.

The complaint case in short is that for payment of dues the convict-petitioner on 28.09.2016 gave a cheque amounting Tk. 20,00,000/- to the complainant (opposite-part No. 2) and the complainant submitted the cheque to the concerned bank for encashment and the said cheque was dishonored commenting on “Insufficient Fund” and the complainant through his engaged lawyer sent a legal notice through registered post on 17.04.2017 requesting him to pay the money but the convict petitioner did not pay the same and thus he on 17.05.2017 filed this case.

Learned Advocate Mr. Mohammad Mostafezur Rahman Miah appeared for the convict petitioner while learned advocate Mr. Md. Humayun Kabir represented the respondent-opposite party No. 2.

Learned Advocate for the accused petitioner submits that both courts below upon misapplication of mind and upon misinterpretation of the law came upon wrong finding causing serious injustice to the interest of the petitioner. He submits that

although the legal notice was not served upon the petitioner but however the courts below even in absence of legal notice came upon the wrong finding. He submits that he was not aware of the judgment of the trial court since he did not receive the legal notice. He also submits that the names and addresses of the petitioners were also wrong and therefore he did not receive the legal notice. He takes me to the ground No. 5 of the criminal revision wherefrom he submits that he lost his cheque and he made a GD in the concerned police station. He submits that although he placed the argument before the appellate court but however the appellate court did not consider this submission. He submits that the appellate court also was silent on the issue of the application of remand made by the petitioner. He submits that for ends of justice this judgment ought to be set aside and the Rule bears merit and ought to be made absolute.

On the other hand learned Advocate Mr. Md. Humayun Kabir vehemently opposes the Rule. He submits that the trial court correctly made observation that even if return of the legal notice is not back but however under the provisions of Section 17 of the General Clause Act, 1897 it shall be deemed that legal notice it issued properly served. He submits that he was absconding all through trial and it is an admitted fact that he

gave the cheque. He submits that the circumstantial facts prove that the cheque and signature could not be denied even in appeal therefore it is evident that the petitioner did not receive the legal notice deliberately. He submits that since the signature is admitted and not receiving the legal notice under the provisions of Section 17 of the General Clauses Act does not create a bar on proceeding with the trial therefore such submissions of the petitioner is totally unfound. He submits that although the petitioner submits that he has made argument about a G.D entry on the ground of the relevant cheque being lost, but however nothing there is nothing much from the materials to show nor from the judgment of the appellate court to show that he made G.D. entry. He submits that at this stage he cannot make his argument in criminal revision since he did not make this plea in the lower court. He concludes his submissions upon assertion that since the signature is admitted and cheque was dishonored therefore the petitioner has no case here and the Rule bears no merits and ought to be discharged for ends of justice.

I have heard the learned advocate from both sides, perused the application and materials on records. The petitioner here could not deny the signature his even in appeal. The

petitioner however contended that he did not receive the legal notice in this regard. I am in agreement with the observation made by the trial court as under: “কিন্তু, উক্ত লিগ্যাল নোটিশটি অদ্যবধি ফেরত আসে নাই। তথাপিও, General Clauses Act, এর ১৭ ধারার বিধানমতে রেজিস্ট্রি ডাকযোগে নোটিশ প্রেরন করা হলেই উহা যথাযথ জারী মর্মে গণ্য করা যাবে।”

Relying on Section 17 of the General Clause Act and compared to the fact that the signature could not be denied by the petitioner even in appeal, therefore I am also of the considered view that the petitioner was only deliberately trying to avoid receiving the legal notice. The petitioner argued that he was not aware of the case and that is why he could not appear in trial.

On the issue of absence the trial court made an observation that: “অত্র মামলার আসামী আদালতে বিচার প্রক্রিয়া শুরু হবার দিন থেকেই পলাতক ছিলেন। আদালতের চিার প্রক্রিয়ায় যুক্ত হয়ে আত্মপক্ষ সমর্থন কিংবা নিজেকে নির্দোষ প্রমাণ বা আরোপিত অভিযোগ থেকে মুক্ত হবার কোন প্রকার চেষ্টা করেননি।”

I am of the considered view that the trial court’s observation is correct and the submissions of the petitioner are totally unfound. He was deliberately absconding to avoid trial and also did not deliberately receive legal notice.

The petitioner argued that he had filed a G.D against losing the cheque in the concerned police station. Learned Advocate for the petitioner draw upon the lower court records

and shows that he had filed a G.D. before the concerned police station and contended that however the G.D was not considered by the courts.

I am inclined to opine that such G.D is a created document which was somehow produced by the petitioner to prove his case but which is not at all reliable. The date of the G.D is 24.06.2014 while the cheque is dated 28.09.2016. Such difference between the date of the G.D. and issuance of the cheque cannot be relied upon. As stated above since the petitioner could not deny the signature at any stage therefore I am of the considered view that the cheque was admittedly given by the petitioner, he taking the plea of not receiving the notice and filing a G.D. is only a tactic to avoid the process of the law.

Under the facts and circumstances I am of the considered view that the courts correctly gave the judgments and needs no interference with. I do not find any merit in the case.

In the result, the Rule is discharged.

The judgment and order dated 10.01.2023 passed by the learned Sessions Judge, Narayagonj in Criminal Appeal No. 148 of 2022 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 14.02.2021 passed

by the learned Joint Sessions Judge, 2<sup>nd</sup> Court, Narayangonj in Sessions Case No. 1318 of 2020 arising out of C.R. Case No. 306 of 2017 convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 1(one) year and also to pay a fine of Tk. 20,00,000/-

The accused-petitioner is directed to deposit the balance amount of cheque to the trial court within 45 days from the date of receiving this judgment along with lower court records to be paid to the complainant opposite party in accordance with law.

The accused-petitioner is further directed to surrender before the trial court within 60 days from the same date for serving out the remaining sentence of imprisonment.

The complainant-opposite party is allowed to withdraw the 50% of the cheque amount which has been deposited by the accused-petitioner in the trial court through Chalan within 1(one) month from the date of receipt of this judgment.

Send down the Lower Court Records at once.

Communicate the judgment at once.

**Shokat (B.O.)**