

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No. 2572 of 2021

Md. Haris Ali

.... convict-appellant-petitioner

-Versus-

The State and another

.... opposite-parties

No one appears

.... For the petitioner

Mr. Md. Shofiul Aziz, Advocate

.... For the opposite party No.2

Heard on 29.10.2023 and

Judgment on: 02.11.2023

Md. Kamrul Hossain Mollah.J:

This is an application 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 30.10.2019 passed by the learned Additional Sessions Judge, 1st Court, Sylhet in Criminal Appeal No. 133 of 2019 dismissing the appeal and thereby upholding the judgment and order of conviction and sentence dated 18.02.2016 passed by the learned Joint Sessions Judge, 1st Court, Sylhet in Sessions Case No. 290 of 2015 arising out of C.R. Case No.16 of 2015 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881

and sentencing him to suffer simple imprisonment for a period of 01(one) year and also to pay a fine of Tk. 2,40,000/- 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 granted bail the convict-petitioner for a period of 01(one) year and stayed the realization of fine till disposal of the Rule.

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

The prosecution case, in short is that the convict-petitioner issued a cheque being No. IBE 7833902, dated 06.10.2014 in favour of complainant opposite party to payout the loan liability amounting of Taka 1,20,000/- (One Lac Twenty Thousand only) the complainant deposited the same for encashment to the concern bank. But which was dishonored due to insufficient fund on 09.10.2014. Thereafter, the complainant issued a legal notice through his lawyer on 23.07.2012 requesting the petitioner to pay the said cheque amount within 30 (thirty) days. But the petitioner did not take any step to refund the aforesaid money. For this reason, the complainant-opposite party No.2 finding no other alternative filed a

complaint-petition under Section 138 of the Negotiable Instrument Act, 1881 against the petitioner before the learned Judicial Magistrate, 1st Court, Sylhet on 08.01.2015.

The learned Judicial Magistrate after receiving the petition of complaint examined the complainant under Section 200 of the Code of Criminal Procedure, 1898 and took cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 as well as registered the petition of complaint as C.R. Case No.16 of 2015 accordingly issued summon against the convict petitioner. On 01.03.2015 the convict-petitioner voluntarily surrendered before the Judicial Magistrate, 1st Cour, Sylhet and obtained bail.

In the meantime, it was transferred to the Court of learned Sessions Judge, Sylhet for trial and disposal and the learned Sessions Judge registered the case as Sessions Case No. 290 of 2015. Thereafter the case record has been further transferred before the Court of learned Joint Sessions Judge, 1st Court, Sylhet for trial. On 04.07.2015 the learned Joint Sessions Judge, 1st Court, Sylhet framed charge against the petitioner under section 138 of the Negotiable Instruments Act, 1881 and

the charge could not be read over to the accused-opposite party No.1 for his absconding.

The learned Joint Sessions Judge, 1st Court, Sylhet examined the complainant as PW1 to prove the prosecution case, but defence examined none.

After closing the prosecution witness, the learned trial Court did not examine the convict petitioner under Section 342 of the Code of Criminal Procedure for his absconsion.

After hearing the parties and considering the evidence on record, the learned Joint Sessions Judge, 1st Court, Sylhet found guilty the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 01 (one) year and also to pay a fine of Tk.2,40,000/- by his judgment and order of conviction and sentence dated 18.02.2016.

Being aggrieved by and dissatisfied with the Judgment and order dated 30.10.2019 passed by the learned Joint Sessions Judge, 1st Court, Sylhet in Sessions Case No.290 of 2015 arising out C.R. Case No.16 of 2015, the petitioner filed the Criminal Appeal No.133 of 2019 before the learned Sessions

Judge, Sylhet. Thereafter, it was transferred to the learned Additional Sessions Judge, 1st Court, Sylhet for disposal. After hearing the parties and considering the materials on record, the learned Additional Sessions Judge, 1st Court, Sylhet dismissed the Criminal Appeal No.133 of 2019 and thereby affirmed the judgment and order of conviction and sentence dated 18.02.2016 passed by the learned Joint Sessions Judge, 1st Court, Sylhet in Sessions Case No.290 of 2015 arising out of C.R. Case No.16 of 2015 by his judgment and order dated 30.10.2019.

Being aggrieved by and dissatisfied with the judgment and order dated 30.10.2019 passed by the learned Additional Sessions Judge, 1st Court, Sylhet in Criminal Appeal No.133 of 2019 dismissing the said appeal and thereby affirmed the judgment and order of conviction and sentence dated 18.02.2016 passed by the learned Joint Sessions Judge, 1st Court, Sylhet in Sessions Case No.290 of 2015 arising out of C.R. Case No.16 of 2015 the convict-petitioner filed this Criminal Revision before the Hon'ble High Court Division.

No one appears for the convict-petitioner to press the instant Rule when this matter was taken up for hearing and disposal although it appears in the daily cause list several times.

On the other hand, Mr. Md. Shofiul Aziz, the learned Advocate appearing on behalf of the opposite party No.2 submits that the convict-petitioner issued a cheque being No. IBE 7833902, dated 06.10.2014 in favour of complainant opposite party to payout the loan liability amounting of Taka 1,20,000/- (One Lac Twenty Thousand only) the complainant deposited the same for encashment to the concern bank. But which was dishonored due to insufficient fund on 09.10.2014. Thereafter, the complainant issued a legal notice through his lawyer on 23.07.2012 requesting the petitioner to pay the said cheque amount within 30 (thirty) days. But the petitioner did not take any step to refund the aforesaid money. For this reason, the complainant-opposite party No.2 finding no other alternative filed a complaint-petition under Section 138 of the Negotiable Instrument Act, 1881 against the petitioner before the learned Judicial Magistrate, 1st Court, Sylhet on 08.01.2015 as C.R. Case No.16 of 2015. In the meantime, it was transferred to the Court of learned Sessions Judge, Sylhet for trial and

disposal and the learned Sessions Judge registered the case as Sessions Case No. 290 of 2015. Thereafter the case record has been further transferred before the Court of learned Joint Sessions Judge, 1st Court, Sylhet for trial. After hearing the parties and considering the evidence on record, the learned Joint Sessions Judge, 1st Court, Sylhet found guilty the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 01 (one) year and also to pay a fine of Tk.2,40,000/- by his judgment and order of conviction and sentence dated 18.02.2016. Being aggrieved by and dissatisfied with the Judgment and order dated 30.10.2019 passed by the learned Joint Sessions Judge, 1st Court, Sylhet in Sessions Case No.290 of 2015 arising out C.R. Case No.16 of 2015, the petitioner filed the Criminal Appeal No.133 of 2019 before the learned Sessions Judge, Sylhet. Thereafter, it was transferred to the learned Additional Sessions Judge, 1st Court, Sylhet for disposal. After hearing the parties and considering the materials on record, the learned Additional Sessions Judge, 1st Court, Sylhet dismissed the Criminal Appeal No.133 of 2019 and thereby affirmed the judgment and order of conviction and sentence dated 18.02.2016 passed by the learned

Joint Sessions Judge, 1st Court, Sylhet in Sessions Case No.290 of 2015 arising out of C.R. Case No.16 of 2015 by his judgment and order dated 30.10.2019 rightly, which is maintainable in the eye of law. Accordingly, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and order of the Courts' below, the submissions of the learned Advocate for the opposite party No.2, the papers and documents as available on the record.

It appears from the records that the convict-petitioner issued a cheque being No. IBE 7833902, dated 06.10.2014 in favour of complainant opposite party to payout the loan liability amounting of Taka 1,20,000/- (One Lac Twenty Thousand only) the complainant deposited the same for encashment to the concern bank. But which was dishonored due to insufficient fund on 09.10.2014. Thereafter, the complainant issued a legal notice through his lawyer on 23.07.2012 requesting the petitioner to pay the said cheque amount within 30 (thirty) days. But the petitioner did not take any step to refund the aforesaid money. For this reason, the complainant-opposite party No.2 finding no other alternative filed a complaint-petition under Section 138 of the Negotiable Instrument Act, 1881 against the

petitioner before the learned Judicial Magistrate, 1st Court, Sylhet on 08.01.2015 as C.R. Case No.16 of 2015 following all legal formalities.

Now, let us discuss the evidence of prosecution witness Md. Zakir Hossain.

Md. Zakir Hossain as P.W.1 in his deposition stated that the petitioner took loan of Tk.4,00,000/- from bank. After repay some installment, he became defaulter and after giving repeated reminder, the petitioner issued a cheque of Tk.1,20,000/- bearing No.7833902 of Islami Bank Bangladesh Limited, Biswanath Branch, Sylhet in favour of the complainant, who placed the same before the bank for encashment, but the cheque was dishonoured on 16.10.2014 for insufficient fund. He served a legal notice upon the petitioner on 12.11.2014, but he took no step for the payment of the cheque amount within the time. Thereafter, he filed this case. He identified authorization letter as exhibit-1, complainant's petition and therein his signature as exhibit-2 and exhibit-2/1. He also exhibited the original cheque as exhibit-3, dishonored slip as exhibit-4 series, copy of the legal notice and postal receipt- as exhibit-5 series.

In the light of the above discussion, it is clear before me that the petitioner issued a cheque of Tk.1,20,000/- bearing No.7833902 of Islami Bank Bangladesh Limited, Biswanath Branch, Sylhet in favour of the complainant, who placed before the bank for encashment, but the cheque was dishonoured on 16.10.2014 for insufficient fund. He served a legal notice upon the petitioner on 12.11.2014, but he took no step for the payment of the cheque amount in time. Thereafter, he filed this case following all legal formalities, which is maintainable in the eye of law.

Considering the above facts and materials on record, I think that the judgment and order dated 30.10.2019 passed by the learned Additional Sessions Judge, 1st Court, Sylhet in Criminal Appeal No.133 of 2019 dismissing the appeal rightly and is maintainable in the eye of law.

Accordingly, I do not find any cogent and legal ground to interfere with the judgment and order dated 30.10.2019 and find substance in the submissions of the learned Advocate for the opposite party No.2. Therefore, the instant Rule has no merit.

In the result, the Rule is discharged.

The judgment and order dated 30.10.2019 passed by the learned the learned Additions Sessions Judge, 1st Court, Sylhet in Criminal Appeal No.133 of 2019 dismissing the appeal and thereby affirmed the judgment and order of conviction and sentence dated 18.02.2016 passed by the learned Joint Sessions Judge, 1st Court, Sylhet in Sessions Case No.290 of 2015 arising out of C.R. Case No.16 of 2015 is hereby upheld and confirmed.

Further, the convict-petitioner 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 arrest him.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.1,20,000/- to the complainant-opposite party No.2 (if he did not withdraw the said amount) in this case.

The order of bail granted earlier by this Court is hereby cancelled and recalled and the order of stay of realization of fine is hereby vacated.

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