

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

**Present:**

Mr. Justice Md. Kamrul Hosssain Mollah

**Criminal Revision No.730 of 2022**

Farid Ahmed Ponki

.....convict-petitioner

-Versus-

The State and another

..... opposite-parties

No one appears

.....For the convict-petitioner

Mrs. Umme Masumun Nesa, A.A.G with

Mr. Ashiqul Haque, A.A.G

.....For the State

Mr. Md. Shofiul Aziz, Advocate

...For the complainant-opposite party No.2

**Heard on 29.10.2023 and**

**Judgment on:07.11.2023**

**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 impugned and order of conviction and sentence dated 22.03.2021 passed by the learned Additional Sessions Judge, 1<sup>st</sup> Court, Sylhet in Criminal Appeal No.361 of 2019 dismissing the appeal and thereby confirming the judgment and order of conviction and sentence dated 22.05.2019 passed by the learned Joint Sessions

Judge, 3<sup>rd</sup> Court, Sylhet in Sessions Case No.176 of 2019 arising out of C.R. Case No.282 of 2018 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 sentenced him to suffer simple imprisonment for a period of 04(four) months and also to pay a fine of Tk.96,000/- 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 to the convict-petitioner till disposal of the Rule and stayed the realization of fine.

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

The prosecution case, in short is that following the petitioner's request, the bank granted him an investment benefits of Tk.40,000/- in favour of his business namely M/S Rabbi Metal Workshop and he takes advantage of the investment. The bank declared the petitioner a defaulter for not repaying the investment due on time. If the bank repeatedly begged the accused, the accused issued a cheque of Tk.48,000/- to the bank on 17.05.2018 and on that date the cheque is presented to the bank account for encashment, but due to

insufficient fund the cheque was dishonoured and returned. Thereafter, the bank contacted the accused, but did not get any reply and issued a legal notice to the petitioner on 31.05.2018, but he did not pay the said amount. Thereafter, the complainant opposite party No.2 finding no other alternative filed a complaint-petition before the learned Senior Judicial Magistrate, Cognizance Court No.1, Sylhet under section 138 of the Negotiable Instruments Act, 1881 against the petitioner on 25.07.2018.

The learned Magistrate examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 as C.R. Case No.282 of 2018 and issued summons against him. The convict-petitioner surrendered before the concerned Court with a prayer for bail and obtained bail on 03.12.2018. Thereafter, this case was transferred to the learned Sessions Judge, Sylhet for trial, where the case was registered as Sessions Case No.176 of 2019. The learned Sessions Judge, Khulna transferred the case to the learned Joint Sessions Judge, 3<sup>rd</sup> Court, Sylhet for trial and disposal. Later, on 06.03.2019 charge was framed against the

convict-petitioner under section 138 of the Negotiable Instruments Act, 1881. The charge was not read over and explained to the convict-petitioner for his absconsion.

The prosecution examined 01(one) witness to prove the case and the defence cross-examined none.

The petitioner was not examined under section 342 of the Code of Criminal Procedure for his absconsion.

The learned Joint Sessions Judge, 3<sup>rd</sup> Court, Sylhet after hearing the parties and perusing the evidence on record found guilty the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 04(four) months and also to pay a fine of Tk.96,000/- by his judgment and order of conviction and sentence dated 22.05.2019.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 22.05.2019 the convict-petitioner filed Criminal Appeal No.361 of 2019 before the learned Sessions Judge, Sylhet. Thereafter, it was transferred to the learned Additional Sessions Judge, 1<sup>st</sup> Court, Sylhet for disposal. After hearing the appeal the learned

Additional Sessions Judge, 1<sup>st</sup> Court, Sylhet dismissed the Appeal and affirmed the judgment and order of conviction and sentence dated 22.05.2019 by his judgment and order of conviction and sentence dated 22.03.2021.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 22.03.2021 passed by the learned Additional Sessions Judge, 1<sup>st</sup> Court, Sylhet in Criminal Appeal No.361 of 2019, the convict-petitioner filed this Criminal Revision, before this 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 of Tk.48,000/- to the bank on 17.05.2018 and on that date the cheque is presented to the bank account for encashment, but due to insufficient fund the cheque was dishonoured and returned. Thereafter, the bank contacted the accused, but did not

get any reply and issued a legal notice to the petitioner on 31.05.2018, but he did not pay the said amount. Thereafter, the complainant opposite party No.2 finding no other alternative filed a complaint-petition before the learned Senior Judicial Magistrate, Cognizance Court No.1, Sylhet under section 138 of the Negotiable Instruments Act, 1881 against the petitioner on 25.07.2018 as C.R. Case No.282 of 2018. Thereafter, this case was transferred to the learned Sessions Judge, Sylhet for trial, where the case was registered as Sessions Case No.176 of 2019. The learned Sessions Judge, Khulna transferred the case to the learned Joint Sessions Judge, 3<sup>rd</sup> Court, Sylhet for trial and disposal. The learned Joint Sessions Judge, 3<sup>rd</sup> Court, Sylhet after hearing the parties and perusing the evidence on record found guilty the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 04(four) months and also to pay a fine of Tk.96,000/- by his judgment and order of conviction and sentence dated 22.05.2019. Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 22.05.2019 the convict-petitioner filed Criminal Appeal No.361 of 2019 before the learned Sessions Judge,

Sylhet. Thereafter, it was transferred to the learned Additional Sessions Judge, 1<sup>st</sup> Court, Sylhet for disposal. After hearing the appeal the learned Additional Sessions Judge, 1<sup>st</sup> Court, Sylhet dismissed the Appeal and affirmed the judgment and order of conviction and sentence dated 22.05.2019 by his judgment and order of conviction and sentence dated 22.03.2021 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 Advocate for the opposite party No.2, the papers and documents as available on the record.

On perusal of the record, it has been found that the cheque was issued on 17.05.2018 in favour of the complainant for an amount of Tk.48,000/- which was dishonoured on 17.05.2018 for insufficient fund. The complainant issued the legal notice on 31.05.2018 within the statutory period and filed the case within the statutory period having no response from the petitioner as per section 138 of the Negotiable Instruments Act,

1881 following all legal formalities, which is maintainable in the eye of law.

Upon careful scrutiny the deposition of the P.W.1 it appears that the P.W.1 as complainant fully supported his case in his deposition. P.W.1 has stated in his examination-in-chief that the convict-petitioner issued a cheque of Tk.48,000/- to the bank on 17.05.2018 and on that date the cheque is presented to the bank account for encashment, but due to insufficient fund the cheque was dishonoured and returned. Thereafter, the bank contacted the accused, but did not get any reply and issued a legal notice to the petitioner on 31.05.2018, but he did not pay the said amount.

Therefore, considering the facts and circumstances and the evidence on record, this Court is of the view that the prosecution has been able to prove the case beyond all reasonable doubt.

In the light of the above discussion, it is clear before me that the complainant-opposite party No.2 filed this case following all legal formalities and judgment and order of conviction and sentence dated 22.03.2021 passed by the learned Additional Sessions Judge, 1<sup>st</sup> Court, Sylhet in Criminal Appeal



No.361 of 2019 rightly, which is maintainable in the eye of law and there is no any scope to interference there.

Accordingly, I do not find any cogent and legal ground to interfere with the impugned judgment and order of conviction and sentence dated 22.03.2021. Therefore, the instant Rule has no merit.

In the result, the Rule is discharged.

The judgment and order of conviction and sentence dated 22.03.2021 passed by the learned the learned Additional Sessions Judge, 1<sup>st</sup> Court, Sylhet in Criminal Appeal No.361 of 2019 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 22.05.2019 passed by the learned Joint Sessions Judge, 3<sup>rd</sup> Court, Sylhet in Sessions Case No.176 of 2019 arising out of C.R. Case No.282 of 2018 is hereby upheld and confirmed.

Further, the concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.24,000/-, which has been deposited by the convict-petitioner through Chalan at the time of filing appeal to the complainant-opposite party No.2 (if he did not withdraw the said amount).

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

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

*Md. Anamul Hoque Parvej*  
*Bench Officer*