

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No.1521 of 2022

Rani Begum

.....convict-petitioner

-Versus-

The State and another

..... opposite-parties

Mr. J.K. Paul, Advocate

.....For the convict-petitioner

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. Mridul Datta, Advocate

Heard on 13.11.2023 and
Judgment on: 23.11.2023

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 judgment and order of conviction and sentence dated 21.03.2022 passed by the learned Sessions Judge, Moulvibazar in Criminal Appeal No.58 of 2021 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 11.01.2021 of fine to pay back the cheque money within 60 days to the complainant unless which the petitioner is to suffer 03(three) months simple imprisonment passed by the learned Joint Sessions

Judge, 2nd Court, Moulvibazar in Sessions Case No.158 of 2019 arising out of C.R. Case No.522 of 2018 (Sadar) 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 for a period of 01(one) year from date 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 has 02(two) sons living abroad in Sweden and due to said reason the complainant was given hope to send him to Sweden in exchange of Tk.16,50,000/-, but the convict-petitioner was failed to send him to Sweden and ultimately the petitioner returned the money through cheque for an amount of Tk.16,50,000/- by issuing NRB Bank Limited cheque. The complainant on 20.09.2018 tried to encashment the cheque by depositing the same before NRB Bank, Moulvibazar and it was dishonoured by stating that there is no enough money to honor the cheque and after being dishonoured the complainant met many times with the convict-petitioner to realize the cheque

money, but all of his attempt is ended in futile and thereafter issued a legal notice on 25.09.2018 which was received by the convict-petitioner, but he did not repay the money. For this reason, the complainant-opposite party No.2 filed a complaint-petition before the learned Senior Judicial Magistrate, 1st Court Cognizance, Moulvibazar under section 138 of the Negotiable Instruments Act, 1881 against the convict-petitioner on 05.11.2018.

The learned Senior Judicial Magistrate, 1st Court Cognizance, Moulvibazar after examination the complainant under section 200 of the Code of Criminal Procedure took cognizance against the petitioner under sections 138 of the Negotiable Instruments Act, 1881 as C.R. Case No.682 of 2018 and issued summons upon the convict-petitioner. Thereafter, when this case become ready for trial it was sent to the learned Sessions Judge, Moulvibazar for disposal and it was renumbered as Sessions Case No.158 of 2019. Further, it was transferred to the learned Joint Sessions Judge, 2nd Court, Moulvibazar for hearing and disposal. The learned Joint Sessions Judge, 2nd Court, Moulvibazar framed charge against the convict-petitioner under section 138 of the Negotiable

Instruments Act, 1881 on 08.09.2019 and the said charge was read over and explained the convict-petitioner, in which pleaded not guilty and claimed to be tried.

The prosecution adduced as many as 01(one) witness in support of the case, but the defence did not examine none.

Due to abscondence of the convict-petitioner the trial Court could not examined him under section 342 of the Code of Criminal Procedure.

After conclusion of the trial the learned Joint Sessions Judge, 2nd Court, Moulvibazar upon hearing both the parties and on perusal of the evidence on record and document convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him of fine to pay back the cheque amount of Tk.16,50,000/- within 60(sixty) days to the complainant unless which the petitioner is to suffer 03(three) months simple imprisonment by his judgment and order of conviction and sentence dated 11.01.2021.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 11.01.2021 passed by the learned Joint Sessions Judge, 2nd

Court, Moulvibazar in Sessions Case No.158 of 2019 arising out of C.R. Case No.522 of 2018(Sadar), the convict-petitioner preferred the Criminal Appeal No.58 of 2021 before the learned Sessions Judge, Moulvibazar. The learned Sessions Judge, Moulvibazar after hearing both the parties dismissed the said appeal and thereby affirmed the judgment and order of conviction and sentence dated 11.01.2021 of fine to pay back the cheque money within 60 days to the complainant unless which the petitioner is to suffer 03(three) months simple imprisonment passed by the learned Joint Sessions Judge, 2nd Court, Moulvibazar in Sessions Case No.158 of 2019 arising out of C.R. Case No.522 of 2018 (Sadar) by his judgment and order of sentence dated 21.03.2022.

Being aggrieved by and dissatisfied with the judgment and order sentence dated 21.03.2022 passed by the learned Sessions Judge, Moulvibazar in Criminal Appeal No.58 of 2021 dismissing the said appeal and thereby affirming the judgment and order of conviction and sentence dated 05.01.2018 of fine to pay back the cheque money within 60 days to the complainant unless which the petitioner is to suffer 03(three) months simple imprisonment passed by the learned Joint Sessions Judge, 2nd Court, Moulvibazar in Sessions Case No.158 of 2019 arising out of C.R.

Case No.522 of 2018 (Sadar), the convict-petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

Mr. J.K Paul, the learned Advocate appearing for the convict-petitioner submits that a amicable settlement has been reached between the parties through a deed of compromise dated 12.01.2023 and the convict-petitioner fully paid the claimed cheque amount to the complainant-opposite party No.2. The complainant has no claimed against the convict-petitioner if he be acquitted and the complainant got his claimed amount. Accordingly, he prays for making the Rule absolute.

On the other hand, Mr. Mridul Datta, the learned Advocate appearing on behalf of the complainant-opposite party No.2 supported the submission of the learned Advocate for the petitioner and submits that the convict-petitioner paid the total cheque amount to the complainant and the peaceful compromise has been held between the parties through a deed of compromise dated 12.01.2023 and he has no objection if the convict-petitioner be acquitted and to absolute the Rule.

I have perused the revisional application, compromise application, the impugned judgment and order of the Courts'

below, the submissions of the learned Advocates for the parties, the papers and documents as available on the record.

It appears from the submissions of the learned Advocates for both the parties that an amicable settlement became between the parties and there is no claim each to other.

Moreover, the main object of this case is recovery of cheque amount, which has been settled amicably between the parties.

In the light of the above discussion, it is clear before me that since the convict-petitioner paid the claimed cheque amount, an amicable settlement has been held between the parties through a deed of compromise dated 12.01.2023 and there is no any claim each to other, therefore, the judgment and order of conviction and sentence dated 21.03.2022 passed by the learned Sessions Judge, Moulvibazar in Criminal Appeal Case No.58 of 2021 is not maintainable against the convict-petitioner and it will be fair to interference there.

Accordingly, I find cogent and legal ground in the submissions of the learned Advocates for the parties and to

interfere with the impugned judgment and order of conviction and sentence dated 21.03.2022. Therefore, the instant Rule has merit.

In the result, the Rule is made absolute.

The impugned judgment and order of conviction and sentence dated 21.03.2022 passed by the learned Sessions Judge, Moulvibazar in Criminal Appeal Case No.58 of 2021 dismissing the said Appeal and thereby affirming the judgment and order of conviction and sentence dated 05.01.2018 of fine to pay back the cheque money within 60 days to the complainant unless which the petitioner is to suffer 03(three) months simple imprisonment passed by the learned Joint Sessions Judge, 2nd Court, Moulvibazar in Sessions Case No.158 of 2019 arising out of C.R. Case No.522 of 2018 (Sadar) is hereby set-aside and the convict-petitioner be acquitted.

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

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.8,25,000/- to the

complainant-opposite party No.2 (if he did not withdraw the said amount) in this case.

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

Md. Anamul Hoque Parvej
Bench Officer