

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

**Present:**

Mr. Justice Md. Kamrul Hosssain Mollah

**Criminal Revision No. 4006 of 2022**

Momotaj Mozid

..... convict-petitioner

-Versus-

The State and another

..... opposite-parties

Mr. Abdul Wahab Dewan Kajal, Advocate

..... For the convict-petitioner

Mrs. Umme Masumun Nesa, A.A.G

..... For the State

Mr. Mohammad Monju Mollah, Advocate

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

**Heard on 10.08.2023 and**

**Judgment on: 20.08.2023**

**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 11.10.2022 passed by the learned Additional Metropolitan Sessions Judge, 3<sup>rd</sup> Court, Dhaka in Criminal Appeal No.244 of 2022 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 30.04.2015 passed by the learned Acting Joint Metropolitan Sessions Judge, 7<sup>th</sup> Court, Dhaka in Metropolitan Sessions Case No.2319 of 2013

arising out of C.R. Case No.377 of 2012, convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 to pay a fine of Tk.2,00,000/- in default to suffer simple imprisonment for a period of 03(three) months 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 stayed the realization of fine.

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

The prosecution case, in short is that the convict-petitioner took loan Tk. 2,00,000/- from the complainant and the convict-petitioner against that loan issued a cheque of Tk. 2,00,000/- dated 23.07.2012 in favour of the complainant and the said cheque was presented before the concerned Bank on 23.07.2012 for encashment, which was dishonoured for insufficient of fund. Then the complainant served a legal notice upon the convict-petitioner by registered post with AD on 23.07.2012 asking the petitioner to refund the money within 30 days. As the petitioner did not take any step to refund the money within prescribed period. Thereafter, the complainant

filed a complaint-petition before the learned Metropolitan Magistrate, Dhaka against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 on 27.08.2012.

The learned Metropolitan Magistrate, Dhaka after examining the complainant opposite party No.2 under section 200 of the Code of Criminal Procedure took cognizance against the convict-petitioner under section 138 of the Negotiation Instruments Act, 1881 as C.R. Case No.377 of 2012 and issued a summon against the petitioner.

The convict-petitioner after receiving the summons surrendered before the Metropolitan Magistrate Court and enlarged on bail. Thereafter, the case was transferred before the learned Metropolitan Sessions Judge, Dhaka and the same was registered as Metropolitan Sessions Case No.2319 of 2013 and subsequently, the case was transferred before the learned Joint Metropolitan Sessions Judge, 7<sup>th</sup> Court, Dhaka for trial and disposal.

The learned trial Court framed charge on 15.05.2013 against the convict-petitioner under section 138 of the

Negotiable Instruments Act, 1881, which was read over to him who pleaded not guilty and claimed to be tried.

The prosecution examined only one witness and the convict-petitioner examined 01 (one) witness.

After closing the prosecution witness by the learned trial Court, the convict-petitioner was examined under section 342 of the Code of Criminal Procedure who pleaded again not guilty and he claimed himself innocent.

Upon perusing the evidence and hearing both the parties the learned trial Court convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 to pay a fine of Tk.2,00,000/- in default to suffer simple imprisonment for 03(three) months by his judgment and order of conviction and sentence dated 30.04.2015. Against the said judgment and order of conviction and sentence, the convict-petitioner filed Criminal Appeal No.244 of 2022 before the learned Metropolitan Sessions Judge, Dhaka. Thereafter, the said Appeal was transferred to the learned Additional Metropolitan Sessions Judge, 3<sup>rd</sup> Court, Dhaka for disposal. After hearing both the parties the learned Additional Metropolitan Sessions Judge, 3<sup>rd</sup>

Court, Dhaka dismissed the aforesaid appeal and thereby affirmed the judgment and order of conviction and sentence dated 30.04.2015 passed by the learned Joint Metropolitan Sessions Judge, 7<sup>th</sup> Court, Dhaka by his judgment and order dated 11.10.2022.

Being aggrieved by and dissatisfied with the judgment and order dated 11.10.2022 passed by the learned Additional Metropolitan Sessions Judge, 3<sup>rd</sup> Court, Dhaka in Criminal Appeal No.244 of 2022, the convict-petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

Mr. Abdul Wahab Dewan Kajal, the learned Advocate appearing on behalf of the petitioner submits that the alleged cheque was dishonored by the Prime Bank Limited on 23.07.2012 and notice also was served on 23.07.2012 which is unlawful and inconsistent with the law and as such committed an error of law resulting in the decision occasioning failure of justice.

He further submits that the validity period of cheque was not mentioned upon the cheque. The notice was not served as per law and the convict-petitioner was not received the notice,

the learned Appellate Court committed an error in his decision and as such the impugned judgment and order should not be set-aside.

He again submits that the alleged cheque was in her own name of petitioner which was scratched by the complainant in his own name by rubbing and writing in different link, but the learned Court below did not consider it.

The learned Advocate for the petitioner lastly submits that without consideration the witness and without considering the fact, circumstances and evidences which is arbitrary, malafide and without lawful considering the facts and evidenced which is arbitrary is of no legal effect. Therefore, the order of conviction of the Courts' below should be set-aside. Accordingly, he prays for making the Rule absolute.

On the other hand, Mr. Mohammad Monju Mollah, the learned Advocate appearing on behalf of the opposite party No.2 submits that the convict-petitioner took loan of Tk. 2,00,000/- from the complainant and the convict-petitioner against that loan issued a cheque of Tk. 2,00,000/- dated 23.07.2012 in favour of the complainant and the said cheque

was presented before the concerned Bank on 23.07.2012 for encashment, which was dishonoured for insufficient of fund. Then the complainant served a legal notice upon the convict-petitioner by registered post with AD on 23.07.2012 asking the petitioner to refund the money within 30 days. As the petitioner did not take any step to refund the money within prescribed period. Thereafter, the complainant filed a complaint-petition before the learned Metropolitan Magistrate, Dhaka against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 on 27.08.2012. Thereafter, the case was transferred before the learned Metropolitan Sessions Judge, Dhaka and the same was registered as Metropolitan Sessions Case No.2319 of 2013 and subsequently, the case was transferred before the learned Joint Metropolitan Sessions Judge, 7<sup>th</sup> Court, Dhaka for trial and disposal. Upon perusing the evidence and hearing both the parties the learned trial Court convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 to pay a fine of Tk.2,00,000/- in default to suffer simple imprisonment for 03(three) months by his judgment and order of conviction and sentence dated 30.04.2015. Against the said judgment and order of conviction

and sentence, the convict-petitioner filed Criminal Appeal No.244 of 2022 before the learned Metropolitan Sessions Judge, Dhaka. Thereafter, the said Appeal was transferred to the learned Additional Metropolitan Sessions Judge, 3<sup>rd</sup> Court, Dhaka for disposal. After hearing both the parties the learned Additional Metropolitan Sessions Judge, 3<sup>rd</sup> Court, Dhaka dismissed the aforesaid appeal and thereby affirmed the judgment and order of conviction and sentence dated 30.04.2015 passed by the learned Joint Metropolitan Sessions Judge, 7<sup>th</sup> Court, Dhaka by his judgment and order dated 11.10.2022 rightly. 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 Advocates for both the parties, the papers and documents as available on the record.

It appears from the records that the convict-petitioner took loan of Tk. 2,00,000/- from the complainant and the convict-petitioner against the loan issued a cheque of Tk. 2,00,000/- dated 23.07.2012 in favour of the complainant and the said cheque was presented before the concerned Bank on



23.07.2012 for encashment, which was dishonoured for insufficient of fund. Then the complainant served a legal notice upon the convict-petitioner by registered post with AD on 23.07.2012 asking the petitioner to refund the money within 30 days. As the petitioner did not take any step to refund the money within prescribed period. Thereafter, the complainant filed a complaint-petition before the learned Metropolitan Magistrate, Dhaka against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 on 27.08.2012 following all legal formalities rightly.

Now, let us discuss the evidence of prosecution witness Abul Kalam Azad.

Abul Kalam Azad as P.W.1 in his deposition stated that the convict-petitioner issued a cheque in favour of the complainant on 23.07.2012 and the said cheque was dishonoured for insufficient of fund on 23.07.2012. Thereafter, the complainant served a legal notice upon the convict-petitioner on 23.07.2012 but the petitioner did not pay the loan money. Thereafter, the complainant filed a complaint-petition before the learned Metropolitan Magistrate, Dhaka against the convict-petitioner under section 138 of the Negotiable

Instruments Act, 1881 on 27.08.2012. He identified the impugned cheque as exhibit-1, original dishonored Slip exhibit-2, Legal Notice as exhibit-3, Postal Receipt as Exhibit-4 and complaint-petition as exhibit-5.

In the light of the above discussion and evidence it is clear before me that the convict petitioner given a cheque of Tk. 2,00,000/- to the complainant bank on 23.07.2012 which was dishonored on the same date for insufficient of fund on 23.07.2012 the complainant sent a legal notice upon the accused petitioner but the accused petitioner never paid the said amount to the complainant. Considering the above facts and evidence on record the learned Additional Metropolitan Sessions Judge, 3<sup>rd</sup> Court, Dhaka rightly passed the judgment and order dated 11.10.2022 in Criminal Appeal No.244 of 2022 and is maintainable in the eye of law.

Accordingly, I do not find any cogent and legal ground to interfere with the impugned judgment and order dated 11.10.2022. Therefore, the instant Rule has no merit.

In the result, the Rule is discharged.

The judgment and order dated 11.10.2022 passed by the learned Additional Metropolitan Sessions Judge, 3<sup>rd</sup> Court, Dhaka in Criminal Appeal No.244 of 2022 is hereby upheld and confirmed.

Further, the convict-petitioner is hereby directed to pay the rest amount of loan to the complainant, otherwise 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 her arrest.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.1,00,000/- to the complainant-opposite party No.2 (if he did not take the said amount) in this case.

The order of stay upon the realization of fine by this Court is hereby recalled and vacated.

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