

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No.4557 of 2023

A.F.M. Saiful Islam Manik

.....convict-petitioner

-Versus-

The State and another

..... opposite-parties

Mr. Md. Jahangir Hussain, Advocate

.....For the convict-petitioner

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. Md. Amir Hamja, Advocate

.....For the opposite party No.2

Heard and Judgment on: 27.05.2024

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 impugned judgment and order of conviction and sentence dated 11.10.2023 passed by the learned Sessions Judge, Lalmonirhat in Criminal Appeal No.209 of 2022 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 17.08.2022 passed by the learned Joint Sessions Judge, 2nd Court, Lalmonirhat in Sessions Case No.558of 2021 arising out of C.R. Case No.147 of 2021(Kali) convicting the petitioner under section 138 of the

Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 12(twelve) months and also to pay a fine of Tk.42,00,000/- 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 petitioner for a period of 01(one) year and stayed the realization of fine.

The relevant facts necessary for disposal of the Rule are that the convict-petitioner issued a cheque of Pubali Bank Limited, Tusbander Branch, Lalmonirhat bearing ChequeNo.As-100-B-#029704 amounting to Tk.42,00,000/- in favour of the complainant-opposite party No.2. But it was dishonoured for insufficient of fund on 18.07.2021. Thereafter, the complainant served a legal notice to the petitioner on 25.07.2021, but he did not pay the cheque amount. The complainant-opposite party No.2 finding no other alternative filed a complaint-petitioner under section 138 of the Negotiable Instruments Act, 1881 against the convict-appellant before the learned Senior Judicial Magistrate, Amoli Adalat-5, (Kaligonj Thana), Lalmonirhat as C.R. Case No.147 of 2021(Kaligonj) on 06.09.2021 following all legal formalities and the said learned Senior Judicial Magistrate took cognizance against the petitioner

under section 138 of the Negotiable Instruments Act, 1881 and issued summons.

Thereafter, it was transferred to the learned Sessions Judge, Lalmonirhat for disposal which was renumbered as Sessions Case No.558 of 2021 and further, it was transferred to the learned Joint Sessions Judge, 2nd Court, Lalmonirhat for trial and disposal. After conclusion of the trial and hearing both the parties the learned trial Court on perusal of the evidence on record and document convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 12(twelve) months and also to pay a fine of Tk.42,00,000/- by his judgment and order of conviction and sentence dated 17.08.2022.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 17.08.2022 passed by the learned Joint Sessions Judge, 2nd Court, Lalmonirhat in Sessions Case No.558 of 2021 arising out of C.R. Case No.147 of 2021 (Kaligong) the convict-petitioner preferred the Criminal Appeal No.209 of 2022 before the learned Sessions Judge, Lalmonirhat. The learned Sessions Judge, Lalmonirhat after hearing both the parties dismissed the

said appeal and affirmed the judgment and order of conviction and sentence dated 17.08.2022 passed by the learned Joint Sessions Judge, 2nd Court, Lalmonirhat in Sessions Case No.558 of 2021 arising out of C.R. Case No.147 of 2021 (Kaligong) by his judgment and order of conviction and sentence dated 11.10.2023.

Being aggrieved by and dissatisfied with the judgment and order dated 11.10.2023 passed by the learned Sessions Judge, Lalmonirhat in Criminal Appeal No.209 of 2022, the convict-petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

Mr. Md. Faruk Hossain, the learned Advocate appearing for the complainant-petitioner by filing an application for compromise submits that an amicable settlement has been reached between the parties and the convict-appellant has paid the 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 acquitting the convict-petitioner and making the Rule absolute.

Mr. Md. Amir Hamja, 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 a peaceful compromise has been held between the parties and he has no objection to acquittal the convict-petitioner and absolute the Rule.

I have perused the revisional application, the application for compromise, 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 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 amount, an amicable settlement has been held between the parties and there is no any claim each to other, the judgment and order of conviction and sentence dated

11.10.2023 passed by the learned Sessions Judge, Lalmonirhat in Criminal Appeal Case No.209 of 2022 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 11.10.2023. Therefore, the instant Rule has merit.

In the result, the Rule is made absolute.

The impugned judgment and order of conviction and sentence dated 11.10.2023 passed by the learned Sessions Judge, Lalmonirhat in Criminal Appeal No.209 of 2022 dismissing the said Appeal and affirming the judgment and order of conviction and sentence dated 17.08.2022 passed by the learned Joint Sessions Judge, 2nd Court, Lalmonirhat in Sessions Case No.558 of 2021 arising out of C.R. Case No.147 of 2021 (Kaligonj) is hereby set-aside and the convict-petitioner be acquitted.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.21,00,000/- to the

complainant-opposite party (if he did not withdraw the said amount) in this case.

The order of bail granted at the time of issuance of the Rule is hereby recalled and cancelled and the order of stay of realization of fine is hereby vacated.

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