

Present:

Mr. Justice Md. Ataur Rahman Khan

Criminal Revision No. 1279 of 2023.

Md. Sheikh Momin

...Convict-petitioner.

-Versus-

The State and another

.... Opposite parties.

Mr. Mohammad Abu Sayem, Advocate.

..... For the petitioner.

Mrs. Mahbuba Aktar Roly, Advocate.

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

Mrs. Anjuman Ara Begum, AAG

Mr. Miah Sirajul Islam, AAGs

..... For the State.

**Heard on: 06.11.2023, 13.11.2023,
14.11.2023.**

And

Judgment on: 22.11.2023.

This Rule under Section 439 read with section 435 of the Code Criminal Procedure is directed against the impugned Judgment and order dated 19.11.2022 passed by the Sessions Judge, Narsingdi, in Criminal Appeal No. 42 of 2021 dismissed the criminal Appeal affirming the judgment and order of conviction and sentence dated 05.08.2020 passed by the Joint Sessions Judge, 2nd Court, Narsingdi, in Sessions Case No. 553

of 2019 arising out of C.R. Case No. 14 of 2019 (polash) convicted the convict petitioner under section 138 of the Negotiable Instrument Act, 1881 and sentenced him to suffer simple imprisonment for a period of 01 (one) year and to pay a fine of Tk. 5,00,000/- (five lac).

The complaint case, in brief, is that, the accused took loan of Tk. 5,00,000/- (five lac) from the complainant on condition that the said loan money will take back within 01 (one) month. On 10.10.2018 the accused issued a cheque being No. 1171-4379533, amount of Tk. 5,00,000/- (five lac) under saving account No. 010666555 Agrani Bank Ltd, Polash Branch, Narsingdi for the purpose of loan money. The complainant presented the cheque for encashment but the same was dishonoured due to insufficient fund. On 04.12.2018 the complainant sent a legal notice upon the convict petitioner, but the convict petitioner did not pay the said amount of money to the complainant. The complainant made a petition of complaint before the court of Chief Judicial Magistrate, Narsingdi on 16.01.2010.

The case was transferred to the court of Sessions Judge, Narsingdi, which was registered as Sessions Case No. 553 of 2019. Again the case was transferred to the court of Joint Sessions Judge, 2nd Court, Narsingdi for trial and disposal.

On 23.04.2019 the Joint Sessions Judge, 2nd Court, Narsingdi framed charged against the convict petitioner under section 138 of the Negotiable Instruments Act, 1881 and charge was read over upon the convict petitioner and the convict petitioner pleaded not guilty. The complainant examined 01 (one) witness and the defence examine none to prove the case.

On 05.08.2020 after completion of trial the Joint Sessions Judge, 2nd Court, Narsingdi after hearing convicted the convict petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 01 (one) year and to pay a fine of Tk. 5,00,000/- (five lac).

Being aggrieved by and dissatisfied with the Judgment and order of conviction and sentence dated 05.08.2020 passed by the Joint Sessions Judge, 2nd Court, Narsingdi, in Sessions

Case No. 553 of 2019 arising out of C.R. Case No. 14 of 2019 (polash), the convict petitioner preferred Criminal Appeal No.42 of 2019 in the court of the Sessions Judge, Narsingdi, who after hearing dismissed the criminal appeal affirming the Judgment and order of conviction and sentence dated 05.08.2020 passed by the Joint Sessions Judge, 2nd Court, Narsingdi, in Sessions Case No. 553 of 2019.

Being aggrieved by and dissatisfied with the Judgment and order dated 19.11.2022 passed by the Sessions Judge, Narsingdi, in Criminal Appeal No. 42 of 2021, the convict petitioner filed this Revision before this court and obtained Rule, bail and stay realization of fine.

Mr. Mohammad Abu Sayem, the learned Advocate appearing on behalf of the convict petitioner submits that the Joint Sessions Judge, 2nd Court, Narsingdi after hearing without considering the evidence on record wrongly convicted the convict petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 01 (one) year and to pay a fine of Tk.

5,00,000/- (five lac). He further submits that the Sessions Judge, Narsingdi after hearing without consideration of the evidence on record wrongly dismissed the criminal Appeal affirming the judgment and order of conviction and sentence dated 05.08.2020 passed by the Joint Sessions Judge, 2nd Court, Narsingdi. He further submits that the judgment and order of conviction passed by the trial court and appellate court is bad in law, improper. He further submits that the trial court based his findings on mere surmise and conjecture and the judgment is based on objection analysis of evidence. He further submits that the trial court are contrary to the evidence on record. He further submits that both the courts below convicted the convict petitioner on surmise and conjecture without entering into the real facts of the case and they did not apply their judicial mind. Accordingly, he submits that the present Rule may be absolute for ends of justice.

Mrs. Mahbuba Aktar Roly, the learned Advocate appearing on behalf of the complainant opposite party No. 2 submits that the convict petitioner took loan of Tk. 5,00,000/- (five lac) from the complainant on condition that the said loan

money will take back within 01 (one) month. She further submits that on 10.10.2018 the convict petitioner issued a cheque being No. 1171-4379533, amount of Tk. 5,00,000/- (five lac) under saving account No. 010666555 Agrani Bank Ltd, Polash Branch, Narsingdi for the purpose of loan money. The complainant presented the cheque to the Agrani Bank Ltd, polash branch Narsingdi on 14.01.2018 for encashment but the same was dishonoured due to insufficient fund. She further submits that on 04.12.2018 the complainant sent a legal notice upon the convict petitioner but the convict petitioner did not pay the said amount of money to the complainant. The complainant made a petition of complaint before the learned court of Chief Judicial Magistrate, Narsingdi on 16.01.2010. She further submits that the learned Joint Sessions Judge, 2nd Court Narsingdi after hearing on consideration of the evidence on record rightly convicted and the sentenced the convict petitioner as mentioned above. She further submits that the Sessions Judge, Narsingdi after hearing on consideration of the evidence on record rightly dismissed the criminal Appeal affirming the judgment and

order of conviction and sentence dated 05.08.2020 passed by the Joint Sessions Judge, 2nd Court, Narsingdi. The learned Magistrate took cognizance against the convict petitioner under section 138 of the Negotiable Instruments Act, 1881. She further submits that the trial court rightly framed charged against the convict petitioner under section 138 of the Negotiable Instruments Act, 1881. Accordingly, she submits that the present Rule may be discharged for ends of justice.

Mrs. Anjuman Ara Begum along with Mr. Miah Sirajul Islam, the learned Assistant Attorney Generals appearing on behalf of the opposite party –State adopted the submissions made by the learned Advocate appearing on behalf of the complainant opposite party No. 2 and submit that the Rule may be discharged for ends of justice.

Heard the learned Advocate of both sides, perused the revisional application, impugned Judgment and order dated 19.11.2022 passed by the Sessions Judge, Narsingdi, in Criminal Appeal No. 42 of 2021 dismissed the criminal Appeal upholding the judgment and order of conviction and sentence dated 05.08.2020 passed by the Joint Sessions Judge, 2nd

Court, Narsingdi, in Sessions Case No. 553 of 2019 arising out of C.R. Case No. 14 of 2019 (polash) and other necessary papers which are available in records. It appears from the records that the convict petitioner issued a cheque being No. 1171-4379533, amount of Tk. 5,00,000/- (five lac) under saving account No. 010666555 Agrani Bank Ltd, Polash Branch, Narsingdi for the purpose of loan money. The complainant presented the cheque to the Agrani Bank Ltd, polash branch Narsingdi on 14.01.2018 for encashment but the same was dishonoured due to insufficient fund. On 04.12.2018. The complainant sent a legal notice upon the convict petitioner, but the convict petitioner did not pay the said amount of money to the complainant. The Joint Sessions Judge, 2nd Court, Narsingdi after hearing on consideration of the evidence on record rightly convicted and sentenced the convict petitioner as mentioned above. The Sessions Judge, Narsingdi after hearing on consideration of the evidence on record rightly dismissed the criminal Appeal upholding the judgment and order of conviction and sentence dated

05.08.2020 passed by the Joint Sessions Judge, 2nd Court, Narsingdi, in Sessions Case No. 553 of 2019.

On critical analysis of the aforesaid evidence on record, It transpires that the convict petitioner issued cheque of at Tk. 5,00,000/- in favour of the complainant. The complainant presented the cheque for encashment but the cheque was dishonored due to insufficient fund. The complainant sent a legal notice to pay the cheque money but the convict petitioner did not response to pay the complainant cheque money. The Joint Sessions Judge, 2nd Court, Narsingdi after hearing on consideration of the evidence on record and the real facts of the case rightly convicted the convict appellants under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for period of 01 (one) year and to pay a fine of Tk.5,00,000/-.

So, in all fairness the prosecution has been able to prove the case beyond reasonable doubt. The Joint Sessions Judge, 2nd Court, Narsingdi, after hearing on consideration of the evidence on record rightly convicted and sentenced the

convict petitioner as mentioned above. The Sessions Judge, Narsingdi after hearing on consideration of the evidence on record rightly dismissed the criminal Appeal upholding the judgment and order of conviction and sentence dated 05.08.2020 passed by the Joint Sessions Judge, 2nd Court, Narsingdi, in Sessions Case No. 553 of 2019.

Considering the facts and circumstances of the case, I hold and find that the conviction under section 138 of the Negotiable Instrument Act, 1881 is hereby maintained and the sentence to suffer simple imprisonment for a period of 01 (one) year and to pay a fine of Tk. 5,00,000/- (five lac) is hereby upheld.

In the result, the Rule issued earlier is hereby discharged.

The impugned Judgment and order dated 19.11.2022 passed by the Sessions Judge, Narsingdi, in Criminal Appeal No. 42 of 2021 dismissed the criminal Appeal upholding the judgment and order of conviction and sentence dated 05.08.2020 passed by the Joint Sessions Judge, 2nd Court,

Narsingdi, in Sessions Case No. 553 of 2019 arising out of C.R. Case No. 14 of 2019 (polash) convicted the convict petitioner under section 138 of the Negotiable Instrument Act, 1881 and sentenced him to suffer simple imprisonment for a period of 01 (one) year and to pay a fine of Tk. 5,00,000/- (five lac) are hereby affirmed.

Let the convict petitioner, Md. Sheikh Momin son of Aftab Uddin is directed to pay the rest 50% cheque amount in favour of the complainant-opposite party No. 2 within 02 (two) months from the date of receipts of this Judgment, if the convict petitioner pay the rest 50% cheque amount in favour of the complainant in time then the sentence will be set aside, failing which the convict petitioner shall suffer simple imprisonment for a period of 01 (one) year and the law enforcing agency to take him in custody in accordance with law.

The complainant opposite party No.2 is directed to withdraw the deposited 50% cheque amount from the concerned court as early as possible.

The order of stay realization of fine granted earlier by this court stands vacated.

Send down the L. C. records along with a copy of this Judgment to the Courts concerned immediately for information and necessary action.

A.B.O/ Monir