

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No.362 of 2023

Mosammat Umme Salma

.....convict-petitioner

-Versus-

The State and another

..... opposite-parties

Mr. H.M. Shanjid Siddique, Advocate

.....For the convict-petitioner

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. SK. Eusuf Rahman, Advocate

..For the complainant-opposite party No.2

Heard on 09.11.2023 and

Judgment on: 15.11.2023

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 of conviction and sentence dated 12.01.2023 passed by the learned Sessions Judge, Jhenaidah in Criminal Appeal No.395 of 2022 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 22.08.2022 passed by the learned Joint Sessions Judge, 2nd Court, Jhenaidah, in Sessions Case No.165 of 2019 corresponding to C.R. Case No.642 of 2018

(Jhenaidah) convicting the petitioner under section 420 of the Penal Code and sentencing him to suffer simple imprisonment for a period of 01(one) year and also to pay a fine of Tk.10,00,000/- (ten lac), 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.

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

The prosecution case, in short is that the convict-petitioner offered to sell a property to the complainant and took advance, however, he did not transferred the said land and in order to adjust the liabilities to the complainant, the convict petitioner issued the cheque No. $\frac{\text{গঘ}}{\text{ঙ ০}}$ 1563965 drawn on his current account in favour of the complainant. The complainant deposited the said cheque in the Sonali Bank Limited, Jhenaidah Branch, Jhenaidah and the said cheque was dishonoured and returned unpaid on 28.05.2018 from the bank for insufficient fund in the drawer's account through online clearing presentment. Thereafter, the complainant sent a legal

notice through lawyer to the convict-petitioner on 12.06.2018 and demanded payment of the cheque money within 30 days from the date of receiving the legal notice, but did not repay the cheque amount. Thereafter, the complainant filed the petition of complainant on 26.07.2018 under section 138 of Negotiable Instruments Act, 1881 and hence the case.

The learned Senior Judicial Magistrate, Amoli Adalat, Jhenaidah 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.642 of 2018 and issued summons against him. The convict-petitioner surrendered before the concerned Senior Judicial Magistrate, Jhenaidah on 04.11.2018 with a prayer for bail and he was enlarged on bail. Thereafter, this case was sent to the learned Sessions Judge, Jhenaidah for trial, where the case was registered as Sessions Case No.165 of 2019. The learned Sessions Judge, Jhenaidah after taking cognizance on 15.04.2019 transferred the case to the learned Joint Sessions Judge, 2nd Court, Jhenaidah for trial and disposal. Later on 24.09.2019 charge was framed against the convict-petitioner under section 138 of the Negotiable

Instruments Act, 1881. The charge so framed was read over and explained to the convict-petitioner to which he pleaded not guilty and claims to be tried. The prosecution side adduced as many as 01(one) witness P.W.1. Thereafter, the convict-petitioner adduced as many as four witnesses. After closing the prosecution witnesses by the learned trial Court, the petitioner was examined under section 342 of the Code of Criminal Procedure and he claimed himself innocent.

The learned Judge of the trial Court 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 01(one) year and also to pay a fine of Tk.10,00,000/- (ten lac) by his judgment and order of conviction and sentence dated 22.08.2022.

Being aggrieved by and dissatisfied with the judgment and order dated 22.08.2022 the convict-appellant filed Criminal Appeal No.395 of 2022 before the learned Sessions Judge, Jhenaidah. After hearing the learned Sessions Judge, Jhenaidah dismissed the Appeal and affirmed the judgment and order of

conviction and sentence dated 22.08.2022 by his judgment and order dated 12.01.2023.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 12.01.2023 passed by the learned Sessions Judge, Jhenaidah in Criminal Appeal No.395 of 2022, the convict-petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

Mr. H.M. Shanjid Siddique, the learned Advocate appearing on behalf of the petitioner submits that the convict-petitioner deposited Tk.5,00,000/- at the time of filing the appeal being Criminal Appeal No.395 of 2022 before the learned Joint Sessions Judge, 2nd Court, Jhenaidah. Thereafter, during pendency of this Criminal Revision No.362 of 2023 the convict-petitioner has paid Tk.5,00,000/- to the complainant-opposite party No.2 on 14.11.2023. The complainant-opposite party No.2 has already received the entire cheque amount of Tk.10,00,000/- from the convict-petitioner by amicable settlement out of Court and convict- accused be acquitted. The convict opposite party prays for make Rule absolute. Therefore, the complainant-opposite party No.2 also has no

objection if the present Criminal Revision is disposed of and conviction against the convict-petitioner set-aside.

Mr. S.K Eusuf Rahman, the learned Advocate appearing on behalf of the opposite party No.2 submits in support of submitted affidavit on behalf of the complainant- Respondent – Opposite party No. 2 and agreed with the submission of the learned Advocate for the convict-accused petitioner.

I have perused the revisional application, the impugned judgment and order of conviction and sentence of the Court's below, the submissions of the learned Advocates for the parties, the papers and documents as available on the record.

Moreover, the main object of the case under section 138 of the Negotiable Instruments Act, 1881 is to recover money.

In the light of the above discussion, it is clear before me that since the convict-petitioner paid the cheque amount, the judgment and order dated 12.01.2023 passed by the learned Sessions Judge, Jhenaidah in Criminal Appeal No.395 of 2022 is not maintainable against the 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 dated 12.01.2023. Therefore, the instant Rule has merit.

In the result, the Rule is made absolute.

The impugned judgment and order dated 12.01.2023 passed by the learned Sessions Judge, Jhenaidah in Criminal Appeal No.395 of 2022 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. 500,000(five lac) to the complainant –opposite party No. 2 (if he did not take the said amount) in this case.

The order of bail granted earlier by this Court is hereby cancelled and recalled.

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

Md. Anamul Hoque Parvej
Bench Officer