

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

**Present:**

Mr. Justice Md. Kamrul Hossain Mollah

**Criminal Revision No.4254 of 2022**

Abdul Kalam

.... convict-petitioner

-Versus-

The State and another

.... opposite-parties

No one appears

.... For the convict-petitioner

Mrs. Umme Masumun Nesa, A.A.G

.... For the State

Mr. Md. Shofiul Aziz, Advocate

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

**Heard on 22.08.2023 and**

**Judgment on: 27.08.2023**

**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 27.03.2022 passed by the learned Additional Sessions Judge, 1<sup>st</sup> Court, Sylhet in Criminal Appeal No.273 of 2020 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 27.01.2020 passed by the learned Joint Sessions Judge, 1<sup>st</sup> Court, Sylhet in Sessions Case No.737 of 2019 arising out of complaint Register Case No.409 of 2018 convicting the petitioner under section

138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 06(six) months and also to pay a fine of Tk.90,000/- 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 convict-petitioner for a period of 01(one) year and 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 namely Abdul Kalam took loan (R.D.S) from complaint Bank which was allowed loan through sanction letter by the complainant Bank. During loan the convict-petitioner enjoying said loan, but did not pay installments infavour of the complainant's Bank. Thereafter, the complainant Bank on 16.09.2018 placed the said cheque of Islami Bank Bangladesh Limited, Biwanath Branch, current account No.RDS-521 bearing its No.MSR No.4215626 which was issued by the convict petitioner in favour of the complainant Bank he took the loan and the same was refused due to insufficient of fund. On 20.09.2018 the complainant Bank sent a legal notice upon the accused, but the

convict petitioner never repaid the said amount to the complainant. For this reason, the complainant filed a complaint-petition before the learned Senior Judicial Magistrate, Cognizance Court No.3, Sylhet against the convict-petitioner under section 138 of the Code of Criminal Procedure.

The learned Court 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.409 of 2018 and issued a summon against the petitioner.

The petitioner after receiving the summons from the Court surrendered before the Court and enlarged on bail. Thereafter, the case was transferred before the learned Joint Sessions Judge, 1<sup>st</sup> Court, Sylhet for trial and disposal and the same was registered as Sessions Case No.737 of 2019.

The learned trial Court framed charge on 23.07.2019 against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 and which was read over to him who pleaded not guilty and claimed to be tried.

The prosecution examined only one witness, but the defense examined none.

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

After completion of evidence the learned trial Court on perusal of the evidence on record and document found guilty the petitioner and convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 06(six) months and also to pay a fine of Tk.90,000/- by his judgment and order of conviction and sentence dated 27.01.2020. Against the said judgment, the convict-petitioner filed Criminal Appeal No.273 of 2020 before the learned Sessions Judge, Sylhet. Thereafter, the said appeal was transferred to the Additional Sessions Judge, 1<sup>st</sup> Court, Sylhet for disposal. After hearing the said Appeal the learned Additional Sessions Judge, 1<sup>st</sup> Court, Sylhet dismissed the aforesaid appeal and thereby affirmed the judgment and order of conviction and sentence dated 27.01.2020 passed by the learned Joint Sessions Judge, 1<sup>st</sup> Court, Sylhet by judgment and order dated 27.03.2022.

Being aggrieved by and dissatisfied with the judgment and order dated 27.03.2022 passed by the learned Additional Sessions Judge, 1<sup>st</sup> Court, Sylhet in Criminal Appeal No.273 of 2020, the convict-petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

No one appears for the convict-petitioner to press the instant Rule.

On the other hand, Mr. Md. Shofiul Aziz, the learned Advocate appearing on behalf of the respondent No.2 submits that the convict-petitioner namely Abdul Kalam took loan (R.D.S) from complaint Bank which was allowed loan through sanction letter by the complainant Bank. During loan the convict-petitioner enjoying said loan, but did not pay installments infavour of the complainant's Bank. Thereafter, the complainant Bank on 16.09.2018 placed the cheque to Islami Bank Bangladesh Limited, Biwanath Branch, Sylhet current account No.RDS-521 bearing its No.MSR No.4215626 which was issued by the convict petitioner in favour of complaint Bank against he took the loan and the same was refused due to insufficient fund. On 20.09.2018 the complainant Bank sent a legal notice upon the accused, but the petitioner never repaid the said amount to the complainant. For

this reason, the complainant filed a complaint-petition before the learned Senior Judicial Magistrate, Cognizance Court No.3, Sylhet against the convict-petitioner under section 138 of the Code of Criminal Procedure as C.R. Case No.409 of 2018. Thereafter, the case was transferred before the learned Joint Sessions Judge, 1<sup>st</sup> Court, Sylhet for trial and disposal and the same was registered as Sessions Case No.737 of 2019. After completion of evidence the learned trial Court found on perusal of the evidence on record and document found guilty the petitioner and convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 06(six) months and also to pay a fine of Tk.90,000/- by his judgment and order of conviction and sentence dated 27.01.2020. Against the said judgment, the convict-petitioner filed Criminal Appeal No.273 of 2020 before the learned Sessions Judge, Sylhet. Thereafter, the said appeal was transferred to the Additional Sessions Judge, 1<sup>st</sup> Court, Sylhet for disposal. After hearing the said Appeal the learned Additional Sessions Judge, 1<sup>st</sup> Court, Sylhet dismissed the aforesaid appeal and thereby affirmed the judgment and order of conviction and sentence dated 27.01.2029 passed by the learned Joint Sessions Judge, 1<sup>st</sup> Court, Sylhet by

judgment and order dated 27.03.2022 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 Advocate for the opposite party No.2, the papers and documents as available on the record.

It appears from the records that the convict-petitioner namely Abdul Kalam took loan (R.D.S) from complaint Bank which was allowed loan through sanction letter by the complainant Bank. During loan the convict-petitioner enjoying said loan, but did not pay installments infavour of the complainant's Bank. Thereafter, the complainant Bank on 16.09.2018 placed the said cheque Islami Bank Bangladesh Limited, Biwanath Branch, Sylhet current account No.RDS-521 bearing its No.MSR No.4215626 and the same was refused due to insufficient fund. On 20.09.2018 the complainant Bank sent a legal notice upon the accused, but the petitioner never repaid the said amount to the complainant.

Now, let us discuss the evidence of prosecution witness Md. Golam Mostafa.

Md. Golam Mostafa as P.W.1 deposed in favour of Complainant Bank and stated that the convict-petitioner namely Abdul Kalam took loan (R.D.S) from complaint Bank which was allowed loan through sanction letter by the complainant Bank. During loan the convict-petitioner enjoying said loan, but did not pay installments infavour of the complainant's Bank. Thereafter, the accused issued a cheque in favour of the Complainant Bank against he took the loan and the complainant Bank on 16.09.2018 placed the cheque of Islami Bank Bangladesh Limited, Biwanath Branch, Sylhet current account No.RDS-521 bearing its No.MSR No.4215626 which was issued by the convict petitioner infavour of Complainant Bank against the took the loan and the same was refused due to insufficient fund. On 20.09.2018 the complainant Bank sent a legal notice upon the accused, but the petitioner never repaid the said amount to the complainant. For this reason, he filed the Case. He identified the letter of authority as exhibit-1, complaint-petition as exhibit-2, impugned cheque as exhibit-3, dishonoured slip as exhibit-4, legal notice as exhibit-5, Postal Receipt- as exhibit-6. In his cross-examination he state that the petitioner took loan Tk.90,000, but he paid Tk.4000/-.



In the light of the above discussion and evidence on record, it is clear before me that the convict-petitioner gave a cheque of Tk.90,000/- to the complainant on 16.09.2018 and the complainant placed the said cheque to the bank account of the petitioner, but the said cheque was dishonoured for insufficient of fund on 16.09.2018. On 20.09.2018 the Complainant Bank sent a legal notice upon the accused but the accused never repaid the said amount to the Complainant Bank. Considering the above facts and evidence on record, the learned Additional Sessions Judge, 1<sup>st</sup> Court, Sylhet rightly passed the judgment and order dated 27.03.2022 in Criminal Appeal No.273 of 2020 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 27.03.2022. Therefore, the instant Rule has no merit.

In the result, the Rule is discharged.

The judgment and order dated 27.03.2022 passed by the learned the learned Additional Sessions Judge, 1<sup>st</sup> Court, Sylhet in Criminal Appeal No.273 of 2022 is hereby upheld and confirmed.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk. 45,000/- to the Complainant –Opposite party No.2 (if he did not take the said amount) in this case.

Further, the convict-petitioner is hereby 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 arrest him.

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

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

*Md. Anamu Hoque Parvej*  
*Bench Officer*