

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No.3422 of 2022

Saleh Ahmed

.....convict-petitioner

-Versus-

The State and another

..... opposite-parties

No one appears

.... For the convict-petitioner

Mrs. Aleya Khandker, A.A.G and

Mrs. Umme Masumun Nesa, A.A.G

.... For the State

Mr. Md. Shofiul Aziz, Advocate

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

Heard and Judgment on: 23.08.2023

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 of conviction and sentence dated 22.03.2022 passed by the learned Additional Sessions Judge, 3rd Court, Sylhet in Criminal Appeal No.578 of 2019 dismissing the appeal and thereby upholding the judgment and order of conviction and sentence dated 13.02.2019 passed by the learned Joint Sessions Judge, 2nd Court, Sylhet in Sessions Case No.138 of 2019 arising

out of C.R. Case No.228 of 2016 (Golapganj) convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 01(one) year and also to pay a fine of Tk.1,71,771/- 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 06(six) months and stayed the fine.

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

The prosecution case, in short is that one Md. Foyjur Rahman, son of Haji Dudu Mia, SBIS Officer, IBBL, Golapganj Branch, Sylheton behalf of the Islami Bank Bangladesh Limited, Golapganj Branch being complainant filed a petition of complaint before the learned Senior Judicial Magistrate, 1st Court, Sylhet against the convict petitioner under section 138 of the Negotiable Instruments Act, 1881 stating that the petitioner received investment benefit of Tk.1,50,000/- (one lac fifty thousand) from the complainant opposite party No.2 and in order to pay the said

money the convict-petitioner on 08.08.2016 issued a cheque being No.7264504 amount of Tk.1,71,771/-. Thereafter, the complainant deposited the said cheque before the said Branch for encashment, but that cheque was dishonoured for insufficient of fund. Thereafter, the complainant on 23.08.2016 sent a legal notice to the convict-petitioner requesting him to refund him within 30 days, but he did not take any step to repay the cheque amount and for this reason the complainant filed a complaint-petition before the Senior Judicial Magistrate, 1st Court, Sylhet.

The learned Court after examining the complainant opposite party No.2 under section 200 of the Code of Criminal Procedure recorded the case as C.R. Case No.228 of 2016 under section 138 of the Negotiable Instruments Act, 1881 and issued a summon against the petitioner.

The petitioner after receiving the summon from the Court surrendered before the Court and enlarged on bail. Thereafter, the case was transferred before the learned Sessions Judge, Sylhet and the same was registered as Sessions Case No.138 of 2019 and subsequently, the case

was transferred before the learned Joint Sessions Judge, 2nd Court, Sylhet for trial.

The learned trial Court framed charge on 31.01.2019 against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 even the convict-petitioner denied the same and prayed for justice.

At the time of trial the prosecution produced as many as 01(one) witness before the learned trial Court to prove the case but the defence examined none. It was not possible to examine the convict-petitioner under section 342 of the Code of Criminal Procedure for his absconding.

After completion of evidence the learned trial Court found guilty of the petitioner and the learned Court on perusal of the evidence on record and document convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 01(one) year and to pay a fine of Tk.1,71,771/- by his judgment and order of conviction and sentence dated 13.02.2019. Against the said judgment, the convict-petitioner filed Criminal Appeal No.578 of 2019

before the learned Additional Sessions Judge, 3rd Court, Sylhet. After hearing the said Appeal the learned Additional Sessions Judge, 3rd Court, Sylhet by judgment and order dated 22.03.2022 disallowed the aforesaid appeal and thereby affirmed the judgment and order of conviction and sentence dated 13.02.2019 passed by the learned trial Court.

Being aggrieved by and dissatisfied with the judgment and order dated 22.03.2022 passed by the learned Additional Sessions Judge, 3rd Court, Sylhet in Criminal Appeal No.578 of 2019, 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 petitioner received investment benefit of Tk.1,50,000/- (one lac fifty thousand) from the complainant opposite party No.2 and in order to pay the said money the convict-petitioner on 08.08.2016 issued a cheque being No.7264504 amount of Tk.1,71,771/-. Thereafter, on the

same date i.e on 8.8.2016 and lastly on 16.08.2016 the complainant deposited the said cheque before the said Branch for encashment, but that cheque was dishonoured for insufficient of fund. Thereafter, the complainant on 23.08.2016 sent a legal notice to the convict-petitioner requesting him to refund him within 30 days, but he did not take any step to repay the cheque amount. For this reason, the complainant/Bank filed the C.R. Case No.228 of 2016 before the learned Senior Judicial Magistrate, 1st Court, Sylhet against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881. The said case was transferred to the Joint Sessions Judge, 2nd Court, Sylhet as Sessions Case No.138 of 2019 for disposal. After completion of evidence the learned trial Court found guilty the 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.1,71,771/- on 13.02.2019. Against the said judgment, the petitioner filed Criminal Appeal No.578 of 2019 before the learned Additional Sessions Judge, 3rd Court, Sylhet. The learned Additional Sessions Judge, 3rd Court, Sylhet by judgment and

order dated 22.03.2022 disallowed the aforesaid appeal and thereby affirmed the judgment and order of conviction and sentence dated 13.02.2019 passed by the learned trial Court, which is maintainable in the eye of law. Therefore, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and order of the Court's 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 took investment benefit of Tk.1,50,000/- from the complainant-bank, but the petitioner did not repay the said money. For this reason, the complainant/Bank filed the C.R. Case No.228 of 2016 before the learned Senior Judicial Magistrate, 1st Court, Sylhet against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881. The said case was transferred to the Joint Sessions Judge, 2nd Court, Sylhet as Sessions Case No.138 of 2019 for disposal. After completion of evidence the learned trial Court found guilty the 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.1,71,771/- on 13.02.2019. Against the said judgment, the petitioner filed Criminal Appeal No.578 of 2019 before the learned Additional Sessions Judge, 3rd Court, Sylhet. The learned Additional Sessions Judge, 3rd Court, Sylhet by judgment and order dated 22.03.2022 disallowed the aforesaid appeal and thereby affirmed the judgment and order of conviction and sentence dated 13.02.2019 passed by the learned trial Court.

Now, let us discuss the evidence of prosecution witness Khasruzzaman.

Khasruzzaman as P.W.1 in his deposition stated that he is empowered to testify on behalf of the institution as per Exhibit-1. The accused Saleh Ahmad issued a check of Tk.1,71,771 dated 08.08.2016 for payment of dues. When the cheque was submitted to the concerned bank for encashment, it was dishonored due to insufficient funds on 08.08.2016 and lastly on 16.08.2016. The legal notice was issued to the accused on 23.08.2016. The case was filed on 20/10/2016 as the accused did not pay the due amount. He identified the petition as Exhibit-2 and his colleague's signature thereon as

Exhibit-2(a), Check as Exhibit-3, dishonored Slip as Exhibit-4, copy of Legal Notice as Exhibit-5, Postal Receipt-1 as Exhibit-6.

Further, it appears from the deposition of the P.W.1 that the complainant filed the said case against the convict-petitioner after following all legal formalities.

In the light of the above discussion, it is clear before me that the judgment and order dated 22.03.2022 passed by the learned Additional Sessions Judge, 3rd Court, Sylhet in Criminal Appeal No.578 of 2019 rightly and is maintainable in the eye of law and there is no scope to interference.

Accordingly, I do not find any cogent and legal ground to interfere with the impugned judgment and order dated 22.03.2022. Therefore, the instant Rule has no merit.

In the result, the Rule is discharged.

The judgment and order dated 22.03.2022 passed by the learned the learned Additional Sessions Judge, 3rd Court, Sylhet in Criminal Appeal No.578 of 2019 is hereby upheld

and confirmed. The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk. 1,71,771/- of fine of amount to the respondent opposite party No. 2 (if he did not take the said amount)

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

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 him arrest.

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

Md. Anamu Hoque Parvej, Bench Officer