

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

**Present:**

Mr. Justice Md. Kamrul Hosssain Mollah

**Criminal Revision No.4245 of 2022**

A. Mannan Prodhan

.....convict-petitioner

-Versus-

The State and another

..... opposite-parties

No one appears

.....For the convict-petitioner

Mrs. Umme Masumun Nesa, A.A.G with

Mr. Ashiqul Haque, A.A.G

.....For the State

Mr. Rashedul Haque, Advocate

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

**Heard on 22.11.2023 and**

**Judgment on: 23.11.2023**

**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 dated 27.09.2022 passed by the learned Sessions Judge, Narayanganj in Criminal Appeal No.241 of 2022 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 28.06.2022 passed by the learned Joint Sessions Judge, 1<sup>st</sup> Court, Narayanganj in Sessions Case No.418 of 2020

arising out of C.R. Case No.707 of 2019 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.5,00,000/- (five 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 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 has given a cheque of Tk.5,00,000/- (five lac) being Cheque No.AIB/CD A7565403 dated 26.10.2018, Account No.0381020014521, Al Arafa Islami Bank Limited, Narayanganj Branch, Narayanganj to the complainant for loan. On 24.04.2019 the complainant deposited the said cheque to the concerned Al-Arafah Islamic Bank Limited, Narayanganj Branch, Narayanganj for encashment, but the same was dishonoured due to insufficient of fund. On 09.05.2019 the complainant issued a notice under section 138 of the Negotiable

Instruments Act, 1881 to the convict-petitioner through his lawyer for payment of Tk.5,00,000/- within 30 days, but the convict-petitioner failed to make payment of the said amount to the complainant. Thereafter, the complainant filed the petition of complaint on 18.06.2019 under section 138 of Negotiable Instruments Act, 1881 before the learned Senior Judicial Magistrate, Narayanganj against the convict-petitioner and hence the case.

The learned Senior Judicial Magistrate, Narayanganj 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.234 of 2017 and issued summons against him. The convict-petitioner surrendered before the concerned Senior Judicial Magistrate, Narayanganj on 30.10.2019 with a prayer for bail and obtained bail. Thereafter, this case was sent to the learned Sessions Judge Court, Narayanganj for trial, where the case was registered as Sessions Case No.418 of 2020. The learned Sessions Judge, Narayanganj after taking cognizance on 11.02.2020 transferred the case to the learned Joint Sessions Judge, 1<sup>st</sup> Court, Narayanganj for trial and

disposal. Later on 06.12.2020 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 desired to face trial. The prosecution examined 01(one) witness as P.W.1. After examination of the witness the convict-petitioner was not examined under section 342 of the Code of Criminal Procedure for his absconding.

The learned Joint Sessions Judge, 1<sup>st</sup> Court, Narayanganj 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 06(six) months and also to pay a fine of Tk.5,00,000/- (five lac) by his judgment and order of conviction and sentence dated 28.06.2022.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 28.06.2022 passed by the learned Joint Sessions Judge, 1<sup>st</sup> Court, Narayanganj in Sessions Case No.418 of 2020 arising out of C.R. Case No.707 of 2019 the convict-petitioner filed Criminal Appeal No.241 of

2022 before the learned Sessions Judge, Narayanganj. After hearing the parties the learned Sessions Judge, Narayanganj dismissed the Appeal and affirmed the judgment and order of conviction and sentence dated 28.06.2022 by his judgment and order of conviction and sentence dated 27.09.2022.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 27.09.2022 passed by the learned Sessions Judge, Narayanganj in Criminal Appeal No.241 of 2022, 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, though it appears in the daily cause list several times for hearing.

On the other hand, Mr. Rashedul Haque, the learned Advocate appearing on behalf of the opposite party No.2 submits that the convict-petitioner has given a cheque of Tk.5,00,000/- (five lac) being Cheque No.AIB/CD A7565403 dated 26.10.2018, Account No.0381020014521, Al Arafa Islami Bank Limited, Narayanganj Branch, Narayanganj to the complainant for loan. On 24.04.2019 the complainant deposited

the said cheque to the concerned Al-Arafah Islamic Bank Limited, Narayanganj Branch, Narayanganj for encashment, but the same was dishonoured due to insufficient of fund. On 09.05.2019 the complainant issued a notice under section 138 of the Negotiable Instruments Act, 1881 to the convict-petitioner through his lawyer for payment of Tk.5,00,000/- within 30 days, but the convict-petitioner failed to make payment of the said amount to the complainant. Thereafter, the complainant filed the petition of complaint on 18.06.2019 under section 138 of Negotiable Instruments Act, 1881 before the learned Senior Judicial Magistrate, Narayanganj against the convict-petitioner. Thereafter, this case was sent to the learned Sessions Judge Court, Narayanganj for trial, where the case was registered as Sessions Case No.418 of 2020. The learned Sessions Judge, Narayanganj after taking cognizance on 11.02.2020 transferred the case to the learned Joint Sessions Judge, 1<sup>st</sup> Court, Narayanganj for trial and disposal. The learned Joint Sessions Judge, 1<sup>st</sup> Court, Narayanganj 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 06(six) months and also to pay a fine of Tk.5,00,000/- (five lac) by his judgment and order of conviction and sentence dated 28.06.2022. Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 28.06.2022 passed by the learned Joint Sessions Judge, 1<sup>st</sup> Court, Narayanganj in Sessions Case No.418 of 2020 arising out of C.R. Case No.707 of 2019 the convict-petitioner filed Criminal Appeal No.241 of 2022 before the learned Sessions Judge, Narayanganj. After hearing the parties the learned Sessions Judge, Narayanganj dismissed the Appeal and affirmed the judgment and order of conviction and sentence dated 28.06.2022 by his judgment and order of conviction and sentence dated 27.09.2022 rightly. Therefore, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and order of conviction and sentence 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.

On careful assessment of the oral evidence given by P.W.1 and scrutinizing exhibited documents, it appears that the

petitioner had issued the disputed cheque with an amount of Tk.5,00,000/- to the complainant on 26.10.2018 (Ex.2) which was presented by the complainant before the bank on 24.04.2019 for encashment, but it was dishonoured (Exz2/1) due to insufficient of fund. For this reason, the complainant served a legal notice dated 09.05.2019 {Ex.2(2),2(3)} following the provision mentioned in section 138 (1a)(b) of the Negotiable Instruments Act, 1881 within the stipulated time. The said service is due service as per the provision of section 138 (1a)(b) of the Negotiable Instruments Act, 1881. Thus, the evidence shows that then the petitioner did not pay the cheque amount within time. Moreover, Ex.1 along with the record of the concerned cognizance Court shows that the complainant has filed the case on 18.06.2019. So, the case is within the stipulated time. According to above discussion it appears that the defense plea, being not proved, is not credible.

Moreover, the petitioner side exhibited no legally acceptable documentary evidence to prove his plea. Additionally, the petitioner side did not specifically deny the drawers signature in the disputed cheque. Furthermore, by cross-examining PW's the petitioner side could not be able to



raise anything in defense's favour impeaching the credibility of PW's evidence for his absconding. Thus, it is apparent that the petitioner has failed to prove any contradiction.

Therefore, considering the facts and circumstances and the evidence on record, this Court is of the view that the prosecution has been able to prove the case beyond all reasonable doubts.

In the light of the above discussion, it is clear before me that the judgment and order of conviction and sentence dated 27.09.2022 passed by the learned Sessions Judge, Narayanganj in Criminal Appeal No.241 of 2022 rightly and is maintainable in the eye of law and there is no any scope to interference there.

Accordingly, I do not find any cogent and legal ground to interfere with the impugned judgment and order of conviction and sentence dated 27.09.2022. Therefore, the instant Rule has no merit.

In the result, the Rule is discharged.

The judgment and order of conviction and sentence dated 27.09.2022 passed by the learned Sessions Judge,

Narayanganj in Criminal Appeal No.241 of 2022 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 28.06.2022 passed by the learned Joint Sessions Judge, 1<sup>st</sup> Court, Narayanganj in Sessions Case No.418 of 2020 arising out of C.R. Case No.707 of 2019 is hereby upheld and confirmed.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.2,50,000/-, which has been deposited by the convict-petitioner through Chalan at the time of filing appeal to the complainant-opposite party No.2 (if he did not take the said amount).

The convict-petitioner is hereby directed to surrender before the concerned lower Court within in 30(thirty) days from the date of receipt of this judgment and order, failing which the concerned lower Court is hereby directed to take necessary steps to secure arrest him.

The order of bail and stay realization of fine granted earlier by this Court is hereby cancelled and vacated.

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

*Md. Anamul Hoque Parvej*  
*Bench Officer*

