

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No. 570 of 2023

Md. Rejaul Islam

.....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. Mohammad Musa, Advocate

... For the complainant-respondent No.2

Heard on 21.08.2023 and

Judgment on: 22.08.2023

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 09.06.2022 passed by the learned Sessions Judge, Natore in Criminal Appeal No.307 of 2019 dismissing the appeal and upholding the judgment and order dated 29.05.2019 passed by the learned Joint Sessions Judge, 2nd Court, Natore in Sessions Case No.42 of 2017

arising out of C.R. Case No.4054 of 2016 (Nat) convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 sentencing him to suffer simple imprisonment for a period of 06(six) months with a fine of Tk.5,28,182/- from which Tk.5,000/- will be given to the government treasury 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.

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

The prosecution case, in short is that the convict-petitioner took a loan from the Islami Bank Bangladesh Limited, Natore Branch, Kanaikhali, Natore (complainant). The petitioner for repay the loan of the complainant gave a bank cheque of Islami Bank Bangladesh Limited, Natore Branch, Natore of Tk.5,23,182/- dated 19.05.2016 being cheque No.IBH 6868319 and deposited the said cheque in the said Bank on 19.05.2016, but due to insufficient fund said cheque was dishonoured and gave a dishonoured certificate. The complainant sent legal notice through lawyer,

but the petitioner did not repay the due money and hence the case.

The learned Judicial Magistrate took cognizance against the petitioner under section 138 of the Negotiation Instruments Act, 1881 and issued the summon against the petitioner and the petitioner after receiving the summons from the Court surrendered before the Court and enlarged on bail. Thereafter, the case was ready for trial and transfer to the learned Sessions Judge and the case was transferred to the Joint Sessions Judge, 2nd Court, Natore for trial and disposal and the same was registered as Sessions Case No. 42 of 2017.

The learned trial Court framed charge on 02.08.2017 against the convict petitioner under section 138 of the Negotiable Instruments Act, 18881 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 of the petitioner and convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer imprisonment for 06(six) months and to pay a fine of Tk.5,28,182/- on 29.05.2019 from which Tk.5,000/- will be given to the government treasury against the said judgment, the petitioner filed Criminal Appeal No.307 of 2019 before the learned Sessions Judge, Natore. The learned Sessions Judge, Natore allowed in part in Criminal Appeal No.307 of 2019 by his judgment and order dated 09.06.2022. In his judgment dated 07.06.2022 he mentioned that-“সেশন-৪৩/২০১৭ নং মামলায় যুগ্ম দায়রা জজ-২য় আদালত, নাটোর কর্তৃক প্রদত্ত গত ২৯/০৫/২০১৯ ইং তারিখের রায় ও দন্ডাদেশ সংশোধনক্রমে আপীলকারী-আসামীর বিরুদ্ধে শুধুমাত্র অর্থদন্ডের আদেশ বহাল রাখা হল।”

Being aggrieved by and dissatisfied with the impugned judgment and order dated 07.06.2022 passed by the learned Sessions Judge, Natore in Criminal Appeal No.307 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. Mohammad Musa, the learned Advocate appearing on behalf of the respondent No.2 submits that the convict-petitioner took a loan from the Islami Bank Bangladesh Limited, Natore Branch, Kanaikhali, Natore (complainant). The petitioner for repay the loan of the complainant gave a bank cheque of Islami Bank Bangladesh Limited, Natore Branch, Natore of Tk.5,23,182/- dated 19.05.2016 being cheque No.IBH 6868319 and deposited the said cheque in the said Bank on 19.05.2016, but due to insufficient fund said cheque was dishonoured and gave a dishonoured certificate. The complainant sent legal notice through lawyer, but the petitioner did not repay the due money. For this reason, the complainant/Bank filed the C.R. Case No.405 of 2016(Nat) before the learned Senior Judicial Magistrate, Natore against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881. The said case was transferred to the

Joint Sessions Judge, Court No.2, Natore as Sessions Case No.42 of 2017 for disposal. 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 imprisonment for 06(six) months and to pay a fine of Tk.5,28,182/- on 29.05.2019, from which Tk.5,000/- will be given to the government treasury. Against the said judgment, the petitioner filed Criminal Appeal No.307 of 2019 before the learned Sessions Judge, Natore. The learned Sessions Judge, Natore allowed in part in Criminal Appeal No.307 of 2019 by his judgment and order dated 07.06.2022. 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.1, the papers and documents as available on the record.

It appears from the records that the convict-petitioner took loan from the complainant-bank, but the petitioner did not repay the due money. For this reason, the

complainant/Bank filed the C.R. Case No.405 of 2016(Nat) before the learned Senior Judicial Magistrate, Natore against the petitioner under section 138 of the Negotiable Instruments Act, 1881. The said case was transferred to the Joint Sessions Judge, Court No.2, Natore as Sessions Case No.43 of 2017 for disposal. 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 imprisonment for 06(six) months and to pay a fine of Tk.5,28,182/- on 29.05.2019, from which Tk.5,000/- will be given to the government treasury. Against the said judgment, the petitioner filed Criminal Appeal No.307 of 2019 before the learned Sessions Judge, Natore. The learned Sessions Judge, Natore allowed in part in Criminal Appeal No.307 of 2019 by his judgment and order dated 07.06.2022.

Now, let us discuss the evidence of prosecution witness Md. Tozammal Hoque.

Md. Tozammal Hoque as P.W.1 in his deposition stated that accused Md. Rezaul Islam gave cheque of

Tk.5,23,182/- on 19.05.2016, which was dishonoured on the same date. On 29.05.2016 served a legal notice before the accused-petitioner and he received the said legal notice on 30.05.2016. This witness identified the said cheque as exhibit-1, dishonoured certificate as exhibit-2 legal notice as exhibit-3, acknowledgment of receipt as exhibit-4.

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.

Moreover, the main object of the case under section 138 of the Negotiable Instruments Act, 1881 is to recover money. Therefore, it is not legal and fair to impose fine and punishment simultaneously on account of failure to pay check amount. In this regard, I will discuss the decision of our High Division in the case of Criminal Appeal No.7126 of 2016, Md. Azizul Sheikh @ Azizul Hoque Vs. the State and others, judgment dated 16.08.2021, where it has been held that:- “However, in consideration of the object sought to be achieved by the above such particular legislation and also considering the facts and circumstances of the case in hand and the object of the law, this Court is of the view that the

main intention of the legislature is to recover the cheque's money and to pay the same to the holder of the cheque, in due course: but no to impose punishment. So, the further sentence of imprisonment would be a harsh having therein no penal object to be achieved. Therefore, as per empowerment conferred by Sub-section (1)(b)(2) of section 423 of the Code of Criminal Procedure (Shortly Cr.P.C), this Court is of the opinion that for securing ends of justice and fairness, the sentence of imprisonment as imposed herein is to be reduced to the period as already undergone, and the fine is to be maintained up to the face value of the dishonoured cheque only. From which the appellant has already deposited 50% thereof as statutory deposit in the trial Court below before filing of the appeal and the rest 50% of the said money (even though a little amount of Tk.55,675/-) is now remaining due which the appellant is bound to pay the same to the complainant: failing which he has to face the consequence as to suffer further 01(one) month simple imprisonment as passed by the trial Court below, in default of payment of the rest fine amount."

Therefore, as per the decision of the High Court Division, the learned lower appellate Court's decision to pay the fine only to the convict-petitioner is maintainable in the eye of law.

In the light of the above discussion, it is clear before me that the judgment and order dated 07.06.2022 passed by the learned Sessions Judge, Natore in Criminal Appeal No.307 of 2019 rightly and is maintainable in the eye of law and there is no scope to interference there.

Accordingly, I do not find any cogent and legal ground to interfere with the impugned judgment and order dated 07.06.2019. Therefore, the instant Rule has no merit.

In the result, the Rule is discharged.

The judgment and order dated 07.06.2019 passed by the learned the learned Sessions Judge, Natore in Criminal Appeal No.307 of 2019 is hereby upheld and confirmed. The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk. Tk.2,61591/-(two lac sixty one thousand five hundred ninety one) 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.

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

Md. Anam Hoque Parvej
Bench Officer