

## Criminal Revision No. 2330 of 2023

29.01.2024

Present:

**Justice Md. Ataur Rahman Khan**

Md. Zakir Hossain

.... For the convict petitioner.

Vs

The State and another

... For the opposite parties.

Mr. M.G Mahmud (Shaheen), Advocate

... For the petitioner.

Mr. Mahbubur Rahman Kishore, Advocate

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

Mr. S.M Fazlul Haque, DAG

Ms. Anjumna Ara Begum, AAG

Mr. Miah Sirajul Islam, AAGs

... For the opposite party No.1.

This is an application for compromise jointly filed by the convict petitioner and complainant opposite party No.2 for disposal of the Rule in the light of compromise.

The learned Advocates on behalf of both the parties submitted that the convict petitioner as well as complainant-opposite party No.2 together compromised to settle the dispute matter amicably out of Court and as such they prayed for allowed the compromise application. The learned Advocates of both sides also presented their respective parties who are personally appeared before the Court with their original national identification cards which have been verified by the learned Advocates of both sides and the learned Assistant Attorney Generals one behalf of the state.

Heard the learned Advocates of both the parties and perused the compromise application as well as relevant documents as annexed thereto.

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It appears from the records that the complainant opposite party No.2 as complainant filed the complaint petition alleging, inter alia, that in order to pay the loan money by the convict-petitioner issued a cheque amounting at Tk.8,60,000/- (eight lac sixty thousand) in favour of the complainant which was dishonoured on 05.09.2016 due to insufficient fund. Thereafter, the complainant maintained all the legal formalities as required under law filed the instant complaint case under Section 138 of the Negotiable Instruments Act, 1881.

After completion of all the necessary formalities, the Trial Court found that the convict appellant guilty of the charge and convicted him under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer imprisonment for 01 (one) year and also to pay a fine of Tk. 8,60,000/- (eight lac sixty thousand). Thereafter, the convict-petitioner upon depositing 50% of the cheque amount preferred the appeal before the lower Appellate Court which was dismissed.

It further appears that the convict-petitioner and the complainant-opposite party No.2 executed a compromise deed (Annexure-I of the application) for negotiating the matter amicably and for recording the compromise the complainant-opposite party No.2 has already received 50% of the rest cheque amount from the convict-petitioner and the complainant-opposite party No.2 will get deposited 50% of the cheque amount from the Court below which the convict petitioner deposited for the purpose of preferring the appeal. In such facts and circumstances, the learned Advocate for the complainant-opposite party No.2 has no grievance against the convict petitioner and the Rule may be disposed of on the basis of compromise petition.

Considering the above facts and circumstances of the case, I do not find any obstacle to accept the compromise in terms of the said compromise deed. I am of the view that the compromise made between

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the parties by executing a deed appears to be reasonable, satisfactory and consistent with the principle of the modern delivery system of justice popularly known as Alternative Dispute Resolution mechanism. Moreover, this Court has decided in several cases that offence under Section 138 of the Negotiable Instruments Act is quasi-criminal and quasi-civil in nature which can be treated as compoundable.

Since the parties have settled the matter amicably and the complainant admitted before this Court that he has already received 50% of the rest cheque amount, I am of the view that justice would be better served if the sentence of imprisonment is hereby set aside.

In view of the forgoing discussion, this Court is of the view that the conviction of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 is upheld but the sentence of suffer imprisonment for a period of 01 (one) year hereby is set aside and the fine of Tk. 8,60,000/- (eight lac sixty thousand) is upheld with observation.

In the result, the application for compromise is allowed and the Rule is absolute in part.

The convict petitioner is discharged from his bail bond, if any.

The concerned Court shall allow the complainant-opposite party No.2 to withdraw 50% of the cheque amount which was deposited by the convict-petitioner for the purpose of preferring the criminal appeal.

Send down the Lower Court's record, at once.

Communicate this judgment and order to the Courts concerned at once for information and necessary action.