

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No. 2504 of 2022

Nargis Begum

..... 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. Muhammad Ali Akkas, Advocate

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

Heard and Judgment on: 30.08.2023

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 29.05.2022 passed by the learned Sessions Judge, Chapainawabganj in Criminal Appeal No.196 of 2022 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 24.10.2021 passed by the learned Joint Sessions Judge, 2nd Court, Chapainawabganj in Sessions Case No.666 of 2020 arising out of C.R. Case No.816 of

2018 convicting the petitioner under section 138(1) 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.3,17,437/-, 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 on 08.08.2018, the convict-petitioner gave a cheque being Mudaraba Saving Account Number-51237, Account's MSP-6627613, Cheque amount Tk.3,17,437/- and that cheque was dishonoured on the same dated 08.08.2018 with the opinion that the account is insufficient Fund. Thereafter, on 13.08.2018, a legal notice has been served on the convict-petitioner and on 19.08.2018 that legal notice has been received by the convict-petitioner's husband. But the convict-appellant did not pay the cheque amount and on the basis of the said information the complainant filed the instant case against the convict-petitioner

under section 138 of the Negotiable Instruments Act, 1881 before the learned Amoli Adalat, Chapainawabganj Sadar, on 4.10.2018 and hence the case.

The learned Magistrate, Chapainawabganj upon receiving the petition of complaint examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance against the petitioner under section 138 of the Negotiable Instruments Act, 1881 as C.R. Case No.816 of 2018 and issued summon against him and the convict petitioner voluntarily surrendered before the learned Magistrate, Chapainawabganj and obtained bail. Thereafter, the case was ready for trial and transferred to the learned Sessions Judge, Chapainawabganj for trial and renumbered as Session Case No.666 of 2020. After receiving the case record the learned Joint Sessions Judge, 2nd Court, Chapainawabganj framed charge against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 on 07.02.2021, which was read over to him who pleaded not guilty and claimed to be tried.

The prosecution examined only one witness as P.W.1 and the convict-petitioner examined none.

After closing the prosecution witnesses by the learned trial Court, the convict-petitioner was not possible to be examined by the trial Court under section 342 of the Code of Criminal Procedure due to his absence.

The learned Joint Sessions Judge, 2nd Court, Chapainawabganj after hearing the parties and perusing the evidence on record found guilty the 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.3,17,437/- by his judgment and order of conviction and sentence dated 24.10.2021.

Thereafter, the convict-petitioner against the judgment and order of conviction and sentence dated 24.10.2021 filed Criminal Appeal No.196 of 2022 before the learned Sessions Judge, Chapainawabganj. The learned Sessions Judge, Chapainawabganj upon hearing the parties dismissed the Criminal Appeal No.196 of 2022 and thereby affirmed the judgment and order of conviction and sentence dated 24.10.2021 passed by the learned Joint Sessions Judge, 2nd Court, Chapainawabganj in Sessions Case No.666 of 2020 by his judgment and order dated 29.05.2022.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 29.05.2022 passed by the learned Sessions Judge, Chapainawabganj in Criminal Appeal No.196 of 2022, the convict-petitioner filed this Criminal Revision before this Hon'ble High Court Division.

No one appears on behalf of the petitioner for press the Rule.

On the other hand, Mr. Muhammad Ali Akkas, the learned Advocate appearing on behalf of the opposite party No.2 submits that on 08.08.2018 the convict-petitioner gave a cheque being Mudaraba Saving Account Number-51237, Account's MSP-6627613, Cheque amount Tk.3,17,437/- and that cheque was dishonoured on the same date 08.08.2018 due to insufficient of Fund. Thereafter, on 13.08.2018, a legal notice has been served on the convict-petitioner and on 19.08.2018 that legal notice has been received by the convict-petitioner's husband. But the convict-appellant did not pay the cheque amount and on the basis of the said information the complainant filed the instant case against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 before the learned Amoli Adalat, Chapainawabganj Sadar.

Thereafter, the case was ready for trial and transferred to the learned Sessions Judge, Chapainawabganj for trial and renumbered as Session Case No.666 of 2020. After receiving the case record the learned Joint Sessions Judge, 2nd Court, Chapainawabganj after hearing the parties and perusing the evidence on record found guilty the 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.3,17,437/- by his judgment and order of conviction and sentence dated 24.10.2021. Thereafter, the convict-petitioner against the judgment and order of conviction and sentence dated 24.10.2021 filed Criminal Appeal No.196 of 2022 before the learned Sessions Judge, Chapainawabganj. The learned Sessions Judge, Chapainawabganj upon hearing the parties dismissed the Criminal Appeal No.196 of 2022 and thereby affirmed the judgment and order of conviction and sentenced dated 24.10.2021 passed by the learned Joint Metropolitan Sessions Judge, 2nd Court, Chapainawabganj in Sessions Case No.666 of 2020 by his judgment and order dated 29.05.2022 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 submission of the learned Advocate for the opposite party, the papers and documents as available on the record.

It appears from the records and submissions of the learned Advocate for the opposite party No.1 that on 08.08.2018, the convict-petitioner gave a cheque being Mudaraba Saving Account Number-51237, Account's MSP-6627613, Cheque amount Tk.3,17,437/- and that cheque was dishonoured on the same dated 08.08.2018 with the opinion that the account is insufficient of Fund. Thereafter, on 13.08.2018, a legal notice has been served on the convict-petitioner and on 19.08.2018 that legal notice has been received by the convict-petitioner's husband. But the convict-appellant did not pay the cheque amount and on the basis of the said information the complainant filed the instant case against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 before the learned Amoli Adalat, Chapainawabganj Sadar on 4.10.2018.

Considering the deposition of the P.W.1 as complainant it appears that the P.W.1 (complainant) strongly supported the

complaint-petition in his deposition and he marked the complaint-petition as exhibit-1, therein his signature as exhibit-1/1, dishonoured cheque as exhibit-2, the slip of the dishonoured cheque as exhibit-3, legal notice as exhibit-4, postal receipt as exhibit-5, acknowledgement received as exhibit-6, authorization letter as exhibit-7.

In the light of the above discussion, it is clear before me that the prosecution has succeeded to prove the case beyond all reasonable shadow of doubt. But, it is found that the total amount of cheque is Tk.3,17,437/-, but the learned Court below sentenced the convict-petitioner six months, which is seem to be very hash for the convict-petitioner. So, I think that justice will be best serve if the sentence six months passed by the learned trial Court reduces to 03(three) months.

Accordingly, I find cogent and legal ground to interfere with the impugned judgment and order of conviction and sentence dated 29.05.2022 on the part of imprisonment only.

In the result, the Rule is discharged with modification of the judgment and order dated 29.05.2022.

The impugned judgment and order dated 29.05.2022 passed by the learned Sessions Judge, Chapainawabganj in Criminal Appeal No.196 of 2022 is hereby modified with this direction that the imprisonment for 06(six) months will reduce to imprisonment for 03(three) months and fine will be as it is.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.1,58,718.5/- to the complainant-opposite party No.2 (if he did not take the said amount) in this case.

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

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