

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No. 3056 of 2022

Nilmoni Chandra

.... convict-appellant-petitioner

-Versus-

The State and another

.... opposite-parties

Mr. Md. Saiful Islam, Advocate

.... For the petitioner

Mr. Md. Shofiul Aziz, Advocate

.... For the opposite-parties

Heard and Judgment on: 16.10.2023

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 30.03.2022 passed by the learned Additional Sessions Judge, 4th Court, Sylhet in Criminal Appeal No. 381 of 2018 dismissing the appeal and upholding the judgment and order of conviction and sentence dated 16.08.2018 passed by the learned Joint Sessions Judge, Additional Court, Sylhet in Sessions Case No. 1279 of 2017 arising out of Osmaninagar C.R. Case No.186 of 2017, convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 sentenced him to suffer simple imprisonment

for a period of 8(eight) months with a fine of Tk. 1,81,000/- 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 6(six) months.

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

The prosecution case, in short is that the complainant-opposite party gave taka 80,000/- (Eighty Thousand) to the convict-petitioner on 30.06.2016 in the way of "by Muyazzal" which was increased and created an account of Tk.90,500/- (Ninety Thousand and Five Hundred) with profit after payment date being a failure to pay the convict petitioner issued a cheque No.IBI2667651 dated 18.07.2017 for Tk.90,500/-, which resulted dishonored lastly on 20.07.2017 insufficient fund. Thereafter, on 27.07.2017 the complainant sent a legal notice to the petitioner for recovery the loan money but he did not pay the said amount. Thereafter, the complainant finding no other alternative filed a petition of complaint before the learned Senior Judicial Magistrate, 1st Court, Sylhet under section 138

of the Negotiable Instruments Act, 1881 against the convict-petitioner on 12.09.2017.

The learned Senior Judicial Magistrate, 1st Court, Sylhet 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 Osmaninagar C.R. Case No.186 of 2017 and issued summons against him. The convict-petitioner surrendered before the concerned Senior Judicial Magistrate, 1st Court, Sylhet on 17.10.2017 with a prayer for bail and he was enlarged on bail and this case was sent to the learned Senior Sessions Judge, Sylhet for disposal, where the case was registered as Sessions Case No.1279 of 2017. The learned Senior Sessions Judge, Sylhet on 24.10.2017 transferred the case to the learned Joint Sessions Judge, Additional Court, Sylhet for trial and disposal. Later on 13.11.2017 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 claims to be tried. The prosecution side adduced as many as 01(one) witness and the defense examined none. After

closing the prosecution witness by the learned trial Court, the petitioner was examined under section 342 of the Code of Criminal Procedure and he claimed himself innocent.

The learned Joint Sessions Judge, Additional Court, Sylhet 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 08(eight) months and also to pay a fine of Tk.1,81,000/- by his judgment and order of conviction and sentence dated 16.08.2018.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 16.08.2018 the convict-appellant filed Criminal Appeal No.381 of 2018 before the learned Senior Sessions Judge, Sylhet and the same was transferred to the learned Additional Sessions Judge, 4th Court, Sylhet for disposal. After hearing the learned Additional Sessions Judge, 4th Court, Sylhet dismissed the Appeal and affirmed the judgment and order of conviction and sentence dated 16.08.2018 passed by the learned Joint Sessions Judge, Additional Court, Sylhet in Sessions Case No.1279 of 2017

arising out of Osmaninagar C.R. Case No.186 of 2017 by his judgment and order dated 30.03.2022.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 30.03.2022 passed by the learned Additional Sessions Judge, 4th Court, Sylhet in Criminal Appeal No.381 of 2018, the convict-petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

Mr. Rona Naharin, the learned Advocate appearing on behalf of the convict-petitioner submits that the petitioner earlier deposited 50% of the cheque amount of Tk.45,250/- vide challan at the time of filing the aforesaid Criminal Appeal No.381 of 2018 and now on compromise with convict-petitioner between the complainant-opposite party No.2 the petitioner deposited rest of the cheque amount of Tk.46,000/- dated 15.10.2023 in Al Wadiya current account Islami Bank Bangladesh Limited, Goalabazar Branch, Sylhet in cash being memo No.ABT 3473283 and as such, the total cheque amount of Tk.90,500 has paid. Accordingly, he prays for acquitting from the sentence and realization of fine, otherwise the petitioner will suffer irreparable loss and injury and also prays for making the Rule absolute.

Mr. Md. Shofiul Aziz, the learned Advocate appearing on behalf of the opposite party No.2 agreed with the submissions of the learned Advocate for the convict-petitioner.

I have perused the revisional application, the impugned judgment and order of conviction and sentence of the Courts' below, the submissions of the learned Advocates for the parties, the papers and documents as available on the record.

Moreover, the main object of the case under section 138 of the Negotiable Instruments Act, 1881 is recovery of the cheque amount.

In the light of the above discussion, it is clear before me that since the convict-petitioner paid the total cheque amount and a compromise has been reached between the parties through a compromise application, there is no any objection of the opposite party No.2 if the petitioner is acquitted. Therefore, the judgment and order dated 30.03.2022 passed by the learned Additional Sessions Judge, 4th Court, Sylhet in Criminal Appeal No.381 of 2018 is not maintainable against the petitioner and it will be fair to interference there.

Accordingly, I find cogent and legal ground in the submissions of the learned Advocates for the parties and to interfere with the impugned judgment and order of conviction and sentence dated 30.03.2022. Therefore, the instant Rule has merit.

In the result, the Rule is disposed of.

The impugned judgment and order of conviction and sentence dated 30.03.2022 passed by the learned Additional Sessions Judge, 4th Court, Sylhet in Criminal Appeal No.381 of 2018 is hereby set-aside and the convict-petitioner be acquitted.

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

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.55,250/- to the complainant-opposite party No.2 (if he did not take the said amount) in this case.

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

Md. Anamul Hoque Parvej
Bench Officer