

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No.805 of 2023

Md. Khurshed Alam

.....convict-petitioner

-Versus-

The State and another

.....opposite-parties

Mr. Md. Rezaul Karim, Advocate

.....For the convict-petitioner

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. Mohammad Musa, Advocate

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

Heard on 12.10.2023 and

Judgment on: 18.10.2023

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 30.08.2022 passed by the learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram in Criminal Appeal No.87 of 2021 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 29.09.2020 passed by the learned Joint Metropolitan Sessions Judge, Court No.5, Chattogram in Sessions Case No.3499 of 2019 arising out of

C.R. Case No.35 of 2019(Bayezid Bostami) convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer imprisonment for a period of 01(one) year and also to pay a fine of Tk.15,29,554/-, 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.

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

The prosecution case, in short is that the convict-petitioner was an investment client of the complainant bank. Accordingly, he received a investment loan for buying cattle through his business organization namely M/S Shah Amanat Traders. Subsequently, the petitioner issued a cheque in favour of the complainant for discharging liability being cheque No.IBW 4390320 dated 20.11.2018 Tk.1529554 (fifteen lac twenty nine thousand five hundred fifty four) of Islami Bank Banladesh Limited. On 20.11.2018 the complainant deposited the said cheque to the concerned bank and it was bounced and dishonoured for insufficient fund. Thereafter, on 25.11.2018 the

complainant served a legal notice through his lawyer to the petitioner to recovery the cheque amount, but the convict-petitioner did not pay the said amount. For this reason, the complainant on 21.01.2019 filed an application under section 138 of the Negotiable Instruments Act, 1881 against the convict-petitioner before the learned Additional Chief Metropolitan Magistrate, Chattogram.

The learned Additional Chief Metropolitan Magistrate, Chattogram upon receiving the petition of complaint examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance the offence against the petitioner under section 138 of the Negotiable Instruments Act, 1881 as C.R. Case No.35 of 2019 and issued summon against him. On 11.03.2019 the convict petitioner voluntarily surrendered before the learned Additional Chief Metropolitan Magistrate, Chattogram and obtained bail. Thereafter, the case was transferred to the learned Metropolitan Sessions Judge, Chattogram for trail and disposal and on 03.07.2019 the case was sent to the learned Joint Metropolitan Sessions Judge, 5th Court, Chattogram as Session Case No.3499 of 2019 for trial and disposal. The learned Joint Metropolitan Sessions Judge, 5th

Court, Chattogram framed charge against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 on 19.09.2019, 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 examined by the trial Court under section 342 of the Code of Criminal Procedure for his absconsion.

The learned Joint Metropolitan Sessions Judge, 5th Court, Chattogram 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 imprisonment for a period of 01(one) year and also to pay a fine of Tk.15,29,554/- by his judgment and order of conviction and sentence dated 29.09.2020.

Thereafter, the convict-petitioner against the judgment and order of conviction and sentence dated 29.09.2020 filed Criminal Appeal No.87 of 2021 before the learned Metropolitan

Sessions Judge, Chattogram and thereafter, the said Criminal Appeal was transferred to the learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram for hearing.

The learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram upon hearing the parties dismissed the Criminal Appeal No.87 of 2021 and thereby affirmed the judgment and order of conviction and sentenced dated 29.09.2020 passed by the learned Joint Metropolitan Sessions Judge, 5th Court, Chattogram in Sessions Case No.3499 of 2019 by his judgment and order dated 30.08.2022.

Being aggrieved by and dissatisfied with the judgment and order dated 30.08.2022 passed by the learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram in Criminal Appeal No.87 of 2021, the convict-petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

Mr. Md. Rezaul Karim, the learned Advocate appearing on behalf of the convict-petitioner that the impugned judgment and order dated 30.08.2022 passed by the learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram in Criminal Appeal No.87 of 2021 is unjust, illegal, improper and bad in

law as well as facts and circumstances and the evidence on record of the case and as such, the same is liable to be set aside for the ends of justice.

He further submits that the prosecution has miserably failed to prove the case beyond all reasonable doubt against the petitioner and therefore, the benefit of doubt will go in favour of the convict-petitioner and in that view of the matter the order of conviction and sentence has caused a gross in justice.

He next submits that the judgment and order of conviction and sentence is against the weight of evidence on record and trial has not been held in accordance with law, charge is defective, appellant was not examined under section 342 of the Code of Criminal Procedure and the impugned judgment and order of conviction and sentence is based on conjectures and surmise and there is no independent evidence at all on the basis of which the order of conviction and sustain because the prosecution has adduced only one witness and he is the complainant himself and as such the impugned judgment and order of conviction is liable to be set-aside.

The learned Advocate lastly submits that the learned Court below failed to appreciate the fact that the alleged cheque was not issued properly and the complainant is not a holder of the cheque in due course of law. Everybody must come before the learned Court with clean hand and with clean version of demand, but in this case in fact the complainant did not said that disputed cheque is a security cheque, which was given to the complainant under terms of contract paper for loan signed earlier between the parties as well as he did not mention any consideration against the disputed cheque and as such, the impugned judgment and order is liable to be set-aside for ends of justice. Accordingly, he prays for making the Rule absolute.

On the other hand, Mr. Mohammad Musa, the learned Advocate appearing on behalf of the opposite party No.2 submits that the convict-petitioner was an investment client of the complainant bank. Accordingly, he received a investment loan for buying cattle through his business organization namely M/S Shah Amanat Traders. Subsequently, the petitioner issued a cheque in favour of the complainant for discharging liability being cheque No.IBW 4390320 dated 20.11.2018 Tk.1529554 (fifteen lac twenty nine thousand five hundred fifty four) of

Islami Bank Banladesh Limited. On 20.11.2018 the complainant deposited the said cheque to the concerned bank and it was bounced and dishonoured for insufficient fund. Thereafter, on 25.11.2018 the complainant served a legal notice through his lawyer to the petitioner to recovery the cheque amount, but the convict-petitioner did not pay the said amount. For this reason, the complainant on 21.01.2019 filed an application under section 138 of the Negotiable Instruments Act, 1881 against the convict-petitioner before the learned Additional Chief Metropolitan Magistrate, Chattogram following all legal formalities. Thereafter, the case was sent to the learned Metropolitan Senior Judge , Chattogram and same was transferred to the learned Joint Metropolitan Sessions Judge, 5th Court, Chattogram as Session Case No.3499 of 2019 for trial and disposal. The learned Joint Metropolitan Sessions Judge, 5th Court, Chattogram 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 imprisonment for a period of 01(one) year and also to pay a fine of Tk.15,29,554/- by his judgment and order of conviction and sentence dated 29.09.2020.

Thereafter, the convict-petitioner against the judgment and order of conviction and sentence dated 29.09.2020 filed Criminal Appeal No.87 of 2021 before the learned Metropolitan Sessions Judge, Chattogram and thereafter, the said Criminal Appeal was transferred to the learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram for hearing. The learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram upon hearing the parties dismissed the Criminal Appeal No.87 of 2021 and thereby affirmed the judgment and order of conviction and sentenced dated 29.09.2020 passed by the learned Joint Metropolitan Sessions Judge, 5th Court, Chattogram in Sessions Case No.3499 of 2019 by his judgment and order dated 30.08.2022 rightly. Therefore, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and order of the Courts' below, the submission of the learned Advocates for the parties, 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 the convict-petitioner was an investment client of the complainant bank.

Accordingly, he received a investment loan for buying cattle through his business organization namely M/S Shah Amanat Traders. Subsequently, the petitioner issued a cheque in favour of the complainant for discharging liability being cheque No.IBW 4390320 dated 20.11.2018 Tk.1529554 (fifteen lac twenty nine thousand five hundred fifty four) of Islami Bank Banladesh Limited. On 20.11.2018 the complainant deposited the said cheque to the concerned bank and it was bounced and dishonoured for insufficient fund. Thereafter, on 25.11.2018 the complainant served a legal notice through his lawyer to the petitioner to recovery the cheque amount, but the convict-petitioner did not pay the said amount. For this reason, the complainant on 21.01.2019 filed an application under section 138 of the Negotiable Instruments Act, 1881 against the convict-petitioner before the learned Additional Chief Metropolitan Magistrate, Chattogram following all legal formalities. Thereafter, the case was sent to the learned Metropolitan Sessions Judge Chattogram and the same was transferred to the learned Joint Metropolitan Sessions Judge, 5th Court, Chattogram as Session Case No.3499 of 2019 for trial and disposal. The learned Joint Metropolitan Sessions Judge, 5th

Court, Chattogram 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 imprisonment for a period of 01(one) year and also to pay a fine of Tk.15,29,554/- by his judgment and order of conviction and sentence dated 29.09.2020. Thereafter, the convict-petitioner against the judgment and order of conviction and sentence dated 29.09.2020 filed Criminal Appeal No.87 of 2021 before the learned Metropolitan Sessions Judge, Chattogram and thereafter, the said Criminal Appeal was transferred to the learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram for hearing. The learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram upon hearing the parties dismissed the Criminal Appeal No.87 of 2021 and thereby affirmed the judgment and order of conviction and sentenced dated 29.09.2020 passed by the learned Joint Metropolitan Sessions Judge, 5th Court, Chattogram in Sessions Case No.3499 of 2019 by his judgment and order dated 30.08.2022.

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 identified his complaint-petition as exhibit-1, therein his signature as exhibit-1/1, letter of authority as exhibit-2, dishonoured cheque as exhibit-3, the slip of the dishonoured cheque as exhibit-4, legal notice, postal receipt and A/D as exhibit-5 series.

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.15,29,554/-, but the learned Court below sentenced the convict-petitioner one year, which is seem to be very hash for the convict-petitioner. So, I think that justice will be best serve if the sentence one year passed by the learned trial Court reduces to 06(six) months.

Accordingly, I find cogent and legal ground to interfere with the impugned judgment and order dated 30.08.2022 on the part of imprisonment only.

In the result, the Rule is discharged with modification of the judgment and order dated 30.08.2022.

The impugned judgment and order dated 30.08.2022 passed by the learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram in Criminal Appeal No.87 of 2021 is hereby modified with this direction that the imprisonment for 01(one) year will reduce to imprisonment for 06(six) months and fine will be as it is.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.7,64,777/- 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