

**IN THE SUPREME COURT OF
BANGLADESH**

HIGH COURT DIVISION

(CRIMINAL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Shohrwardi

Criminal Revision No. 3635 of 2023

Md. Rezaul Karim

.....Convict petitioner

-Vs-

The State and another

....respondents

Mr. Md. Nahid Hasan, Advocate

....For the convict petitioner.

Mr. Md. Mohitul Hasan (Bishal),

Advocate

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

Mr. Md. Shahidul Islam, AAG with

Ms. Sharmin Hamid, AAG

..... For the State

Heard on 31.10.2024, 20.11.2024

Judgment delivered on: 25.11.2024

On an application filed under sections 439 and 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order of conviction and sentence dated 13.08.2023 passed by the Additional Sessions Judge, Court No.4, Bogura in Criminal Appeal No. 560 of 2023 affirming the judgment and order of conviction and sentence dated 17.01.2022 passed by the Joint Sessions Judge, Court No. 2, Bogura in Sessions Case No. 624 of 2022 arising out of C.R. Case No. 666 of 2021 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer imprisonment for 04(four) months and fine of Tk. 2,50,000 should

not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The prosecution case, in short, is that the accused Md. Rezaul Karim issued cheque No. CAP 4918714 on 11.10.2020 drawn on his Account No. 0703203633250001 for payment of Tk. 2,50,000 in favour of the complainant. The complainant presented the cheque on 23.03.2021 for encashment which was dishonoured on 24.03.2021 with the remark “account closed”. On 31.03.2021, the complainant sent a legal notice to the accused and the accused received the same on 08.04.2021 but he did not pay the cheque amount in time. Thereafter, the complainant filed the case on 09.05.2021.

The case was transferred to the Court of Sessions Judge, Bogura and registered as Sessions Case No. 624 of 2022. The Sessions Judge, Bogura sent the case to the Joint Sessions Judge, Court No. 2, Bogura for trial and disposal. During trial charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881 and at the time of framing charge the accused was absconding.

The prosecution examined 01(one) witness to prove the charge against the accused. After examination of P.W. 1, the accused absconded for which he was not examined under section 342 of the Code of Criminal Procedure, 1898. After concluding the trial, the trial court by impugned judgment and order dated 17.01.2022 convicted the petitioner under section 138 of the said Act and sentenced him to suffer imprisonment for 04(four) months and fine of Tk. 2,50,000 against which he filed Criminal Appeal No. 560 of 2023 before Session Judge, Bogura which was heard by Additional Sessions Judge, Court No. 4, Bogura. The appellate court below by

impugned judgment and order affirmed the judgment and order passed by the trial court against which he filed the instant appeal.

P.W. 1 Most. Nilufa Akter is the complainant. She stated that accused Md. Rezaul Karim was known to her and he took loan of Tk. 2,50,000 from her on condition to pay the loan within the next two months. The accused issued cheque on 11.10.2020 drawn on his account maintained with Brac Bank Ltd, Bogura Branch for payment of Tk. 2,50,000. She presented the said cheque on 23.03.2021 through Shahajalal Islami Bank Ltd, Bogura Branch which was dishonored on 24.03.2021. On 31.03.2021 she sent a legal notice to the accused and he received the same on 08.04.2021. Despite the service of notice upon the accused, he did not pay the cheque amount. She proved the complaint petition as exhibit-1 and his signature on the complaint petition as exhibit-1/1, the cheque as exhibit-2, dishonoured slip as exhibit-3, legal notice as exhibit-4, postal receipt and AD as exhibits-5 and 6 respectively. The accused was absconding.

The learned Advocate Mr. Md. Nahid Hasan appearing on behalf of the convict petitioner submits that the accused issued the cheque on 11.10.2020 in favour of the complainant for payment of Tk. 2,50,000 but the same was dishonored and after service of notice, the accused could not pay the cheque amount due to financial hardship. He further submits that the accused settled the dispute out of court with the complainant and 50% of the cheque amount was paid to the complainant in cash and deposited 50% of the cheque amount before filing the appeal. He prayed for setting aside the impugned judgment and order accepting the compromise between the parties.

The learned Advocate Mr. Md. Mohitul Islam (Bishal) appearing on behalf of the complainant submits that the convict petitioner issued the disputed cheque in favour of the complainant for payment of the loan amounting to Tk. 2,50,000 and after complying with all the procedures under section 138 of the Negotiable Instruments Act, 1881 the complainant filed the case. Thereby the accused committed offence under section 138 of the said Act. However, he submits that both the complainant and the convict petitioner settled the dispute out of court and the convict petitioner paid Tk. 1,25,000 in cash and the complainant is willing to withdraw 50% of the remaining cheque amount deposited by the convict petitioner before filing the appeal. He also prayed for acceptance of the compromise made between the parties.

I have considered the submission of the learned Advocate Mr. Md. Nahid Hasan who appeared on behalf of the convict petitioner and the learned Advocate Mr. Mohitul Hasan (Bishal) who appeared on behalf of complainant opposite party No. 2, perused the evidence, impugned judgments and orders passed by the courts below and the records.

On perusal of the records, it appears that 50% of the cheque amount Tk. 1,25,000 is paid by the convict petitioner to the complainant in cash and the complainant is willing to receive the 50% of the remaining cheque amount deposited by the convict petitioner before filing the appeal. Both the complainant and convict petitioner filed a joint application on 13.11.2024 making a compromise between them. The Negotiable Instruments Act, 1881 is a special law and the offence under section 138 of the said Act is not compoundable. Therefore, the rule cannot be disposed of considering the compromise made between the parties. After filing a

case under section 138 of the said Act the court shall dispose of the case only considering the merit of the case. There is no scope to accept the compromise made between the parties.

There is a presumption under section 118(a) of the Negotiable Instruments Act, 1881 that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. The presumption under Section 118 (a) is rebuttable. The accused did not cross-examine P.W.1. The evidence of P.W.1 as regards the issuance of the cheque (exhibit-2) by the convict petitioner for payment of Tk. 2,50,000 in favour of the complainant remains uncontroverted by the defence. Furthermore, the convict petitioner admitted that he issued the cheque in favour of the complainant.

It is found that after the issuance of the cheque dated 11.10.2020 (exhibit-2) the same was dishonoured on 24.03.2021 with the remark “account closed” and bank issued dishonour slip (exhibit-3) and the notice (exhibit-4) dated 31.03.2021 under section 138(b) of the said act was served on 08.04.2021 upon the accused and the convict petitioner did not pay the cheque amount following the notice sent under clause (b) of section 138 of the said Act and the complaint petition was filed in time complying with the procedure under section 138 of the said Act. Therefore, I am of the view that the convict petitioner committed an offence under section 138 of the said Act and the courts below on proper assessment and evaluation of the evidence passed the impugned judgments and orders of conviction.

Considering the gravity of the offence, I am of the view that the ends of justice would be best served if the sentence passed by the courts below is modified as under;

The convict petitioner Md. Rezaul Karim is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and he is sentenced to pay a fine of Tk. 2,50,000.

The complainant is entitled to get the cheque amount of Tk. 2,50,000.

Since the complainant opposite party No. 2 admitted that he already received Tk. 1,25,000 from the complainant, he is only entitled to get 50% of the remaining cheque amount of Tk. 1,25,000 deposited by the convict petitioner in the trial court before filing the appeal.

The Rule is disposed of with modification of the sentence.

Send down the lower Court's records at once.