

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

Present:

Mr. Justice Md. Shohrwardi

Criminal Revision No. 3660 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. 561 of 2023 affirming the judgment and order of conviction and sentence dated 26.02.2023 passed by the Joint Sessions Judge, Court No. 3, Bogura in Sessions Case No. 2049 of 2021 arising out of C.R. Case No. 1099 of 2020(Sadar) convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer imprisonment for 06(six) months and fine of Tk.

6,00,000, in default, to suffer imprisonment for 01(one) month should not be set aside and/or pass such other or further orders 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. SB 0110989 on 15.03.2020 drawn on his Account No. 3311020058309 in favour of the complainant. The complainant presented the cheque on 16.03.2020 for encashment which was dishonoured on 18.03.2020 with the remark “account closed or dormant or blocked”. On 22.03.2020, the complainant sent a legal notice to the accused and he received the same on 29.03.2020 but he did not pay the cheque amount in time. Thereafter, the complainant filed the case on 06.07.2020 in the virtual court.

The case was transferred to the Sessions Judge, Bogura and was registered as Sessions Case No. 2049 of 2021. After that, the case was sent to the Joint Sessions Judge, Court No. 3, Bogura for trial and disposal. The Joint Sessions Judge, Court No. 3, Bogura framed charge under section 138 of the Negotiable Instruments Act, 1881 and the accused was absconding. The prosecution examined 01(one) witness to prove the charge framed against the accused. After examination of P.W. 1, the accused was examined under section 342 of the Code of Criminal Procedure, 1898 and he pleaded not guilty to the charge and claimed to be tried following law.

After concluding the trial, the trial court by impugned judgment and order dated 26.02.2023 convicted the petitioner under section 138 of the said Act and sentenced him to suffer imprisonment for 06(six) months and fine of Tk. 6,00,000, in default, to suffer imprisonment for 01(one) months against which he filed Criminal Appeal No. 561 of 2023 before Sessions 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 Md. Abdul Matin is the complainant. He stated that accused Md. Rezaul Karim issued a cheque on 15.03.2020 for payment of Tk. 6,00,000. After presenting the said cheque on 16.03.2020, it was dishonoured on 18.03.2020. On 22.03.2020 he sent a legal notice to the accused and he received the same on 29.03.2020. Despite the service of notice upon the accused, he did not pay the cheque amount. He proved the complaint petition and his signature on the complaint petition as exhibit-1 series. He proved the disputed cheque, dishonour slip, P.C.R, legal notice and AD as exhibit- 2 series. The accused was absconding. On recall by the defence, he admitted that he has no objection if the accused pay the cheque amount within 03 months.

The learned Advocate Mr. Md. Nahid Hasan appearing on behalf of the convict petitioner submits that the accused issued the cheque on 15.03.2020 in favour of the complainant for payment of Tk. 600,000 but 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 deposited 50% of the cheque amount before filing the appeal and 50% of the cheque amount was paid to the complainant in cash. 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. 6,00,000 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 an 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. 300,000 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 judgment and order passed by the courts below and the records.

On perusal of the records, it appears that a joint application sworn on 13.11.2024 is filed by both parties stating that 50% of the cheque amount Tk. 300,000 has been paid by the convict petitioner in cash and the complainant is willing to receive 50% of the remaining cheque amount deposited by the convict petitioner before filing the appeal and both the complainant and convict petitioner settled the dispute out of court. 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 evidence of P.W.1 as regards the issuance of the cheque (exhibit-2) by the convict petitioner for payment of Tk. 600,000 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 (exhibit-2) the same was dishonoured on 18.03.2020 and the notice (exhibit-2/3) under section 138(b) of the said Act was served upon the accused on 29.03.2020 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. 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. 625,000.

The complainant is entitled to get the cheque amount of Tk. 600,000.

The convict petitioner Md. Rezaul Karim is directed to pay Tk. 25,000 in the trial court within 30 days from the date of receipt of a copy of this judgment failing which the trial court is directed to take necessary steps following law.

Since the complainant opposite party No. 2 admitted that he already received Tk. 300,000 the complainant is only entitled to get 50% of the remaining cheque amount of Tk. 300,000 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.

