

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No.2190 of 2023

Md. Rafiqul Islam (Afsun)

.....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. Mohammad Musa, Advocate

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

Heard on 16.11.2023 and

Judgment on: 19.11.2023

Md. Kamrul Hossain Mollah.J:

This is an application filed by the petitioner 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 21.03.2023 passed by the learned Additional Sessions Judge, 1st Court, Sylhet in Criminal Appeal No.121 of 2020 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 19.01.2020 passed by the learned Joint Sessions Judge, 1st Court, Sylhet in Sessions Case No.146 of 2019 arising out

of C.R. Case No.363 of 2018 convicting the petitioner under section 138 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.1,02,718/-, 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 and stayed the realization of fine.

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

The prosecution case, in short is that the convict-petitioner took loan amount of Tk.1,02,718/- for his business purpose. On 16.07.2018 the petitioner issued a cheque No.IBA No.3897221 bearing Account No.2718 through Islami Bank Ltd, Bihswanath Branch, Sylhet amount of Tk.1,02,718 against his loan money in favour of the petitioner. On 12.08.2018 the complainant presented the said cheque before the bank and same was dishonoured for the reason of insufficient fund, but the petitioner failed to make payment of the said amount to the complainant. Thereafter, the complainant sent a legal notice

upon the petitioner on 12.08.2018, but he did not pay the alleged amount. For this reason, the complainant filed the instant case against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 before the learned Senior Judicial Magistrate, Amoli Adalat-3, Sylhet on 08.10.2018.

The learned Senior Judicial Magistrate, Amoli Adalat-3, Sylhet 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.363 of 2018 and issued summon against him and the convict petitioner voluntarily surrendered before the learned Senior Judicial Magistrate, Amoli Adalat-3, Sylhet and obtained bail. The case was transferred to the learned Senior Sessions Judge, Sylhet for disposal, which was renumbered as Sessions Case No.146 of 2019. The learned Senior Sessions Judge, Sylhet sent the same to the learned Joint Sessions Judge, 1st Court, Sylhet for trial and disposal. The learned Joint Sessions Judge, 1st Court, Sylhet framed charge against the convict-petitioner under section 138 of the Negotiable

Instruments Act, 1881 on 29.01.2019, which was read over to him who pleaded not guilty and claimed to be tried.

The prosecution examined two witnesses 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 Sessions Judge, 1st Court, Sylhet 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.1,02,718/- by his judgment and order of conviction and sentence dated 19.01.2020.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 19.01.2020 passed by the learned Joint Sessions Judge, 1st Court, Sylhet in Sessions Case No.146 of 2019 arising out of C.R. Case No.363 of 2018 the petitioner filed Criminal Appeal No.121 of 2020

before the learned Senior Sessions Judge, Sylhet. The learned Senior Sessions Judge, Sylhet sent the said criminal appeal to the learned Additional Sessions Judge, 1st Court, Sylhet for disposal. The learned Additional Sessions Judge, 1st Court, Sylhet after hearing the parties and considering the materials on record, dismissed the Criminal Appeal No.121 of 2020 and thereby affirmed the judgment and order of conviction and sentenced dated 19.01.2020 passed by the learned Joint Sessions Judge, 1st Court, Sylhet in Sessions Case No.146 of 2019 by his judgment and order of conviction and sentence dated 21.03.2023.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 21.03.2023 passed by the learned Additional Sessions Judge, 1st Court, Sylhet in Criminal Appeal No.121 of 2020, the convict-petitioner filed this Criminal Revision before this Hon'ble High Court Division.

No one appears on behalf of the petitioner to press the Rule when the matter was taken up for hearing and disposal although it appears in the daily cause list several times.

On the other hand, Mr. Mohammad Musa, the learned Advocate appearing on behalf of the opposite party No.2 submits that the convict-petitioner took loan amount of Tk.1,02,718/- for his business purpose. On 16.07.2018 the petitioner issued a cheque No.IBA No.3897221 bearing Account No.2718 through Islami Bank Ltd, Bihswanath Branch, Sylhet amount of Tk.1,02,718 against his loan money in favour of the petitioner. On 12.08.2018 the complainant presented the said cheque before the bank and same was dishonoured for the reason of insufficient fund, but the petitioner failed to make payment of the said amount to the complainant. Thereafter, the complainant sent a legal notice upon the petitioner on 12.08.2018, but he did not pay the alleged amount. For this reason, the complainant filed the instant case against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 before the learned Senior Judicial Magistrate, Amoli Adalat-3, Sylhet on 08.10.2018 as C.R. Case No.363 of 2018. The case was transferred to the learned Senior Sessions Judge, Sylhet for disposal, which was renumbered as Sessions Case No.146 of 2019. The learned Senior Sessions Judge, Sylhet sent the same to the learned Joint

Sessions Judge, 1st Court, Sylhet for trial and disposal. The learned Joint Sessions Judge, 1st Court, Sylhet 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.1,02,718/- by his judgment and order of conviction and sentence dated 19.01.2020. Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 19.01.2020 passed by the learned Joint Sessions Judge, 1st Court, Sylhet in Sessions Case No.146 of 2019 arising out of C.R. Case No.363 of 2018 the petitioner filed Criminal Appeal No.121 of 2020 before the learned Senior Sessions Judge, Sylhet. The learned Senior Sessions Judge, Sylhet sent the said criminal appeal to the learned Additional Sessions Judge, 1st Court, Sylhet for disposal. The learned Additional Sessions Judge, 1st Court, Sylhet after hearing the parties and considering the materials on record, dismissed the Criminal Appeal No.121 of 2020 and thereby affirmed the judgment and order of conviction and sentenced dated 19.01.2020 passed by the learned Joint Sessions Judge, 1st Court, Sylhet in Sessions Case

No.146 of 2019 by his judgment and order of conviction and sentence dated 21.03.2023 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 that the convict-petitioner took loan amount of Tk.1,02,718/- for his business purpose. On 16.07.2018 the petitioner issued a cheque No.IBA No.3897221 bearing Account No.2718 through Islami Bank Ltd, Bihswanath Branch, Sylhet amount of Tk.1,02,718 against his loan money in favour of the petitioner. On 12.08.2018 the complainant presented the said cheque before the bank and same was dishonoured for the reason of insufficient fund, but the petitioner failed to make payment of the said amount to the complainant. Thereafter, the complainant sent a legal notice upon the petitioner on 12.08.2018, but he did not pay the alleged amount. For this reason, the complainant filed the instant case against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 before the learned Senior

Judicial Magistrate, Amoli Adalat-3, Sylhet on 08.10.2018 as C.R. Case No.363 of 2018 following all legal formalities.

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, dishonoured cheque as exhibit-2, the slip of the dishonoured cheque as exhibit-3 and legal notice as exhibit-4.

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.1,02,718/-, but the learned Court below sentenced the convict-petitioner for a period of 06 (six) months, which is seem to be very harsh for the convict-petitioner. So, I think that justice will be best serve if the sentence 06 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 21.03.2023 on the part of imprisonment only.

In the result, the Rule is discharged with modification of the judgment and order dated 21.03.2023.

The impugned judgment and order dated 21.03.2023 passed by the learned Additional Sessions Judge, 1st Court, Sylhet in Criminal Appeal No.121 of 2020 is hereby modified with the direction that the simple imprisonment for 06(six) months will reduce to simple imprisonment for 03(three) months and fine will be as remain.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.51,359/- to the complainant-opposite party No.2 (if he did not withdraw the said amount) in this case.

The order of bail granted earlier by this Court is hereby cancelled and recalled and the order of stay of realization of fine is hereby vacated.

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

Md. Anamul Hoque Parvej
Bench Officer