

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

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Criminal Revision No. 3404 of 2023

Khandoker Lotifur Rahman

.... convict-appellant-petitioner

-Versus-

The State and another

.... opposite-parties

Mr. Kamrul Islam, Advocate with

Mr. Mohammad Nurul Huda Ansary, Advocate

.... For the petitioner

Mr. Md. Moksud Sheikh, Advocate

.... For the opposite party No.2

Heard on 11.01.2024 and

Judgment on: 24.01.2024

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 dated 15.05.2023 passed by the learned Additional Metropolitan Sessions Judge, 7th Court, Chattogram in Criminal Appeal No.402 of 2022 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 21.03.2022 passed by the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram in Metro. Sessions Case No. 177 of 2015

arising out of C.R. (Complaint Register) Case No.1852 of 2014(Kotwali) convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 01(one) year and also to pay a fine of Tk. 41,67,000/- 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 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, order to adjust liability the convict-petitioner Proprietor M/S Aras Enterprise issued a cheque of Tk.40,67,000/- being No.JCA No.0280422 and Tk.1,00,000/- being No.JCA No.0280423 dated 08.07.2014 total amount of Tk. 41,67,000/- only of the Jamuna Bank Limited, Chattogram in favour of the complainant opposite party No.2. The complainant presented the said cheques for encashment, but on 04.09.2014 the said cheques were dishonoured due to payment stopped by drawer. However, the

complainant opposite party No.2 served a legal notice to the petitioner by registered post with acknowledge due on 16.09.2014 demanding payment of the amount due under the cheques within 30(thirty) days. The petitioner received the said legal notice. The notice returned to holder on 08.10.2014, but he did not repay the money within 30(thirty) days. Thereafter, the complainant-opposite party No.2 find no other alternative filed the instant case under Section 138 of the Negotiable Instrument Act, 1881 against the petitioner before the learned Chief Metropolitan Magistrate, Chattogram on 27.10.2014.

The learned Chief Metropolitan Magistrate, Chattogram after receiving the petition of complaint examined the complainant under Section 200 of the Code of Criminal Procedure, 1898 and took cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 as well as registered the petition of complaint as C.R. Case No.1852 of 2014(Kotwali) and issued summon against the convict petitioner.

In the meantime, the case became ready for trial accordingly the learned Chief Metropolitan Magistrate, Chattogram transmitted the case record to the Court of learned

Metropolitan Sessions Judge, Chattogram for trial and disposal and the learned Metropolitan Sessions Judge, Chattogram registered the case as Sessions Case No.177 of 2015. Thereafter the case record has been further transmitted before the Court of learned Additional Metropolitan Sessions Judge, 1st Court, Chattogram for trial.

Thereafter, on 08.07.2015 the learned Additional Metropolitan Sessions Judge, 1st Court, Chattogram framed charge against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 and it was read over and explained to the convict-petitioner to which he pleaded not guilty and claimed to be tried.

The prosecution examined 01(one) witness to prove the case and the defence examined 03(three) witnesses.

After closing the prosecution witness, the learned Trial Court examined the convict petitioner under Section 342 of the Code of Criminal Procedure, 1898, again pleaded not guilty and claimed himself innocent.

After concluding argument, hearing both the parties upon considering the materials on record the learned Joint

Metropolitan Sessions Judge, 4th Court, Chottogram convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 01 (one) year and also to pay a fine of Tk.41,67,000/- in favour of the complainant-opposite party No.2 by his judgment and order of conviction and sentence dated 21.03.2022.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 21.03.2022 passed by the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram in Sessions Case No.177 of 2015 arising out of C.R. (Complainant Register) Case No.1852 of 2014(Kotwali) the convict-petitioner filed Criminal Appeal No.402 of 2022 before the learned Metropolitan Sessions Judge, Chattogram. Thereafter, it was transferred to the learned Additional Metropolitan Sessions Judge, 7th Court, Chattogram for disposal. After hearing both the parties learned Additional Metropolitan Sessions Judge, 7th Court, Chattogram dismissed the said appeal and thereby affirming the judgment and order of conviction and sentence dated 21.03.2022 passed by the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram by his judgment and order dated 15.05.2023.

Being aggrieved by and dissatisfied with the judgment and order dated 15.05.2023 passed by the learned Additional Metropolitan Sessions Judge, 7th Court, Chattogram in Criminal Appeal No.402 of 2022, the convict-petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

Mr. Kamrul Islam, the learned Advocate along with Mr. Mohammad Nurul Huda Ansary, the learned Advocate appearing on behalf of the convict-petitioner submits that the Nurul Islam appointed as Executive Director of Muhammodi Daying and Printing Industries and proprietor of ARAS Enterprise and the said Nurul Islam entered into a business by an agreement with the complainant opposite party No.2 and the convict-petitioner was witness in that said agreement. The complainant demanded a deposit cheques from the petitioner for the business and the petitioner started business by opening 5 letter of credit (LC) with his signed cheque blank condition to the complaint as security letter dispute having paid all the money against 5 letter of credits, but the complainant opposite party No.2 filed this false case under section 138 of the Negotiable Instruments Act, 1881, but that important facts not

consider both courts below hence committed an error of law resulting in an error in decision occasioning failure of justice.

The learned Advocate lastly submits that the trial Court as well as the appellate Court below failed to consider whether the petition of complaint was filed in time and there by both the Court below committed an error of law resulting in an error in decision occasioning failure of justice and findings of both the Courts below is preserve and contrary to law and evidence on record under the facts and circumstances of the case. Therefore, the impugned judgment and order dated 15.05.2023 passed by the learned Additional Sessions Judge, 7th Court, Chattogram in Criminal Appeal No.402 of 2022 illegally and as such the impugned judgment and order is liable to be set-aside. Accordingly, he prays for making the Rule absolute.

On the other hand, Mr. Md. Moksud Sheikh, the learned Advocate appearing on behalf of the opposite party No.2 submits that the convict-petitioner Proprietor M/S Aras Enterprise issued a cheque for Tk.40,67,000/- being No.JCA No.0280422 and Tk.1,00,000/- being No.JCA No.0280423 dated 08.07.2014 total amount of Tk. 41,67,000/- only an

account payee cheque and cheque dated 08.07.2014 Jamuna Bank Limited, Chattogram in favour of the complainant opposite party No.2. The complainant presented the said cheques for encashment, but on 04.09.2014 the said cheques were dishonoured due to payment stopped by drawer. However, the complainant opposite party No.2 served a legal notice to the petitioner by registered post with acknowledge due on 16.09.2014 demanding payment of the amount due under the cheques within 30(thirty) days. The petitioner received the said legal notice. The notice returned to holder on 08.10.2014, but he did not repay the money within 30(thirty) days. Thereafter, the complainant-opposite party No.2 finds no other alternative filed the instant case under Section 138 of the Negotiable Instrument Act, 1881 against the petitioner before the learned Chief Metropolitan Magistrate, Chattogram on 27.10.2014 as C.R. Case No.1852 of 2014(Kotwali).

Thereafter the case was transferred to the Court of learned Metropolitan Sessions Judge, Chattogram for trial and disposal and the learned Metropolitan Sessions Judge, Chattogram registered the case as Sessions Case No.177 of 2015. Thereafter the case record has been further transmitted

before the Court of learned Additional Metropolitan Sessions Judge, 1st Court, Chattogram for trial. Further, it was transferred to the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram for disposal. After concluding hearing both the parties upon considering the materials on record the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 01 (one) year and also to pay a fine of Tk.41,67,000/- in favour of the complainant-opposite party No.2 by his judgment and order of conviction and sentence dated 21.03.2022. Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 21.03.2022 passed by the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram the convict-petitioner filed Criminal Appeal No.402 of 2022 before the learned Metropolitan Sessions Judge, Chattogram. Thereafter, it was transferred to the learned Additional Metropolitan Sessions Judge, 7th Court, Chattogram for disposal. After hearing both the parties learned Additional Metropolitan Sessions Judge, 7th Court, Chattogram dismissed the said appeal and thereby

affirming the judgment and order of conviction and sentence dated 21.03.2022 by his judgment and order dated 15.05.2023 rightly. Accordingly, he prays for discharging the Rule.

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

It appears from the records that the convict-petitioner Proprietor M/S Aras Enterprise issued a cheque of Tk.40,67,000/- being No.JCA No.0280422 and Tk.1,00,000/- being No.JCA No.0280423 dated 08.07.2014 total amount of Tk. 41,67,000/- only of the Jamuna Bank Limited, Chattogram in favour of the complainant opposite party No.2. The complainant presented the said cheques for encashment, but on 04.09.2014 the said cheques were dishonoured due to payment stopped by drawer. However, the complainant opposite party No.2 served a legal notice to the petitioner by registered post with acknowledge due on 16.09.2014 demanding payment of the amount due under the cheques within 30(thirty) days. The petitioner received the said legal notice. The notice returned to holder on 08.10.2014, but he did not repay the money within

30(thirty) days. Thereafter, the complainant-opposite party No.2 finds no other alternative filed the instant case under Section 138 of the Negotiable Instrument Act, 1881 against the petitioner before the learned Chief Metropolitan Magistrate, Chattogram on 27.10.2014 as C.R. Case No.1852 of 2014(Kotwali) following all legal formalities .

Now, let us discuss the evidence of prosecution witness Alhaz Mohammad Mofizur Rahman.

Alhaz Mohammad Mofizur Rahman as P.W.1 in his deposition stated that the convict-petitioner gave two cheques of Tk.40,67000/- and Tk.1,00,000/- to the complainant in payment of the debt on 08.07.2014. The said cheques were dishonoured due to payment stopped by drawer on 04.09.2014. The complainant opposite party No.2 served a legal notice to the petitioner by registered post on 16.09.2014. The petitioner did not receive the said legal notice and it was returned on 08.10.2014. The petitioner did not repay the said amount. Thereafter, he filed the instant case on 27.10.2014. He identified the complaint-petition as exhibit-1, therein his signature as Exhibit-1/1, cheque No.0280422 and 0280423 dated 08.07.2014 as exhibit-2,2/1, dishonored Slip as exhibit-3

and 3/1, legal notice as exhibit-4, postal receipt as exhibit-4/1 and return envelope as exhibit-4/2. He identified the convict-petitioner on dock.

Considering the above facts and circumstances, it appears that the convict-petitioner gave two cheques of Tk.40,67000/- and Tk.1,00,000/- to the complainant in payment of the debt on 08.07.2014. The said cheques were dishonoured due to payment stopped by drawer on 04.09.2014. The complainant opposite party No.2 served a legal notice to the petitioner by registered post on 16.09.2014. The petitioner did not receive the said legal notice and it was returned on 08.10.2014. The petitioner did not repay the said amount. Thereafter, he filed the instant case on 27.10.2014 following all legal formalities, which is maintainable in the eye of law.

In the light of the above discussion, it is clear before me that the prosecution has able to prove his case beyond all reasonable doubt and the Additional Metropolitan Sessions Judge, 7th Court, Chattogram rightly passed the judgment and order dated 15.05.2023 in Criminal Appeal No.402 of 2022, which is maintainable in the eye of law.

Accordingly, I do not find any cogent and legal ground to interfere with the impugned judgment and order dated 15.05.2023 and I find substance in the submissions of the learned Advocate for the opposite party No.2. Therefore, the instant Rule has no merit.

In the result, the Rule is discharged.

The judgment and order dated 15.05.2023 passed by the learned the learned Additional Metropolitan Sessions Judge, 7th Court, Chattogram in Criminal Appeal No.402 of 2022 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 21.03.2022 passed by the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram in Sessions Case No.177 of 2015 arising out of C.R. (Complainant Register) Case No.1852 of 2014(Kotwali) is hereby upheld and confirmed.

Further, the convict-petitioner is hereby directed to surrender before the concerned Court below within 15(fifteen) days from the date of receipt of this judgment and order, failing which the learned concerned Court below will take necessary steps to secure arrest him.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.20,83,500/- 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. Anamu Hoque Parvej
Bench Officer