**Present:**

**Mr. Justice Md. Khasruzzaman**

**Criminal Revision No. 4545 of 2022**

Md. Anarul Islam
....Convict-appellant-petitioner.
-Versus-
The State and another
...Opposite parties.
Mr. Md. Shamsil Arefin, Advocate
… For the convict-petitioner.
Mr. SM Younus Ali Robi, D.A.G. with
Mrs. Asma Hosen, A.A.G.
Mr. George Chowdhury, A.A.G. and
Mr. Md. Rashedul Hasan Sumon, A.A.G.
.....For the State.
Mr. Chowdhury Shamsul Arifin, Advocate
... For the complainant-opposite party

**Judgment on 23.04.2026**

The Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order of conviction and sentence dated 21.08.2022 passed by the learned Additional Sessions Judge, 2nd Court, Satkhira in Criminal Appeal No. 34 of 2021 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 14.12.2020 passed by the learned Joint Sessions Judge, 1st Court, Satkhira in Sessions Case No.

1147 of 2019, arising out of C.R. Case No. 283 of 2019 (Sat), convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him there under to suffer simple imprisonment for 01 (one) year and also to pay a fine of Tk. 4,00,000.00 (Four Lac), should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

On 23.06.2019 one Md. Yeasin Ali Gazi, as a complainant, instituted C.R. Case No. 283 of 2019 before the learned Additional Chief Judicial Magistrate, Cognizance Court No. 1, Satkhira against the accused alleging commission of an offence punishable under section 138 of the Negotiable Instruments Act, 1881.

The prosecution case, in short, is that on 23.12.2018 at about 5:00 p.m. the accused, Md. Anarul Islam, borrowed Tk. 4,00,000.00 (four lac) from the complainant at his house, in the presence of witnesses, for his brick kiln business. The accused issued cheque No. 1313145 dated 24.04.2019 for the same amount in favour of the complainant. The accused drew the cheque on account No.

5653/55 maintained by him with Bangladesh Krishi Bank, Assasuni Branch, Satkhira. On 24.04.2019 the complainant presented the cheque for collection with Sonali Bank, Satkhira Branch, Satkhira, and it was forwarded to the drawee bank. On 09.05.2019 the cheque was returned unpaid with the endorsement “Insufficient fund”. On 19.05.2019 the complainant through his learned Advocate sent a legal notice to the accused demanding payment of the cheque amount. The accused received the notice on 22.05.2019 and failed to pay within the prescribed period. Thus, the cause of action arose on 23.06.2019. Accordingly, the complainant filed this case under section 138 of the Negotiable Instruments Act, 1881.

After examining the complainant under section 200 of the Code of Criminal Procedure, the learned Additional Chief Judicial Magistrate, Cognizance Court No. 1, Satkhira took cognizance of the offence under section 138 of the Negotiable Instruments Act, 1881 against the accused and issued summons directing him to appear before the Court. Pursuant thereto, on 25.07.2019, the accused

appeared before the Court and prayed for bail, which was granted on the same day.

Subsequently, the case record was transmitted to the learned Sessions Judge, Satkhira, whereupon it was registered as Sessions Case No. 1147 of 2019. After taking cognizance of the offence under section 138 of the Negotiable Instruments Act, 1881 against the accused, the learned Sessions Judge transferred the case to the learned Joint Sessions Judge, 1st Court, Satkhira for holding trial and disposal. Thereafter, on 03.03.2020 charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881. The charge was read over and explained to the accused and he pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined the complainant as P.W.1 in order to substantiate the charge brought against the accused. The defence cross-examined P.W.1. The defence examined the accused Md. Anarul Islam as D.W. 1 and he was cross-examined by the prosecution.

Upon conclusion of the trial, the learned Joint Sessions Judge, 1st Court, Satkhira, by judgment and order dated 14.12.2020, found the accused guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and accordingly convicted and sentenced him to suffer simple imprisonment for 01 (one) year and also to pay a fine of Tk. 4,00,000.00 (Four Lac), with a direction that the complainant would get the entire fine amount.

Being aggrieved by and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict-petitioner, as an appellant, preferred Criminal Appeal No. 34 of 2021 before the learned Sessions Judge, Satkhira. Subsequently, the appeal was transferred to the learned Additional Sessions Judge, 2nd Court, Satkhira for hearing and disposal.

Upon hearing the learned Advocates for both sides and considering the evidence and materials on record, the Appellate Court, by judgment and order dated 21.08.2022, dismissed the appeal, thereby affirming the judgment and order of conviction and sentence passed by the Trial Court.

Being further aggrieved by and dissatisfied with the aforesaid judgment and order dated 21.08.2022 passed by the Appellate Court, the convict-petitioner preferred the instant criminal revision before this Court and obtained the present Rule.

Mr. Md. Shamsil Arefin, the learned Advocate appearing on behalf of the convict-petitioner, made his submissions on the points of law and facts involved in the instant revision.

On the other hand, Mr. Chowdhury Shamsul Arifin, the learned Advocate appearing on behalf of the complainant-opposite party, submits that the accused asked to borrow Tk. 4,00,000.00 from the complainant for his brick kiln business. As the complainant needed bricks, the complainant paid that amount to the accused in the presence of witnesses for the purpose of bricks. The accused did not supply any bricks to the complainant. Therefore, the complainant filed the present case. He further submits that in order to refund the money, the convict-petitioner issued the cheque in favour of the complainant, which was

subsequently dishonoured upon presentation for encashment. Consequently, the complainant, after complying with all the statutory requirements, instituted the instant case under section 138 of the Negotiable Instruments Act, 1881. He also submits that the complainant adduced both oral and documentary evidence in support of the prosecution case and duly proved the relevant documents, which were marked as exhibits. He contends that the prosecution successfully proved the charge against the convict-petitioner beyond reasonable doubt and that the Trial Court, upon proper appreciation of the evidence on record and consideration of the relevant facts and law, rightly convicted and sentenced the convict-petitioner. The said judgment and order of conviction and sentence having been affirmed by the Appellate Court. He finally submits that the concurrent findings of the Courts below, being based on the evidence on record and sound appreciation of law, do not call for any interference by this Court in the exercise of its revisional jurisdiction.

Heard the learned Advocates for both sides, perused the revisional application, the impugned judgments and orders passed by the Courts below, and the other relevant materials available on record.

The depositions and cross-examinations of P.W.1 and D.W.1 are set out below.

P.W. 1, Md. Yeasin Ali Gazi, in his examination-in-chief, deposed that the accused, Md. Anarul Islam, had received Tk. 4,00,000 from him for the supply of bricks. The accused failed to supply the bricks and gave him the cheque. The cheque was dishonoured on 09.05.2019 for insufficiency of funds. The complainant sent a legal notice to the accused. As the accused failed to pay the amount, the complainant instituted the case. He proved the petition of complaint and his signature thereon, which were marked as Exhibits 1 and 1/1 respectively. He further proved the cheque and the dishonour slip which were marked as Exhibits 2 and 3 respectively. He also proved the legal notice, postal receipt and acknowledgement due card, which were marked as Exhibits 4, 5 and 6 respectively.

In cross-examination, P.W. 1 stated that he was a government employee serving as a Registrar at the thana office for primary schools. He stated that his monthly salary was Tk. 50,00,000.00. He denied the suggestion that he lacked the financial means to pay Tk. 4,00,000.00. He also denied the suggestions that the accused had received no money from him and that the accused had never given him the cheque. He denied the defence suggestion that the accused had entered into an agreement with his business partners, had given the cheque to one of them, Rahajan, and that the complainant had obtained the cheque and instituted the case on a false claim. He further denied the suggestion that the accused had paid the amount to Rahajan and that Rahajan had sold the cheque to him. He denied having instituted a false case or given false evidence.

D.W. 1, Md. Anarul Islam, in his examination-in-chief, deposed that he was the accused in the case. He stated that he had never given the cheque to the complainant. He had given it to Rahajan under a written agreement in connection with their business dealings. He subsequently

paid Rahajan the amount covered by the cheque. After receiving payment, Rahajan handed the cheque to the complainant, who used it to institute a false case against him.

In cross-examination, D.W. 1 admitted that the signature on the cheque was his. He denied the suggestion that he had given the cheque to the complainant. He also denied having given false evidence.

Upon a careful examination and scrutiny of the evidence on record, it appears that the complainant, Md. Yeasin Ali, was examined as P.W.1 and, in his examination-in-chief, he categorically supported the prosecution case as narrated in the petition of complaint. He proved the petition of complaint and his signature thereon, which were marked as exhibit Nos. 1 and 1/1 respectively. He further proved the cheque in question and the cheque dishonour slip, which were marked as exhibit Nos. 2 and 3 respectively. He also proved the legal notice, postal receipt and acknowledgement due card, which were marked as exhibit Nos. 4, 5 and 6 respectively.

It is the case of the defence that the accused delivered the cheque in question to his business partner, Rahajan Ali, pursuant to an agreement between them. The defence further contends that the accused subsequently paid the amount due to Rahajan Ali, but that Rahajan Ali nevertheless handed the cheque to the complainant and thereby caused the present false case to be instituted against the accused.

It further appears from the record that P.W.1 was cross-examined by the defence and the defence examined the accused as D.W.1 and he did not produce any document in support of defence case or to rebut or dislodge the prosecution case. Thus, the oral testimony of P.W.1, being supported and corroborated by the documentary evidence on record, lends substantial support to the material allegations made in the petition of complaint. In the absence of any evidence to the contrary, and there being nothing inherently improbable or inconsistent in his testimony, I find no cogent reason to disbelieve the evidence of P.W.1.

It is further submitted by the learned Advocate for the complainant-opposite party that the statutory legal notice was duly served upon the convict-petitioner by registered post with acknowledgement due in compliance with the provisions of sections 138(1)(b) and 138(1A)(b) of the Negotiable Instruments Act, 1881. It is evident from the materials on record, particularly the postal receipt and acknowledgement due card, that the notice was duly received by the convict-petitioner. Furthermore, the defence did not raise any objection regarding the service of the said notice. In view of the aforesaid evidence and circumstances, I am satisfied that the statutory notice was duly served upon the convict-petitioner in accordance with law.

It further appears that the complainant, upon receiving information regarding dishonour of the cheque, issued the statutory demand notice within the prescribed period and that the notice was duly received by the convict-petitioner on 22.05.2019. Despite receipt of the notice, the convict-petitioner failed to make payment of the cheque amount within the statutory period of 30 (thirty) days. Thereafter,

the complainant instituted the complaint on 23.06.2019, within the period prescribed by law. Thus, the necessary statutory requirements for maintaining a prosecution under section 138 of the Negotiable Instruments Act, 1881 appear to have been duly complied with. Therefore, I find that the complainant instituted the case after complying with the mandatory requirements of law and that the proceeding was legally maintainable.

It also appears from the record that the Trial Court, upon an elaborate consideration of the facts and circumstances of the case, the oral and documentary evidence adduced by the prosecution, the defence and the relevant provisions of law, found the accused guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and accordingly convicted and sentenced him. The Appellate Court, upon independent consideration of the evidence and materials on record and examination of the findings arrived at by the Trial Court, affirmed the judgment and order of conviction and sentence. The findings recorded by both the Courts below are supported

by the evidence on record, and I do not find any material infirmity in their appreciation of the evidence relating to the issuance of the cheque, its dishonour, service of the statutory notice and failure of the convict-petitioner to make payment within the prescribed period.

It is well settled that the revisional jurisdiction of this Court is primarily intended to examine the legality, correctness and propriety of the findings, sentence or order passed by the Courts below and to prevent miscarriage of justice arising from any material illegality or irregularity. Ordinarily, this Court, while exercising its revisional jurisdiction, does not interfere with concurrent findings of fact recorded by the Courts below merely for the purpose of substituting its own appreciation of the evidence, unless such findings are shown to be perverse, contrary to the evidence on record or vitiated by any manifest illegality or material irregularity. In the instant case, the Trial Court as well as the Appellate Court have arrived at concurrent findings regarding the guilt of the convict-petitioner upon consideration of the evidence and materials available on

record. Upon scrutiny of those findings, I do not find any misreading or non-consideration of material evidence warranting interference by this Court.

Having given my anxious consideration to the submissions advanced by the learned Advocates for both sides, the evidence and materials on record, the relevant provisions of law and the judgments and orders passed by the Courts below, I am of the considered view that the prosecution has successfully established the charge against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 beyond reasonable doubt. The Trial Court, upon proper appreciation of the evidence and application of the relevant law, rightly convicted and sentenced the convict-petitioner, and the Appellate Court committed no error in affirming the said judgment and order of conviction and sentence. I do not find any illegality, infirmity, perversity or misreading or non-consideration of material evidence in the impugned judgments and orders warranting interference by this Court in the exercise of its revisional jurisdiction. Accordingly, I

find no merit in the instant Rule, and the same is liable to be discharged.

In the result, the Rule is discharged.

The Trial Court is directed to pay the amount deposited by the convict-petitioner before filing the appeal to the complainant-opposite party and issue process against the convict-petitioner to secure his arrest for execution of the sentence.

The Trial Court shall also take necessary steps for realization of the remaining amount of fine, if any, as per the provisions of section 386 of the Code of Criminal Procedure.

Send down the records.

Communicate the order.

**(Md. Khasruzzaman, J:)**