

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No.3211 of 2023

Fakhrul Ahmad Motashim

.....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. Md. Jahangir Hossain, Advocate

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

Heard on 16.01.2024 and

Judgment on:17.01.2024

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 impugned and order of conviction and sentence dated 16.07.2023 passed by the learned Senior Sessions Judge, Sylhet in Criminal Appeal No.173 of 2023 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 11.09.2022 passed by the learned Joint Sessions Judge, Additional Court, Sylhet in Sessions Case No.216 of 2022 arising out of C.R.

Case No.202 of 2019 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 sentenced him to suffer simple imprisonment for a period of 01(one) year and also to pay a fine of Tk.18,00,000/- 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 continued the bail to the convict-petitioner till disposal of the Rule 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 Tk.32,00,000/- from the complainant to sent abroad of complainant's relative. In failing the convict-petitioner issued a cheque being No.4697569 dated 20.06.2019 in favour of the complainant for an amount of Tk.18,00,000/-. The complainant presented the aforesaid cheque to the NRB Bank Limited, Goalbazar Branch, Osmaninagor, Sylhet for encashment. But, the cheque was dishonoured due to insufficient fund on 08.07.2019. Thereafter, a legal notice was served on 18.07.2019 by the complainant through his learned engaged lawyer calling upon the convict-petitioner requesting

for payment of the said cheque amount. But, the convict-petitioner did not pay the aforesaid cheque amount to the complainant. Thereafter, the complainant finding no other alternative filed a complaint-petition before the learned Senior Judicial Magistrate, Amoli Adalat No.01, Sylhet under section 138 of the Negotiable Instruments Act, 1881 against the petitioner on 21.08.2019.

The learned Magistrate examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 as C.R. Case No.202 of 2019 and issued summons against him. The convict-petitioner surrendered before the concerned Court with a prayer for bail and obtained bail. Thereafter, this case was transferred to the learned Sessions Judge, Sylhet for trial, where the case was registered as Sessions Case No.216 of 2022. The learned Sessions Judge, Sylhet transferred the case to the learned Joint Sessions Judge, Additional Court, Sylhet for trial and disposal. Later on 28.02.2022 charge was framed against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881. The charge was read over and explained to the convict-

petitioner, in which he pleaded not guilty and claimed to be tried. The prosecution examined 01(one) witness to prove the case and the defence examined none. The petitioner was not examined under section 342 of the Code of Criminal Procedure for his absconsion.

The learned Joint Sessions Judge, Additional Court, Sylhet after hearing the parties and perusing the evidence on record found guilty the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 01(one) years and also to pay a fine of Tk.18,00,000/- by his judgment and order of conviction and sentence dated 11.09.2022.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 11.09.2022 passed by the learned Joint Sessions Judge, Additional Court, Sylhet in Sessions Case No.216 of 2022 arising out of C.R. Case No.202 of 2019 the convict-petitioner filed Criminal Appeal No.173 of 2023 before the learned Senior Sessions Judge, Sylhet and after hearing the appeal the learned Senior Sessions Judge, Sylhet dismissed the said Appeal and thereby affirmed the judgment and order of conviction and sentence dated 11.09.2022 by his

judgment and order of conviction and sentence dated 16.07.2023.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 16.07.2023 passed by the learned Senior Sessions Judge, Sylhet in Criminal Appeal No.173 of 2023, the convict-petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

No one appears for the convict-petitioner to press the instant Rule, when this matter was taken up for hearing and disposal although it appears in the daily cause list several times.

On the other hand, Mr. Md. Jahangir Hossain, the learned Advocate appearing on behalf of the opposite party No.2 submits that the convict-petitioner took Tk.32,00,000/- from the complainant to sent abroad of complainant's relative. In failing the convict-petitioner issued a cheque being No.4697569 dated 20.06.2019 in favour of the complainant for an amount of Tk.18,00,000/-. The complainant presented the aforesaid cheque to the NRB Bank Limited, Goalbazar Branch, Osmaninagor, Sylhet for encashment. But, the cheque was

dishonoured due to insufficient fund on 08.07.2019. Thereafter, a legal notice was served on 18.07.2019 by the complainant through his learned engaged lawyer calling upon the convict-petitioner requesting for payment of the said cheque amount. But, the convict-petitioner did not pay the aforesaid cheque amount to the complainant. Thereafter, the complainant finding no other alternative filed a complaint-petition before the learned Senior Judicial Magistrate, Amoli Adalat No.01, Sylhet under section 138 of the Negotiable Instruments Act, 1881 against the petitioner on 21.08.2019 as C.R. Case No.202 of 2019. Thereafter, this case was transferred to the learned Sessions Judge, Sylhet for trial, where the case was registered as Sessions Case No.216 of 2022. The learned Sessions Judge, Sylhet transferred the case to the learned Joint Sessions Judge, Additional Court, Sylhet for trial and disposal. The learned Joint Sessions Judge, Additional Court, Sylhet after hearing the parties and perusing the evidence on record found guilty the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 01(one) years and also to pay a fine of Tk.18,00,000/- by his judgment and order of conviction

and sentence dated 11.09.2022. Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 11.09.2022 passed by the learned Joint Sessions Judge, Additional Court, Sylhet in Sessions Case No.216 of 2022 arising out of C.R. Case No.202 of 2019 the convict-petitioner filed Criminal Appeal No.173 of 2023 before the learned Senior Sessions Judge, Sylhet and after hearing the appeal the learned Senior Sessions Judge, Sylhet dismissed the said Appeal and thereby affirmed the judgment and order of conviction and sentence dated 11.09.2022 by his judgment and order of conviction and sentence dated 16.07.2023 rightly, which is maintainable in the eye of law. 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 submissions of the learned Advocate for the opposite party No.2, the papers and documents as available on the record.

On perusal of the record, it is found that the convict-petitioner took Tk.32,00,000/- from the complainant to sent abroad of complainant's relative. In failing the convict-

petitioner issued a cheque being No.4697569 dated 20.06.2019 in favour of the complainant for an amount of Tk.18,00,000/-. The complainant presented the aforesaid cheque to the NRB Bank Limited, Goalbazar Branch, Osmaninagor, Sylhet for encashment. But, the cheque was dishonoured due to insufficient fund on 08.07.2019. Thereafter, a legal notice was served on 18.07.2019 by the complainant through his learned engaged lawyer calling upon the convict-petitioner requesting for payment of the said cheque amount. But, the convict-petitioner did not pay the aforesaid cheque amount to the complainant. Thereafter, the complainant finding no other alternative filed a complaint-petition before the learned Senior Judicial Magistrate, Amoli Adalat No.01, Sylhet under section 138 of the Negotiable Instruments Act, 1881 against the petitioner on 21.08.2019 as C.R. Case No.202 of 2019 following all legal formalities.

Upon careful scrutiny the deposition of the P.W.1 it appears that the P.W.1 as complainant fully supported his case in his deposition. P.W.1 has stated in his examination-in-chief that the convict-petitioner Fakhrul Ahmad Motashin issued a cheque being No.4697569 dated 20.06.2019 for amount of

Tk.18,00,000/- in favour of the complainant and the cheque was placed before the bank for encashment, but unfortunately it was dishonoured on 08.07.2019 for insufficient of fund. Thereafter, the complainant has given legal notice to the petitioner on 18.07.2019, but he did not respond the notice and did not take any step for payment of the cheque amount. Thereafter, the complainant filed this case.

Therefore, considering the facts and circumstances and the evidence on record, this Court is of the view that the prosecution has been able to prove the case beyond all reasonable doubt.

In the light of the above discussion, it is clear before me that the complainant-opposite party No.2 filed this case following all legal formalities and judgment and order of conviction and sentence dated 16.07.2023 passed by the learned Senior Sessions Judge, Sylhet in Criminal Appeal No.173 of 2023 rightly, which is maintainable in the eye of law and there is no any scope to interference there.

Accordingly, I do not find any cogent and legal ground to interfere with the impugned judgment and order of

conviction and sentence dated 16.07.2023. Therefore, the instant Rule has no merit.

In the result, the Rule is discharged.

The judgment and order of conviction and sentence dated 16.07.2023 passed by the learned the learned Senior Sessions Judge, Sylhet in Criminal Appeal No.173 of 2023 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 22.11.2022 passed by the learned Joint Sessions Judge, 3rd Court, Sylhet in Sessions Case No.216 of 2022 arising out of C.R. Case No.202 of 2019 is hereby upheld and confirmed.

Further, the concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.9,00,000/-, which has been deposited by the convict-petitioner through Chalan at the time of filing appeal to the complainant-opposite party No.2 (if he did not withdraw the said amount).

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

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

Md. Anamul Hoque Parvej
Bench Officer