

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

**Present:**

Mr. Justice Md. Kamrul Hosssain Mollah

**Criminal Revision No.3178 of 2022**

Md. Sumon Miah

.....convict-petitioner

-Versus-

The State and another

..... opposite-parties

No one appears

.....For the convict-petitioner

No one appears

.....For the opposite party No.2

**Judgment on merit on 14.01.2024**

**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 31.01.2022 passed by the learned Sessions Judge, Lakshmipur in Criminal Appeal No.438 of 2020 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 28.10.2020 passed by the learned Joint Sessions Judge, 2<sup>nd</sup> Court, Lakshmipur in Sessions Case No.436 of 2019 arising out of C.R. Case No.37 of 2019 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 sentenced him to suffer simple

imprisonment for a period of 06(six) months and also to pay a fine of Tk.2,40,000/- 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 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 loan of Tk.2,40,000/- from the complainant for business purpose. The convict-petitioner against the said loan issued cheque being No.33221111 of Tk.80,000/- dated 01.10.2018, cheque being No.33221112 of Tk.80,000/- dated 01.11.2018, cheque being No.33221113 of Tk.80,000/- dated 01.12.2018 in favour of the complainant. The complainant deposited the aforesaid cheques to the concerned bank for encashment. But, the said cheques were dishonoured for insufficient fund on 10.01.2019. Thereafter, a legal notice was served on 15.01.2019 by the complainant through his learned engaged lawyer for refunding his cheques amount. But, the convict-petitioner did not pay the aforesaid cheques amount to

the complainant. Thereafter, the complainant finding no other alternative filed a complaint-petition before the learned Senior Judicial Magistrate, Amoli Anchol Ramgonj, Lakshmipur under section 138 of the Negotiable Instruments Act, 1881 against the petitioner on 20.02.2019.

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.37 of 2019 and issued summons against him. On 10.04.2019 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, Lakshmipur for trial, where the case was registered as Sessions Case No.436 of 2019. The learned Sessions Judge, Lakshmipur transferred the case to the learned Joint Sessions Judge, 2<sup>nd</sup> Court, Lakshmipur for trial and disposal.

Later on 27.08.2019 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 examined under section 342 of the Code of Criminal Procedure and he pleaded not guilty.

The learned Joint Sessions Judge, 2<sup>nd</sup> Court, Lakshmipur 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 06(six) months and also to pay a fine of Tk.2,40,000/- by his judgment and order of conviction and sentence dated 28.10.2020.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 28.10.2020 passed by the learned Joint Sessions Judge, 2<sup>nd</sup> Court, Lakshmipur in Sessions Case No.436 of 2019 arising out of C.R. Case No.37 of 2019 the convict-petitioner filed Criminal Appeal No.438 of 2020 before the learned Sessions Judge, Lakshmipur and after hearing the appeal the learned Sessions Judge, Lakshmipur

dismissed the said Appeal and thereby affirmed the judgment and order of conviction and sentence dated 28.10.2020 by his judgment and order of conviction and sentence dated 31.01.2022.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 31.01.2022 passed by the learned Sessions Judge, Lakshmipur in Criminal Appeal No.438 of 2020, the convict-petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

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

I have perused the revisional application, the impugned judgment and order of conviction and sentence of the Courts' below, the papers and documents as available on the record.

On perusal of the record, it is found that the convict-petitioner took loan of Tk.2,40,000/- from the complainant for business purpose. The convict-petitioner against the said loan issued cheque being No.33221111 of Tk.80,000/- dated

01.10.2018, cheque being No.33221112 of Tk.80,000/- dated 01.11.2018, cheque being No.33221113 of Tk.80,000/- dated 01.12.2018 in favour of the complainant. The complainant deposited the aforesaid cheques to the concerned bank for encashment. But, the said cheques were dishonoured for insufficient fund on 10.01.2019. Thereafter, a legal notice was served on 15.01.2019 by the complainant through his learned engaged lawyer for refunding his cheques amount. But, the convict-petitioner did not pay the aforesaid cheques amount to the complainant. Thereafter, the complainant finding no other alternative filed a complaint-petition before the learned Senior Judicial Magistrate, Amoli Anchol Ramgonj, Lakshmipur under section 138 of the Negotiable Instruments Act, 1881 against the petitioner on 20.02.2019 as C.R. Case No.37 of 2019 following all legal formalities. Thereafter, this case was transferred to the learned Sessions Judge, Lakshmipur for trial, where the case was registered as Sessions Case No.436 of 2019. The learned Sessions Judge, Lakshmipur transferred the case to the learned Joint Sessions Judge, 2<sup>nd</sup> Court, Lakshmipur for trial and disposal. The learned Joint Sessions Judge, 2<sup>nd</sup> Court, Lakshmipur 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 06(six) months and also to pay a fine of Tk.2,40,000/- by his judgment and order of conviction and sentence dated 28.10.2020. Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 28.10.2020 passed by the learned Joint Sessions Judge, 2<sup>nd</sup> Court, Lakshmipur in Sessions Case No.436 of 2019 arising out of C.R. Case No.37 of 2019 the convict-petitioner filed Criminal Appeal No.438 of 2020 before the learned Sessions Judge, Lakshmipur and after hearing the appeal the learned Sessions Judge, Lakshmipur dismissed the said Appeal and thereby affirmed the judgment and order of conviction and sentence dated 28.10.2020 by his judgment and order of conviction and sentence dated 31.01.2022.

Upon careful scrutiny of 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 took loan of Tk.2,40,000/- from the complainant for business purpose. The convict-petitioner against the said loan issued cheque being No.33221111 of

Tk.80,000/- dated 01.10.2018, cheque being No.33221112 of Tk.80,000/- dated 01.11.2018, cheque being No.33221113 of Tk.80,000/- dated 01.12.2018 in favour of the complainant. The complainant deposited the aforesaid cheques to the concerned bank for encashment. But, the said cheques were dishonoured for insufficient fund on 10.01.2019. Thereafter, a legal notice was served on 15.01.2019 by the complainant through his learned engaged lawyer for refunding his cheques amount. But, the convict-petitioner did not pay the aforesaid cheques amount to the complainant. Thereafter, the complainant filed this case.

Therefore, considering the above 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 31.01.2022 passed by the learned Sessions Judge, Lakshmipur in Criminal Appeal No.438 of 2020 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 31.01.2022. Therefore, the instant Rule has no merit.

In the result, the Rule is discharged.

The judgment and order of conviction and sentence dated 31.01.2022 passed by the learned the learned Sessions Judge, Lakshmipur in Criminal Appeal No.438 of 2020 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 28.10.2020 passed by the learned Joint Sessions Judge, 2<sup>nd</sup> Court, Sylhet in Sessions Case No.436 of 2019 arising out of C.R. Case No.37 of 2019 is hereby upheld and confirmed.

Further, the concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.1,20,000/-, 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 of 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*