

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No. 3643 of 2023

Haji Abdul Momen

.... convict-petitioner

-Versus-

The State and another

.... complainant-opposite parties

No one appears

.... For the petitioner

Mr. Ashak Kumar Banik, Advocate

.... for the opposite party No.1

Heard on 20.02.2024 and

Judgment on: 22.02.2024

Md. Kamrul Hossain Mollah.J:

This is an application 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 10.10.2022 passed by the learned Sessions Judge, Narsingdi in Criminal Appeal No.276 of 2021 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 13.10.2021 passed by the learned Joint Sessions Judge, 1st Court, Narsingdi in Sessions Case No.1088 of 2020 arising out of C.R. Case No.334 of 2020 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 10(ten) months and also to pay a fine of Tk. 8,50,000/- 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 the convict-petitioner for a period of 06(six) months 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 taken amount of Tk.8,50,000/- from the complainant and issued a cheque being No.3171-0764537 of Agrani Bank Limited, Narsingdi Branch of Tk.8,50,000/- on 18.03.2020. The said cheque was deposited by the complainant with the concerned Bank, for encashment which was dishonoured on 05.07.2020 for insufficient fund. Thereafter, the complainant issued a legal notice to the petitioner on 28.07.2020 to pay the money immediately, the petitioner received the said legal notice, but did not pay the said cheque amount. Thereafter, the complainant-opposite party No.2 finding no other alternative filed a complaint-petition against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 before the learned Raipura C.R. Amoli Adalat, Narsingdi on 02.09.2020.

The learned Raipura C.R. Amoli Adalat, Narsingdi 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.334 of 2020 and issued summon against the

convict-petitioner. On 29.09.2020 the petitioner voluntarily surrendered before the Court and obtained bail.

Thereafter, it was transmitted to the Court of learned Sessions Judge, Narsingdi for trial and disposal and registered as Sessions Case No.1088 of 2020. Further, it was transferred to the learned Joint Sessions Judge, 1st Court, Narsingdi for disposal. Thereafter, on 03.03.2021 the learned Joint Sessions Judge, 1st Court, Narsingdi framed charge against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 and it was read over to him and he pleaded not guilty and claimed to be tried.

The learned Joint Sessions Judge, 1st Court, Narsingdi examined the complainant as PW1 to prove the prosecution case, but defense examined none.

After closing the prosecution witness, the learned trial Court examine the convict-petitioner under Section 342 of the Code of Criminal Procedure, where he pleaded not guilty and he claimed himself innocent.

After hearing both the parties and considering the materials on record, the learned Joint Sessions Judge, 1st Court, Narsingdi found guilty the convict-appellant under section138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 01(one) year and also to pay a fine of Tk.8,50,000/- by his judgment and order of conviction and sentence dated 13.010.2021.

Being aggrieved by and dissatisfied with the Judgment and order of conviction and sentence dated 13.10.2021 passed by the learned Joint Sessions Judge, 1st Court, Narsingdi in Sessions Case No.1088 of 2020 arising out of Raipur C.R. Case No.334 of 2020 the convict-petitioner filed Criminal Appeal No.276 of 2021 before the learned Sessions Judge, Narsingdi. After hearing the parties and considering the evidence on record, the learned Sessions Judge, Narsingdi dismissed the appeal and thereby affirmed the judgment and order of conviction and sentence dated 13.10.2021 passed by the learned Joint Sessions Judge, 1st Court, Narsingdi in Sessions Case No.1088 of 2020 arising out of Raipur C.R. Case No.334 of 2020 by his judgment and order of conviction and sentence dated 10.10.2022.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 10.10.2022 passed by the learned Sessions Judge, Narsingdi in Criminal Appeal No.276 of 2021 dismissing the appeal, the convict-petitioner filed this Criminal Revision before the Hon'ble High Court Division.

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

On the other hand, Mr. Ashok Kumar Banik, the learned Advocate appearing on behalf of the opposite party No.2 submits that the convict-petitioner taken amount of Tk.8,50,000/- from the complainant and issued a cheque being No.3171-0764537 of Agrani

Bank Limited, Narsingdi Branch of Tk.8,50,000/- on 18.03.2020. The said cheque was deposited by the complainant with the concerned Bank, for encashment which was dishonoured on 05.07.2020 for insufficient fund. Thereafter, the complainant issued a legal notice to the petitioner on 28.07.2020 to pay the money immediately, the petitioner received the said legal notice, but did not pay the said cheque amount. Thereafter, the complainant-opposite party No.2 finding no other alternative filed a complaint-petition against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 before the learned Raipura C.R. Amoli Adalat, Narsingdi on 02.09.2020 as C.R. Case No.334 of 2020. Thereafter, it was transmitted to the Court of learned Sessions Judge, Narsingdi for trial and disposal and registered as Sessions Case No.1088 of 2020. Further, it was transferred to the learned Joint Sessions Judge, 1st Court, Narsingdi for disposal. After hearing both the parties and considering the materials on record, the learned Joint Sessions Judge, 1st Court, Narsingdi found guilty the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 01(one) year and also to pay a fine of Tk.8,50,000/- by his judgment and order of conviction and sentence dated 13.10.2021. Being aggrieved by and dissatisfied with the Judgment and order of conviction and sentence dated 13.10.2021 passed by the learned Joint Sessions Judge, 1st Court, Narsingdi in Sessions Case No.1088 of 2020 arising out of Raipur C.R. Case No.334 of 2020 the convict-

petitioner filed Criminal Appeal No.276 of 2021 before the learned Sessions Judge, Narsingdi. After hearing the parties and considering the evidence on record, the learned Sessions Judge, Narsingdi dismissed the appeal and thereby affirmed the judgment and order of conviction and sentence dated 13.10.2021 passed by the learned Joint Sessions Judge, 1st Court, Narsingdi in Sessions Case No.1088 of 2020 arising out of Raipur C.R. Case No.334 of 2020 by his judgment and order of conviction and sentence dated 10.10.2022 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 papers and documents as available on the record.

It appears from the records that the convict-petitioner taken amount of Tk.8,50,000/- from the complainant and issued a cheque being No.3171-0764537 of Agrani Bank Limited, Narsingdi Branch of Tk.8,50,000/- on 18.03.2020. The said cheque was deposited by the complainant with the concerned Bank, for encashment which was dishonoured on 05.07.2020 for insufficient fund. Thereafter, the complainant issued a legal notice to the petitioner on 28.07.2020 to pay the money immediately, the petitioner received the said legal notice, but did not pay the said cheque amount. Thereafter, the complainant-opposite party No.2 finding no other alternative filed a complaint-petition against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 before the learned Raipura

C.R. Amoli Adalat, Narsingdi on 02.09.2020 as C.R. Case No.334 of 2020 following all legal formalities.

Now, let us discuss the evidence of prosecution witness Abdul Sattar Mia.

Abdul Sattar Mia as P.W.1 in his deposition stated that the convict-petitioner issued a cheque bearing No.0764537 on 18.03.2020 for payment of Tk.8,50,000/- him. He deposited the said cheque to the concerned Bank, for encashment which was dishonoured on 05.07.2020 for insufficient fund. Thereafter, the complainant issued legal notice to the petitioner on 28.07.2020, but the petitioner did not pay the cheque amount. For this reason, he filed this case. He identified the cheque as exhibit-1, dishonored Slip dishonoured slip as exhibit-2, legal notice as exhibit-3, postal receipt as exhibit-4 and the complaint-petition as exhibit-5 and his signature was marked as exhibit-5(1).

In the light of the above discussion, it is clear before me that the petitioner issued a cheque of Tk.8,50,000/-, but it was dishonoured for insufficient fund on 05.07.2020. Thereafter, the complainant served a legal notice to the petitioner on 28.07.2020, but the petitioner did not pay the said amount. For this reason, the complainant-opposite party No.2 filed this case following all legal formalities.

Therefore, after hearing both the parties and upon considering the evidence on record the learned Sessions Judge, Narsingdi passed

the judgment and order of conviction and sentence dated 10.10.2022 in Criminal Appeal No.276 of 2021 rightly is maintainable in the eye of law.

Accordingly, I do not find any cogent and legal ground to interfere with the judgment and order of conviction and sentence dated 10.10.2022. Therefore, the instant Rule has no merit.

In the result, the Rule is discharged.

The judgment and order of conviction and sentence dated 10.10.2022 passed by the learned the learned Sessions Judge, Narsingdi in Criminal Appeal No.276 of 2021 dismissing the appeal 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.4,25,000/- 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