

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No.3397 of 2022

Kazi Iftekhar Uddin Muhammad Khaled

.....convict-petitioner

-Versus-

The State and another

..... opposite-parties

No one appears

.....For the convict-petitioner

Mrs. Umme Masumun Nesa, A.A.G with

Mr. Ashiqul Haque, A.A.G

.....For the State

Mr. Imran Ahmed Bhuiyan, Advocate

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

Heard on 29.01.2024 and

Judgment on:30.01.2024

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 07.09.2021 passed by the learned Additional Metropolitan Sessions Judge, 2nd Court, Chattogram in Criminal Appeal No.854 of 2019 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 06.08.2019 passed by the learned

Joint Metropolitan Sessions Judge, 5th Court, Chattogram in Sessions Case No.2717 of 2017 arising out of C.R. Case No.2431 of 2016 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 sentenced him to suffer simple imprisonment for a period of 08(eight) months and also to pay a fine of Tk.6,00,000/- 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 granted bail to 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 Kazi Iftekhar Uddin Mohammad Khaled to pay the dues issued cheque being No.SB0275055 dated 24.03.2016 of the Eastern Bank Limited, Chattogram, for total Tk.6,00,000/- (six lac) in favour of the complainant. The complainant presented the cheque to the bank on 22.08.2016 for encashment, but it was dishonoured due to insufficient of fund. Then the complainant sent a legal notice by registered post to the petitioner on 20.09.2016 for making payment within 30

days which was not received by him on 22.09.2016. But the petitioner did not pay the said amount. For this reason, the complainant-opposite party No.2 filed a complaint-petition before the learned Chief Metropolitan Magistrate, Chattogram under section 138 of the Negotiable Instruments Act, 1881 against the petitioner.

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.2431 of 2016 (Kotwali) 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 Metropolitan Sessions Judge, Chattogram for trial, where the case was registered as Metro Sessions Case No.2717 of 2017. The learned Metropolitan Sessions Judge, Chattogram transferred the case to the learned Joint Metropolitan Sessions Judge, 5th Court, Chattogram for trial and disposal. Later on 26.02.2018 charge was framed against the convict-petitioner under section 138 of the Negotiable

Instruments Act, 1881. The charge was not read over and explained to the convict-petitioner for his absconsion.

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 Metropolitan Sessions Judge, 5th Court, Chattogram 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 08(eight) months and also to pay a fine of Tk.6,00,000/- by his judgment and order of conviction and sentence dated 06.08.2019.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 06.08.2019 the convict-petitioner filed Criminal Appeal No.854 of 2019 before the learned Metropolitan Sessions Judge, Chattogram and thereafter, it was transferred to the learned Additional Metropolitan Sessions Judge, 2nd Court, Chattogram for disposal. After hearing the appeal the learned Additional

Metropolitan Sessions Judge, 2nd Court, Chattogram dismissed the said Appeal and affirmed the judgment and order of conviction and sentence dated 06.08.2019 by his judgment and order of conviction and sentence dated 07.09.2021.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 07.09.2021 passed by the learned Additional Metropolitan Sessions Judge, 2nd Court, Chaggotram in Criminal Appeal No.854 of 2019, 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 disposal although it appears in the daily cause list several times.

On the other hand, Mr. Imran Ahmed Bhuiyan, the learned Advocate appearing on behalf of the opposite party No.2 submits that the convict-petitioner Kazi Iftexhar Uddin Mohammad Khaled to pay the dues issued cheque being No.SB0275055 dated 24.03.2016 of the Eastern Bank Limited, Chattogram, for total Tk.6,00,000/-(six lac) in favour of the complainant. The complainant presented the cheque to the bank

on 22.08.2016 for encashment, but it was dishonoured due to insufficient of fund. Then the complainant sent a legal notice by registered post to the petitioner on 20.09.2016 for making payment within 30 days which was not received by him on 22.09.2016. But the petitioner did not pay the said amount. For this reason, the complainant-opposite party No.2 filed a complaint-petition before the learned Chief Metropolitan Magistrate, Chattogram under section 138 of the Negotiable Instruments Act, 1881 against the petitioner.

Thereafter, this case was transferred to the learned Metropolitan Sessions Judge, Chattogram for trial, where the case was registered as Metro Sessions Case No.2717 of 2017. The learned Metropolitan Sessions Judge, Chattogram transferred the case to the learned Joint Metropolitan Sessions Judge, 5th Court, Chattogram for trial and disposal.

The learned Joint Metropolitan Sessions Judge, 5th Court, Chattogram 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 08(eight) months

and also to pay a fine of Tk.6,00,000/- by his judgment and order of conviction and sentence dated 06.08.2019.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 06.08.2019 the convict-petitioner filed Criminal Appeal No.854 of 2019 before the learned Metropolitan Sessions Judge, Chattogram and thereafter, it was transferred to the learned Additional Metropolitan Sessions Judge, 2nd Court, Chattogram for disposal. After hearing the appeal the learned Additional Metropolitan Sessions Judge, 2nd Court, Chattogram dismissed the said Appeal and affirmed the judgment and order of conviction and sentence dated 06.08.2019 by his judgment and order of conviction and sentence dated 07.09.2021 rightly. 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 cheque was issued on 24.03.2016 in favour of the complainant for an

amount of Tk.6,00,000/- which was dishonoured on 22.08.2016 for insufficient of fund. The complainant issued the legal notice on 20.09.2016 within the statutory period and the same was not received by the petitioner on 22.09.2016 and filed the case on 14.11.2016 within the statutory period having no response from the petitioner as per section 138(1)(C) of the Negotiable Instruments Act, 1881 following all legal formalities, which is maintainable in the eye of law.

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 Kazi Iftekhar Uddin Muhammad Khaled issued a cheque being No.SB0275055 dated 24.03.2016 for amount of Tk.6,00,000/- in favour of the complainant and the cheque was placed before the bank for encashment, but unfortunately it was dishonoured on 22.08.2016 for insufficient of fund. Thereafter, the complainant has given legal notice to the petitioner on 20.09.2016, but he did not respond the notice and did not take any step for payment of the cheque amount.

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 07.09.2021 passed by the learned Additional Metropolitan Sessions Judge, 2nd Court, Chattogram in Criminal Appeal No.854 of 2019 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 07.09.2019. Therefore, the instant Rule has no merit.

In the result, the Rule is discharged.

The judgment and order of conviction and sentence dated 07.09.2021 passed by the learned the learned Additional Metropolitan Sessions Judge, 2nd Court, Chattogram in Criminal Appeal No.854 of 2019 dismissing the appeal and thereby affirming the judgment and order of conviction and

sentence dated 06.08.2019 passed by the learned Joint Metropolitan Sessions Judge, 5th Court, Chattogram in Metro Sessions Case No.2717 of 2017 arising out of C.R. Case No.2431 of 2016 is hereby upheld and confirmed.

Further, the concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.3,00,000/-, 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 with a copy of this judgment and order to the concerned Court below at once.

Md. Anamul Hoque Parvej
Bench Officer