Present:
Mr. Justice Md. Shohrowardi

Criminal Revision No. 1909 of 2023
Tanjina
...Convict-petitioner
-Versus-
The State and another
...Opposite parties
Mr. Ehsanul Hoque, Advocate
...For the convict-petitioner
Mr. Shahin Alam, Advocate
...For the complainant-opposite party No. 2
Heard on 06.11.2024 and 31.07.2025
Judgment delivered on 07.08.2025

On an application under section 439 read with section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 22.03.2023 passed by Additional Metropolitan Sessions Judge, Court No. 12, Dhaka in Criminal Appeal No. 975 of 2022 affirming the judgment and order of conviction and sentence dated 10.03.2015 passed by Joint Metropolitan Sessions Judge, Court No. 5, Dhaka in Metropolitan Sessions Case No. 4252 of 2014 arising out of C.R. Case No. 663 of 2013 convicting the petitioner Tanjina under section 138 of the Negotiable Instruments Act, 1881 and sentencing her to suffer imprisonment for 1(one) year and fine of Tk. 16,00,000 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The prosecution case, in short, is that the complaint Md. Billal Hossain is the proprietor of S.M. Auto Centre, Ramna, Dhaka. The accused Tanjina issued Cheque No. 0153413 on 15.09.2013 in favour of S.M. Auto Centre for payment of Tk. 16,00,000 drawn on her account maintained with Eastern Bank Limited, Dilkusha, Commercial Area, Dhaka. The complainant presented the cheque on 07.10.2013 which was dishonoured on 08.10.2013 with the remark ‘insufficient funds’. He sent a legal notice on 10.10.2013 to the

accused and she did not pay the cheque amount after receipt of the said notice. Thereafter, he filed the complaint petition on 03.12.2013.

During trial, the charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881 which was read over to the accused and she pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 1 P.W. to prove the charge against the accused. The accused was absconding during the trial for which he was not examined under section 342 of the Code of Criminal Procedure, 1898.

After concluding the trial, the Joint Metropolitan Sessions Judge, Court No. 5, Dhaka by judgment and order dated 10.03.2015 convicted the accused under section 138 of the Negotiable Instruments Act, 1881 and sentenced her to suffer imprisonment for 1(one) year and fine of Tk. 16,00,000 against which the accused Tanjina filed Criminal Appeal No. 975 of 2022 in the Metropolitan Sessions Judge, Dhaka. The appeal was heard by Additional Metropolitan Sessions Judge, Court No. 12, Dhaka who by impugned judgment and order affirmed the judgment and order of conviction and sentence passed by the trial Court against which the convict-petitioner obtained the Rule.

P.W. 1 Md. Billal Hossain is the complainant. He stated that the accused Tanjina issued a cheque on 15.09.2013 for payment of Tk. 16,00,000. After presenting the cheque it was dishonoured on 08.10.2013 with the remark ‘insufficient funds’. On 10.10.2013 he sent the legal notice and filed the case on 03.12.2013. He proved the Cheque No. 0153413 dated 15.09.2013 as exhibit 1, dishonour slip as exhibit 2, legal notice, postal receipt and AD as exhibit 3 series. He proved the complaint petition as exhibit 4 and his signature as exhibit 4. The accused was absconding during the trial.

Learned Advocate Mr. Ehsanul Hoque appearing on behalf of the convict-petitioner submits that the accused issued the cheque (exhibit 1) in favour of the complainant but the same was dishonoured

due to ‘insufficient funds’. After receipt of the said notice, she could not pay the cheque amount due to her financial hardship. However, he submits that the convict-petitioner and the complainant-opposite party No. 2 settled the dispute between them out of Court and the convict-petitioner paid Tk. 8,00,000 in cash to the complainant-opposite party No. 2 and deposited 50% of the cheque amount in the trial Court before filing the appeal. He prayed for acceptance of the compromise made between the parties.

Learned Advocate Mr. Shahin Alam appearing on behalf of the complainant-opposite party No. 2 submits that the accused issued a cheque on 15.09.2013 for payment of Tk. 16,00,000 in favour of the complainant but the same was dishonoured on 08.10.2013 and he sent a legal notice on 10.10.2013 through registered post with AD but the accused did not pay the cheque amount although she received the notice and the complainant filed the case complying with all the procedure under section 138 of the Negotiable Instruments Act, 1881. However, he submits that the complainant-opposite party No. 2 and the convict-petitioner settled the dispute between them regarding the cheque (exhibit 1) and he received Tk. 8,00,000 in cash from the convict-petitioner and he is willing to withdraw 50% of the remaining cheque amount deposited by the convict-petitioner in the trial Court before filing the appeal. He also prayed for acceptance of the compromise made between the parties.

I have considered the submission of the learned Advocates of both parties, perused the evidence, the impugned judgments and orders passed by the Courts below and the joint application sworn in on 24.07.2025 by both parties.

On perusal of the joint application for compromise dated 24.07.2025, it reveals that both the convict-petitioner and the complainant-opposite party No. 2 settled the dispute out of Court and executed a compromise on 24.07.2025 (Annexure-C) stating that the complaint-opposite party No. 2 received Tk. 8,00,000 in cash and he

is willing to receive 50% of the cheque amount deposited by the convict-petitioner in the trial Court before filing the appeal.

The Negotiable Instruments Act, 1881 is a special law and the offence under section 138 of the Negotiable Instruments Act, 1881 is not compoundable. After filing the complaint petition, the Court is not empowered to dispose of the case considering the compromise made between the parties. The Court shall dispose of the case considering merit. Therefore, the Rule cannot be disposed of considering the compromise made between the parties.

On perusal of the evidence, it appears that the convict-petitioner Tanjina issued Cheque No. 0153413 dated 15.09.2013 in favour of the complainant Md. Billal Hossain for payment of Tk. 16,00,000 (exhibit 1) and the cheque was dishonoured on 08.10.2013 with a remark ‘insufficient funds’ and the bank also issued the dishonour slip (exhibit 2). After that, the complainant sent a legal notice on 10.10.2013 through a registered post with AD (exhibit 3 series). There is no denial of the fact that the accused did not issue the cheque. The learned Advocate Mr. Ehsanul Hoque appearing on behalf of the convict-petitioner admitted that despite the service of notice upon the convict-petitioner, the accused could not pay the cheque amount due to her financial hardship. Therefore, I am of the view that the convict-petitioner Tanjina committed the offence under section 138 of the Negotiable Instruments Act, 1881 and the complainant-opposite party No. 2 filed the case following the procedure under section 138 of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the accused beyond all reasonable doubt.

Considering the gravity of the offence and the facts and circumstances of the case, I am of the view that the ends of justice would be best served if the sentence passed by the Courts below is modified as under;

The convict-petitioner Tanjina is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and she is sentenced to pay a fine of Tk. 16,00,000.

The complainant-opposite party No. 2 is entitled to get the fine amount of Tk. 16,00,000.

It is admitted that the complainant-opposite party No. 2 received Tk. 8,00,000 in cash from the convict-petitioner. Therefore, he is entitled to get the remaining 50% of the cheque amount deposited by the accused in the trial Court before filing the appeal.

The trial Court is directed to allow the complainant-opposite party No. 2 to withdraw 50% of the remaining cheque amount deposited by the convict-petitioner before filing the appeal.

With the above direction and observation, the Rule is disposed of with a modification of the sentence.

However, there will be no order as to costs.

Send down the lower Court’s records at once.