

**IN THE SUPREME COURT OF
BANGLADESH**

HIGH COURT DIVISION

(CRIMINAL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Shohrwardi

Criminal Revision No. 1907 of 2023

Tanjina

..... appellant

-Vs-

The State and another

....respondents

Mr. Ehsanul Hoque, Advocate

....For the appellant.

Mr. Shahin Alam, Advocate

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

Mr. Sultan Mahmood Banna, AAG with

Ms. Sharmin Hamid, AAG

..... For the State

Heard on 06.11.2024, 05.02.2025

Judgment delivered on: 06.02.2025.

On an application filed under sections 439 and 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 19.03.2023 passed by Additional Metropolitan Sessions Judge, Court No.10, Dhaka in Criminal Appeal No.976 of 2022 affirming the judgment and order of conviction and sentence dated 10.03.2015 passed by Metropolitan Joint Sessions Judge, Court No.5, Dhaka in Metropolitan Sessions Case No.4253 of 2014 arising out of C.R. Case No.662 of 2013 convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 01 (one) year and fine of

Tk. 15,00,000/- 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 accused Tanjina issued cheque No. 0153415 on 17.09.2013 drawn on his account No.1071250123956 maintained with Eastern Bank Ltd, Dilkhusa Commercial Area, Dhaka for payment of Tk. 15,00,000 in favour of the complainant Md. Billal Hossain who is the Proprietor S.M. Auto Centre. The complainant presented said cheque on 07.10.2013 for encashment but the same was dishonoured on 08.10.2013 by the bank with a remark “insufficient funds”. He sent a legal notice on 10.10.2013 upon the accused through registered post with AD for payment of the cheque amount within 30 days from the date of receipt of the notice but he did not pay the cheque amount. Consequently, the complainant filed the case on 03.12.2013.

During the trial, the charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881 and at the time of the framing charge he was absconding. The prosecution examined 01(one) witness to prove the charge against the accused and the defence did not cross-examine P.W.1. After concluding the trial, the Metropolitan Joint 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 him thereunder to suffer imprisonment for 01(one) year and fine of Tk. 15,00,000 against which the accused filed the Criminal Appeal No. 976 of 2022 before the Metropolitan Sessions Judge, Dhaka. The appeal was heard by Metropolitan Additional Sessions Judge, Court No. 10, Dhaka who after hearing the appeal by impugned judgment and order dated 19.03.2023 affirmed the judgment and

order 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 17.09.2013 for payment of Tk. 15,00,000 which was dishonoured on 08.10.2013. He sent the legal notice on 10.10.2013 and filed the case on 03.12.2013. He proved the cheque No. 0153415 dated 17.09.2013 as exhibit-1, dishonoured slip as exhibit-2, legal notice and AD as exhibit-3 series and the complainant petition and his signature as exhibit-4 series. The defence did not cross-examine P.W. 1.

The learned Advocate Mr. Ehsanul Hoque appearing on behalf of the convict petitioner submits that the accused Tanjina issued the cheque in favour of the complainant Md. Billal Hossain for payment of Tk. 15,00,000 but after service of notice, he could not pay the cheque amount to the complainant due to financial hardship. He further submits that the accused settled the dispute with the complainant out of court and deposited 50% of the cheque amount before filing the appeal and 50% of the cheque amount was paid to the complainant in cash. He prayed for making the Rule absolute considering the compromise made between the parties.

The learned Advocate Mr. Shahin Alam appearing on behalf of the complainant- opposite party submits that the accused issued the cheque for payment of Tk. 15,00,000 and the complainant presented the said cheque for encashment but the same was dishonoured with a remark "insufficient funds". After complying with all the procedures under section 138 of the said Act, the complainant filed the complaint petition and the accused committed the offence under section 138 of the Negotiable Instruments Act,

1881. However, he admitted that the accused and the complainant settled the dispute between them out of court and the complainant received 50% of the cheque amount Tk. 750,000 in cash and he is willing to withdraw 50% of the remaining cheque amount deposited by the accused in the trial court before filing the appeal. He prayed for acceptance of the compromise made between the accused and the complainant.

I have considered the submission of the learned Advocates of both parties, perused the evidence, impugned judgments and orders passed by the courts below and the records.

On perusal of the evidence, it appears that the accused Tanjina issued cheque No. 0153415 on 17.09.2013 in favour of the S.M. Auto Centre for payment of Tk. 15,00,000. In the complaint petition and the legal notice, it has been stated that the complainant Md. Billal Hossain is the Proprietor of the S.M. Auto Centre. P.W. 1 proved the said cheque as exhibit-1, the said cheque was dishonoured on 08.10.2013 and the Islami Bank Ltd issued a dishonoured slip on the same date which is proved as exhibit-2. The complainant issued a legal notice on 10.10.2013 through registered post with AD which were proved as exhibit-3 series. The learned Advocate engaged on behalf of the accused admitted that due to financial hardship, the accused could not pay the cheque amount despite the service of notice upon him.

From the above evidence, it transpires that the cheque dated 17.09.2013 (exhibit-1) was presented on 08.10.2013 within specified time as mentioned in clause 'a' to section 138 of the Negotiable Instruments Act, 1881 and the bank issued the dishonoured slip (exhibit-2) and the legal notice was sent on 10.10.2013 following the

provision made in clause b to section 138 of the Act which is admittedly served upon the accused but he could not pay the cheque amount within time due to hardship and the complainant filed the case on 03.12.2013 complying with the procedures made in clause 'a' to 'c' of section 138 and section 141(b) of the said Act. Therefore, I am of the view that the accused committed an offence under section 138 of the Negotiable Instruments Act, 1881 and the prosecution proved the charge against the accused beyond all reasonable doubt.

On perusal of the records, it appears that both the complainant and the accused Tanjina filed a joint affidavit stating that the complainant received Tk. 750,000 in cash from the accused and the complainant is willing to withdraw the remaining 50% of the cheque amount deposited by the accused before filing the appeal. The compromise made between the convict petitioner and the complainant is annexed as Annexure-D to the affidavit of compromise sworn on 14.01.2025.

The Negotiable Instruments Act, 1881 is a special law and the offence under section 138 of the said Act is not compoundable. Therefore, the parties are not entitled to settle the dispute out of court. After filing a case under section 138 of the said Act, the Court shall dispose of the case considering the merit of the case. There is no scope to dispose of the case considering the compromise made between the parties.

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 trial court 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 thereunder to pay a fine of Tk. 15,00,000.

The complainant admitted that he received 50% of the cheque amount Tk. 750,000 in cash. Therefore he is only entitled to withdraw the remaining 50% of the cheque amount deposited by the convict petitioner before filing the appeal.

The trial court is directed to allow the complainant to withdraw 50% of the cheque amount i.e. Tk. 750,000 deposited by the convict petitioner before filing the appeal.

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

Send down the lower Court's records at once.

