

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 3816 of 2023

Md. Abdul Latif Mirja

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

Ms. Salina Akter, Advocate

...For the convict-petitioner

Mr. Md Ruhul Quddus Patwary, Advocate

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

Heard on 07.11.2024 and 15.01.2025

Judgment delivered on 19.01.2025

On an application filed under Section 439 of the Code of Criminal Procedure, 1898 the Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 10.07.2023 passed by Sessions Judge, Bogura in Criminal Appeal No. 500 of 2023 affirming the judgment and order dated 27.02.2023 passed by Joint Sessions Judge, Court No. 1, Bogura in Sessions Case No. 2314 of 2020 arising out of C.R. Case No. 180 of 2020 convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer rigorous imprisonment for 6(six) months and fine of Tk. 9,30,000(nine lakh thirty thousand) 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 complainant Md. Safiqul Islam alias Safiq and the accused Md. Abdul Latif Mirja were previously known to each other. The accused took loan of Tk. 9,20,000(nine lakh twenty thousand) on 05.11.2019. After that, on 08.03.2020 the accused issued Cheque No. 3452266 drawn on his business establishment Messers Sabbir Traders for payment of Tk. 9,20,000(nine lakh twenty thousand) drawn on his Account No.

20501730100217513 maintained with Islami Bank Bangladesh Ltd, Highway Sherpur Branch, Bogura. The complainant presented the said cheque on 08.03.2020 which was dishonoured on the same date with the remark “insufficient funds”. The complainant sent a legal notice on 09.03.2020 to the accused for payment of the cheque amount and the accused received the said notice on 12.03.2020 but he did not pay the cheque amount. Consequently, the complainant filed the case on 03.06.2020.

After filing the complaint petition the learned Magistrate took cognizance of offence against the accused under Section 138 of the Negotiable Instruments Act, 1881. Thereafter, the learned Chief Judicial Magistrate, Bogura sent the case to the Sessions Judge, Bogura and the case was registered as Sessions Case No. 2314 of 2020 and the learned Sessions Judge, Bogura was pleased to transfer the case to the Joint Sessions Judge, Court No. 1, Bogura for trial. During the trial, the charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881. The prosecution examined one witness to prove the charge against the accused. During the trial, the accused was absconding.

After concluding the trial, the trial Court by judgment and order dated 27.02.2023 was pleased to convict the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer rigorous imprisonment for 6(six) months and fine of Tk. 9,30,000(nine lakh thirty thousand) against which the accused filed Criminal Appeal No. 500 of 2023 before the Sessions Judge, Bogura with an application under Section 5 of the Limitation Act for condonation of delay of 71 days. After hearing, the Sessions Judge, Bogura by order dated 10.07.2023 rejected the application filed under Section 5 of the Limitation Act and summarily dismissed the appeal against which the convict-petitioner obtained the instant Rule.

Learned Advocate Ms. Salina Akter appearing on behalf of the convict-petitioner submits that the trial Court awarded the sentence of rigorous imprisonment in violation of Section 138 of the Negotiable Instruments Act, 1881 and the appellate Court below without considering the application for condonation of delay of 71 days illegally and mechanically affirmed the judgment and order passed by the trial Court. She prayed for sending the case on remand.

Learned Advocate Mr. Md Ruhul Quddus Patwary appearing on behalf of the complainant-opposite party No. 2 submits that the convict-petitioner was absconding after granting bail and he did not prefer the appeal in time although he was aware of the judgment and order passed by the trial Court and the convict-petitioner failed to explain delay of 71 days in filing the appeal and the appellate Court below legally passed the impugned judgment and order. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Ms. Salina Akter who appeared on behalf of the convict-petitioner and the learned Advocate Mr. Md Ruhul Quddus Patwary who appeared on behalf of the complainant-opposite party No. 2, perused the evidence, impugned judgments and orders passed by both the Courts below and the records.

On perusal of the evidence, it appears that at the time of trial, the convict-petitioner was absconding. At the time of filing the appeal before the Sessions Judge, Bogura, the convict-petitioner applied for condonation of delay of 71 days stating that he was not aware of the judgment and order passed by the trial Court and paid 50% of the cheque amount on 10.05.2023 and obtained bail on 11.05.2023 from the trial Court to prefer appeal against the judgment and order passed by the trial Court.

On perusal of the judgment and order dated 27.02.2023 passed by the trial Court, it appears that the trial Court awarded the

sentence of rigorous imprisonment and fine of Tk. 9,30,000. There is no provision to award the sentence of rigorous imprisonment in the Negotiable Instruments Act, 1881. The trial Court awarded sentence of rigorous imprisonment in violation of the provision made in Section 138 of the Negotiable Instruments Act, 1881.

The appeal against the judgment and order of conviction and sentence is a statutory right. The convict-petitioner filed the appeal after depositing 50% of the cheque amount. The convict-petitioner had given a reasonable explanation in the application filed under Section 5 of the Limitation Act for delay of 71 days in filing an appeal and the appellate Court below ought to have condoned the said delay. Thereby the appellate Court below committed serious illegality in passing the impugned judgment and order rejecting the application for condonation of delay and summarily dismissing the appeal. Therefore, the case should be sent back on remand to the appellate Court below to hear the appeal afresh.

I find merit in the Rule.

In the result, the Rule is made absolute.

The delay of 71 days in filing the appeal before the Sessions Judge, Bogura against the judgment and order dated 27.02.2023 passed by Joint Sessions Judge, Court No. 1, Bogura in Sessions Case No. 2314 of 2020 is hereby condoned.

The impugned judgment and order passed by the appellate Court below is hereby set aside.

The case is sent back on remand to the appellate Court.

The appellate Court is directed to hear the appeal within 6(six) months from the date of receipt of the copy of this judgment.

Send down the lower Court's records at once.