

Present:

Mr. Justice Md. Salim

Criminal Revision No.2622 of 2023

Babul Mia and another

..... Convict-Petitioners.

-Versus-

The State and another

..... Opposite parties.

Mr. Md. Rubel Miah, Advocate

..... For the petitioners.

Mr. Shaikh Wabaidur Rahman, Advocate

..... For the Opposite party No.2

Mr. Monzurul Alam Sujan, DAG

Mr. Towhidul Islam, AAG

Mr. Syed Akhtarul Islam, AAG

..... For the State.

**Heard on 02.02.2026, 16.02.2026, 23.02.2026,
01.03.2026, 08.03.2026, 19.04.2026,
30.04.2026 and 07.05.2026**

Judgment on 07.05.2026

By this Rule, the opposite parties were called upon to show cause as to why the Judgment and order dated 11.04.2023, passed by the learned Additional Sessions Judge, 3rd Court, Brahmanbaria, in Criminal Appeal No.242 of 2021 dismissing the appeal and affirming the Judgment and order of conviction and sentence dated 05.09.2021 passed by the learned Joint Sessions Judge, 2nd Court, Brahmanbaria in Sessions Case No.794 of

2019 arising out of C.R. No. 46 of 2019 convicting the accused petitioners under section 138 of the Negotiable Instruments Act, 1881 and sentenced them to suffer simple imprisonment for 02(two) months and to pay Tk.5,00,000/- should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The prosecution case in brief is that the present-opposite party No.2, as complainant, initially filed a petition of complaint under section 138 of the Negotiable Instruments Act, before the learned Judicial Magistrate, Cognizance Court Bancharampur, Brahmanbaria, against the convict-petitioners, alleging, inter alia, that the accused petitioners 11.01.2019 issued a cheque in favor of the complainant for the purpose of returned the profit of the farm of Tk.5,00,000/-. In order to encash the said cheque, the complainant-opposite party No.2 then presented the cheque on 03.02.2019 to the Bank, but on that very date, the cheque was dishonored with an endorsement of insufficient funds. Finding no other alternative, the opposite party No.2 then served a legal notice on 04.02.2019, by registered post, requesting him

to repay the amount. As the accused petitioner failed to comply with the request made in the legal notice, the complainant-opposite party was constrained to file the petition. In view of the said petition of complaint, the learned Judicial Magistrate, Brahmanbaria, then examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance of the said case. Since the case is triable by the Sessions Judge, the learned Judicial Magistrate then transferred the case to the learned Sessions Judge, Brahmanbaria, for trial.

In the meantime, the accused petitioner surrendered before the courts below and obtained bail.

Subsequently, the learned Joint Sessions Judge, 2nd Court, Brahmanbaria, framed the charge against the accused-petitioner under section 138 of the Negotiable Instruments Act, which was read over and explained to the accused-petitioners, who then pleaded innocent and claimed to be tried.

During the trial, the prosecution examined one witness and produced several documents. On the contrary, the defense examined one witness.

After the conclusion of the taking of evidence, the accused-petitioners were also examined under section 342 of the Code of Criminal Procedure, when they again pleaded their innocence.

However, after the conclusion of the trial, the learned Joint Sessions Judge, 2nd court, Brahmanbaria vide Judgment and order dated 05.09.2021, convicted the accused petitioner under section 138 of the Negotiable Instruments Act, sentenced to suffer simple imprisonment for 02 (two) months and to pay Tk.5,00,000/- as has been stated above.

Being aggrieved by and dissatisfied with the above Judgment and order of conviction and sentence, the convict-petitioner, on surrender before the Joint Sessions Judge, 2nd Court, Brahmanbaria, and after depositing 50% of the cheque amount, preferred the appeal, which has been registered as Criminal Appeal No.242 of 2021 before the Sessions Judge, Brahmanbaria.

Eventually, the learned Additional Sessions Judge, 3rd Court, Brahmanbaria, by the Judgment and order dated 11.04.2023, disallowed the appeal and affirmed the

Judgment and order of conviction and sentence passed by the trial court below.

Being aggrieved by and dissatisfied with the said concurrent Judgment and order of conviction and sentence, the convict, as petitioner, then came before this court and obtained the instant Rule and order of bail.

Mr. Rubel Miah, the learned advocate appearing on behalf of the accused petitioners, upon taking me through the impugned Judgment, the evidence, and other materials on record, vehemently submits that no statutory notice was ever served upon the accused persons, as the complainant failed to mention either in the petition of complaint or in his deposition the date on which the accused persons allegedly received the notice. He further submits that both the Courts below failed to consider the defense case that the cheque in question was forcibly taken from the accused persons at the concerned police station. In this regard, D.W.1, in his deposition, specifically supported the allegation against the complainant; however, the appellate court below, being the last court of fact, failed to consider the said evidence in its proper perspective. He next submits that

for recovery of the alleged cheque, the accused petitioner had filed a criminal miscellaneous case under section 98 of the Code of Criminal Procedure, and upon consideration thereof, the learned court below issued a warrant, which was subsequently stayed by the appellate court. Lastly, he submits that the accused petitioners had issued the cheque in their capacity as the Managing Director and the Chairman of the company, but the complainant instituted the instant case without impleading the company as a party. Thus, the entire trial is vitiated.

Mr. Shaikh Wabaidur Rahman, the learned advocate appearing on behalf of the complainant-opposite party No. 2, submits that the statutory notice was duly served upon the accused petitioners through registered post with A/D. He further submits that in the complaint petition as well as in his deposition, the complainant categorically stated that although the accused persons had received the notice, they failed to make payment of the cheque amount within the stipulated period. He further contends that although the accused persons alleged that the cheque had been

obtained forcibly by the complainant, they failed to substantiate such an allegation by adducing any oral or documentary evidence. Lastly, he submits that since the cheque was issued by the Managing Director and the Chairman of the company, the proceeding cannot fail merely because the company itself was not impleaded as a party to the case.

We have considered the submissions of the learned counsel for both parties, perused the impugned Judgment, the evidence, and other materials on record. It appears that, to bring home the charge, the complainant himself examined as P.W. 1, who stated in his evidence, in line with the petition of complaint. This witness also adduced the material evidence, i.e., the petition of complaint, a cheque, a dishonored slip, a copy of the legal notice, and a postal receipt.

On the contrary, the defense examined one witness, i.e., DW.1 Kabir Miah, who stated in his evidence that the accused petitioner issued the cheque at the local police station under pressure from the complainant and the police. However, in cross-examination, this witness

admitted that he was not present when the cheque was issued at the police station.

Considering the above, we find that P.W. 1's testimony supports the assertion made in the petition of complaint. Moreover, we find that the documents, namely, the disputed cheque, a return memo, a legal notice, and a postal receipt, have been exhibited by the complainant without objection from the accused petitioner, which also establishes that they have been rightly admitted in evidence by the court. However, the defense failed to prove that the alleged cheque was issued under pressure from the complainant and the local police station without consideration.

Be that as it may, to substantiate the question of mode of service of notices in a case under section 138 of the Negotiable Instruments Act, we may quote Sub-section (1A) of section 138 of the Act, which provides 3 (three) modes of service, which run as under:-

“138. Dishonour of cheque for insufficiency of funds in the account - (1).....

[(1A) The notice required to be served under clause (b) of sub-section (1) shall be served in the following manner-

(a) by delivering it to the person on whom it is to be served; or

(b) by sending it by registered post with acknowledgment due to that person at his usual or last known place of abode or business in Bangladesh; or

(c) by publication in a daily Bangla national newspaper having wide circulation

It manifests that service of notice upon the drawer of the cheque shall be deemed to have been duly served if: (a) it has been delivered to the person on whom it is to be served; or (b) that the notice has been sent to that person by registered post with acknowledgement due at his usual or last known place of abode or business in the country; or (c) by publication in a daily bangla national newspaper having wide circulation.

Notably, service of notice under clause (b) of sub-section (1) of section 138 of the Act means any of the 3(three) modes as provided under clause (a), (b), and (c) of sub-section (1A) of section 138 of the Act. The

legislature, while prescribing the above three (3) modes of service of notice, has used the word “or,” and thus makes each clause disjunctive. The duty of the payee is discharged once he serves notice either under clause (a), (b), or (c) of sub-section (1A) of section 138 of the Act.

In the instant case, admittedly, a register-postal receipt has been duly exhibited by the prosecution. However, on perusal of the Exhibit, it appears that a postal registered receipt on which the post office clearly wrote down ‘AD’. On the other hand, the complainant stated in his deposition that although the accused petitioner received the notice did not pay the cheque amount. Moreover, immediately after the case was filed on 20.03.2019, the accused petitioner surrendered to the court on 07.04.1919, obtained bail, and contested the case. Therefore, it is presumed that the legal notice was duly served upon the accused petitioner by registered post with acknowledgment due.

In view of the above, it appears that there is no doubt that both the courts rightly found that the legal notice in the instant case was deemed to have been duly served upon the accused petitioner under clause (b) of

sub-section (1A) of section 138 of the Negotiable Instruments Act.

Further, the settled proposition of law is that the omission of impleading the company in the case of under section 138 of the Negotiable Instrument Act is an irregularity and the same is not fatal. This view gets support in the case of Joynul Karim and others vs. State and another, 21 BLC(AD) 37, laid --

The alleged omission of impleading the company in the proceeding is an irregularity and the same is not fatal and that though the company is not made a party in the proceeding, but the persons concerned, representing the company, who are party in the issuance of the dishonored cheque in reference, having been made party in the proceeding, the proceeding cannot be said to be bad for defect of party inasmuch as the punishment if any on proof, is to be inflicted upon the natural persons involved in the offence committed.

In the instant case, admittedly, the company was not made a party, but the convict petitioner, Babul Mia, is the managing director of the alleged company, and the convict petitioner, Nargis Akhter, is the chairman of the

alleged company, who were duly made parties in the case. Therefore, the submission of Mr. Rubel Mia, the learned advocate for the petitioner, has no footing.

Moreover, on going through the Judgments passed by both the courts below, and the materials on record of both parties, we find that the courts below have very exhaustively and vividly discussed the evidence adduced and produced by the opposite party No.2, which has been marked as exhibits on the part of the complainant.

It appears that the learned Judge of the Court of Appeal, after critical examination and analysis of the above evidence and other materials brought on record, found that the prosecution has been able to prove the charge beyond a reasonable doubt under section 138 of the Negotiable Instruments Act against the convict petitioners.

Further, a careful analysis of the oral and documentary evidence adduced by the prosecution as well as the defense side, and on examination of those documents, we find that this very case was filed in total compliance with the provisions enumerated in section 138 of the Negotiable Instruments Act, having no scope

to interfere with the Judgment. However, considering the above facts and circumstances of the case, we are inclined to modify the sentence with the effect that the sentence of the accused petitioner is to pay Tk.5,00,000/-, i.e., the cheque amount, instead of suffering simple imprisonment for 2 (two) months, and to pay Tk.5,00,000/-.

Considering the above facts and circumstances, we do not find any merit in interfering with the Judgment and order passed by the courts below.

As a result, the Rule is discharged with a modification to the sentence.

The sentence of the convict-petitioner is to pay Tk.5,00,000/-, i.e., the cheque amount, instead of suffering simple imprisonment for 2 (two) months, and to pay Tk.5,00,000/-.

The convict petitioner is directed to deposit the 50% of the remaining cheque amount within 02 (two) months from the date of receipt of this Judgment by the trial court. In default, the complainant is at liberty to take the necessary steps as per the provisions enumerated in Section 386 of the Code of Criminal Procedure.

The learned Judge of the trial court is directed to take the necessary steps so that the complainant can recover the amount deposited by the petitioner to the Government exchequer through chalan within 1(one) month from the date of receipt of this Judgment.

Communicate the Judgment and send down the lower court records.

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(MD. SALIM, J).

Rakib (ABO)