

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Revision No. 3017 of 2023

Mafiz Biswas

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

No one appears.

...For the convict-petitioner

Mr. Md. Shariful Islam, Advocate

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

Heard on 04.09.2024

**Judgment delivered on 04.09.2024**

On an application filed 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 01.06.2022 passed by the Sessions Judge, Kushtia in Criminal Appeal No. 111 of 2022 affirming the judgment and order of conviction and sentence dated 17.10.2021 passed by the Joint Sessions Judge, Court No. 3, Kushtia in Sessions Case No. 1289 of 2018 arising out of C.R. Case No. 97 of 2018 (Mirpur) convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple imprisonment for 4(four) months and to pay a fine of Tk. 4,00,000 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

No one appears on behalf of the convict-petitioner.

Learned Advocate Mr. Md. Shariful Islam on behalf of the complainant-opposite party No. 2 submits that at the time of filing the appeal before the Sessions Judge, Kushtia, the appellant was fugitive and the appellate Court below dismissed the appeal on the ground of fugitive and the appeal filed before the Sessions Judge, Kushtia was not maintainable. The instant Rule arising out of the judgment and order

passed by the appellate Court below is also not maintainable. Therefore, he prayed for discharging the Rule.

On perusal of the records, it appears that the trial Court by judgment and order dated 17.10.2021 convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer imprisonment for 4(four) months and a fine of Tk. 4,00,000. After that, the accused voluntarily surrendered on 11.11.2021 by depositing 50% of the cheque amount and obtained bail from the trial Court under Section 426(2A) of the Code of Criminal Procedure, 1898 till 03.01.2022. After 03.01.2022 the said order of bail granted by the trial Court was not extended. Thereafter, the convict-petitioner filed the criminal appeal on 01.06.2022 and at the time of filing the appeal, he was a fugitive from justice. Therefore, the criminal appeal was not maintainable. Since the appeal filed by the convict-petitioner was not maintainable, the convict-petitioner is not entitled to any relief against the judgment and order passed by the appellate Court.

I do not find any merit in the Rule.

In the result, the Rule is discharged.

However, there will be no order as to costs.

Send down the lower Court's records at once.