

In the Supreme Court of Bangladesh
High Court Division
(Criminal Revisional Jurisdiction)

Present:

Mr. Justice Md. Khairul Alam

Criminal Revision No. 2700 of 2024.

In the matter of:

Md. Anower Hossain

..... Convict-petitioner.

-Versus-

The state and another

..... Opposite parties.

Mr. Md. Kamal Hossain, Advocate with

Mr. Md. Ruhul Quddus Patwary

..... For the petitioner.

Mr. Mohammad Miftaul Alam, Advocate

... For the opposite party No. 2.

**Heard On: 14.11.2024, 20.11.2024 &
Judgment on: 25.11.2024**

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 12.05.2024 passed by the learned Metropolitan Sessions Judge, Chattogram in Criminal Appeal No. 474 of 2024 dismissing the appeal summarily on the ground of maintainability and thereby affirming the judgment and order of conviction and sentence dated 06.02.2023 passed by the learned Metropolitan Joint Sessions

Judge, Court No.04, Chattogram in Sessions Case No. 4549 of 2022 arising out of C.R. Case No. 263 of 2022 (Kotwali) convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 (shortly, the NI Act) and sentencing him to suffer simple imprisonment for 01 (one) year and also to pay a fine of Taka 76,00,000/- should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Relevant facts for disposal of the Rule are that the present convict petitioner was put on trial before the Court of Metropolitan Joint Sessions Judge, Court No.04, Chattogram in Sessions Case No. 4549 of 2022, arising out of C.R. Case No. 263 of 2022 (Kotwali) for an offence of section 138 of the NI Act filed by the present opposite party No. 2 alleging dishonour of a cheque bearing number $\frac{CD}{A}$ 0659762 dated 04.01.2022 for an amount of Tk. 76,00,000/- issued by the present petitioner. After the conclusion of the trial, the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram by the judgment and order of conviction and sentence dated 06.02.2023 found the petitioner guilty under section 138 of the NI Act and sentenced him as

aforesaid. On 24.09.2023, the petitioner was arrested by the police and then he filed an application before this Hon'ble Court under section 561A of the Code of Criminal Procedure. Accordingly, this Court issued a Rule calling upon the opposite parties to show cause as to why the petitioner should not be enlarged on bail in connection with the judgment and order dated 06.02.2023 and also passed an ad interim order of bail. Subsequently, on 05.12.2023 this Court disposed of the Rule with the following directions:

“In view of the submission of the learned Advocate of the accused-petitioner, the Court below is directed to accept the deposit of Tk. 26,60,000/- which is 35% of the value of the dishonored cheque, if so deposited, within a period of 2 months from the date of receipt of this order. The period of bail granted to the petitioner is extended for a further period of 2 months.

Once, $(15+35)=50\%$ of the cheque amount is deposited in the Court below, the Court concern shall register the appeal and dispose of the same in accordance with law. If the petitioner fails to deposit 50% of the value of the cheque amount within a period of 2 months, the order of bail granted to the petitioner shall stand vacated and the

Court below shall proceed with the matter in accordance with law.’’

The said order was received by the trial Court on 01.01.2024 but the petitioner filed the appeal before the learned Metropolitan Sessions Judge, Chattogram depositing the money on 02.04.2024. The learned Metropolitan Sessions Judge, Chattogram by the order dated 12.05.2024 dismissed the appeal summarily, holding that as the petitioner failed to deposit the amount within the time prescribed by this Court, the appeal was not maintainable.

Being aggrieved thereby the petitioner filed this revisional application and obtained the Rule.

Mr. Md. Kamal Hossain, learned Advocate appearing on behalf of the petitioner submits that the petitioner deposited 50% of the cheque amount as required under the law for filing an appeal therefore, dismissing the appeal on the ground of maintainable is beyond the provision of law.

On the other hand, Mr. Mohammad Miftaul Alam, the learned Advocate appearing on behalf of the opposite party No. 2 submits that as the petitioner failed to deposit the money within the period prescribed by this Court, therefore, the Court of appeal

below rightly dismissed the appeal summarily on the ground of maintainable.

Heard the learned Advocates of the contending parties and perused the materials on record including the judgment and order passed by this Court as well as the Court of Appeal below.

It appears that the present opposite party No. 2 as the complainant filed a case implicating the present petitioner as an accused alleging dishonour of a cheque issued by the petitioner in favour of the complainant. In the said case, the petitioner was found guilty under section 138 of the NI Act and he was convicted and sentenced to suffer simple imprisonment for 1 year along with a fine and then he was arrested. Being unable to file an appeal by depositing 50% of the cheque amount as required under the law, the petitioner filed an application under section 561A of the Code of Criminal Procedure and obtained a Rule. Ultimately, the Rule was disposed of with the following directions:

1. The Court below is directed to accept the deposit of Tk. 26,60,000/- which is 35% of the value of the dishonored cheque, if so deposited, within a period of 2 months from the date of receipt of this order. The period of bail granted to the petitioner is extended for a further period of 2 months.

2. Once, (15+35)=50% of the cheque amount is deposited in the Court below, the Court concern shall register the appeal and dispose of the same in accordance with law.

3. If the petitioner fails to deposit 50% of the value of the cheque amount within a period of 2 months, the order of bail granted to the petitioner shall stand vacated and the Court below shall proceed with the matter in accordance with law.

On a plain reading it appears that amongst the said three directions, two directions were regarding the bail of the petitioner which was in negative form, but the direction regarding the appeal, i.e. once, (15+35)=50% of the cheque amount is deposited in the Court below, the Court concerned shall register the appeal and dispose of the same in accordance with the law, was in the positive form. The Court of appeal below misread and misconstrued the said direction and thereby passed the impugned judgment and order which is required to be interfered.

Considering the above facts and circumstances, I find merit in the Rule.

Accordingly, the Rule is made absolute.

The judgment and order dated 12.05.2024 passed by the learned Metropolitan Sessions Judge, Chattogram, in Criminal Appeal No. 474 of 2024 dismissing the appeal summarily on the ground of maintainability is hereby set aside. The learned

Metropolitan Sessions Judge, Chattogram is hereby directed to dispose of Criminal Appeal No. 474 of 2024, on merit, in accordance with the law. Since the matter is an old matter the learned Metropolitan Sessions Judge, Chattogram is also directed to dispose of the appeal, as early as possible, preferably, within 4 (four) months from the date of receiving this judgment and order.

Send down the lower court's record and communicate the order at once.