

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

Present:
Mr. Justice Md. Khairul Alam

Criminal Revision No. 2603 of 2024.

In the matter of:

Abdul Awal

..... Convict-petitioner.

-Versus-

The State and another

..... Opposite parties.

None appears

..... For the petitioner.

Mr. Khandoker Sultan Ahmed, Advocate

... For opposite party No. 2

Heard On: 31.10.2024 &
Judgment on: 05.11.2024

Md. Khairul Alam, J:

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 25.04.2024 passed by the learned Additional Metropolitan Sessions Judge, 6th Court, Chattogram in Criminal Appeal No. 458 of 2023 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 08.11.2022 passed by the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram in Sessions Case No. 2822 of 2017 arising out of C.R. Case No.

1957 of 2015 (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 05 (five) months and also to pay a fine of Tk. 3,50,000/- (three lakh fifty thousand) 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 in the course of his business obtained loan from the present opposite party No. 2, the City Bank Ltd. To disburse the liability the petitioner issued a cheque bearing number 12721940 dated 20.10.2015 for an amount of Tk. 3,50,000/- (three lacs fifty thousand) in favour of the City Bank Ltd. On presentation, the cheque was dishonoured on 20.10.2025 with the endorsement "Insufficient Fund". On 10.11.2015 the bank sent a notice to the petitioner through registered post with acknowledgement due. On 11.11.2015 the petitioner received the notice but did not pay the amount. Hence, the City Bank Ltd. as complainant filed C.R. Case No. 1957 of 2015 (Kotwali) before the Court of Chief Metropolitan Magistrate, Chattogram through one of its authorized employees. Accordingly, cognizance was taken against the petitioner for an offence under section 138 of the NI Act, and the process was issued and the petitioner obtained

bail. Ultimately, the case was renumbered as Sessions Case No. 2822 of 2017 and was transferred to the Court of Joint Metropolitan Session Judge, 4th Court, Chattogram for trial. The trial Court framed charge against the petitioner under section 138 of the NI Act, but the same could not be read over and explained to him because by that time he had absconded. During the trial, the prosecution examined only 01 (one) witness to prove the charge. The petitioner did not cross-examine the prosecution witness. The petitioner could not be examined under section 342 of the Code of Criminal Procedure due to absconding. After the trial, the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram considering the evidence on record by the judgment and order of conviction and sentence dated 08.11.2022 found the petitioner guilty of the offence under section 138 of the NI Act and sentenced him as aforesaid.

Against the said judgment and order of conviction and sentence the petitioner preferred an appeal before the Court of Metropolitan Sessions Judge, Chattogram which was heard by the learned Additional Metropolitan Sessions Judge, 6th Court, Chattogram. The learned Additional Metropolitan Sessions Judge, 6th Court, Chattogram after hearing the appeal by the judgment and order dated 25.04.2024 dismissed the appeal and thereby

affirmed the judgment and order of conviction and sentence passed by the trial Court.

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

None one appears for the petitioner to support the Rule though this matter appears in the delay cause list for a number of days.

Mr. Khandoker Sultan Ahmed, the learned Advocate appearing for opposite party No. 2 supports the impugned judgment and order.

The point for determination is whether the courts below were legally justified in passing the impugned judgment and order.

P.W-1, Marsal Gomaj in his examination-in-chief stated that on 20.10.2015, Abdul Awal issued a cheque for an amount of Tk. 3,50,000/- in favour of the complainant. The cheque was dishonored on 20.10.2015 for insufficiency of funds. On 10.11.2015, legal notice was sent to the accused by registered post with AD. On 11.11.2015, the accused received the notice but did not pay the dues. Hence, on 15.12.2015, the complainant filed the petition of complainant. He exhibited the power of attorney as

exhibit-1, the complaint and his signature on the complaint as exhibit 2 series, the original cheque as exhibit-3, dishonour slip as exhibit-4, the legal notice as exhibit-5, postal receipt, and acknowledgment dues as exhibit- 6 series.

These are the evidence adduced by the prosecution.

From the said evidence it appears that the petitioner issued a cheque in favour of the complainant on 20.10.2015 (exhibit-3). On prosecution, the cheque was dishonored on 20.10.2015 for insufficiency of funds (exhibit-4). Statutory notice was served on 11.11.2015 (exhibit-5), which was received by the petitioner on 11.12.2015 (exhibit-6 series), but the petitioner failed to make the payment of the said amount to the complainant. Hence, the complainant filed the petition of complaint on 15.11.2015 (exhibit-1). All the said acts were done within the statutory period.

In a criminal proceeding, no onus generally lies upon the accused, but in the case of the offence of section 139 of the NI Act, like the civil suit, the separate onus lies upon the prosecution and the defence and while the payee by producing the cheque, dishonour slip, copy of the notice, and acknowledgment due proves that the cheque issued by the drawer was dishonour for insufficiency of funds and the drawer did not pay the amount

despite serving the notice. Then the drawer would be required to satisfy the Court under what circumstances the cheque was issued and at the time of presentation of the cheque whether there was any debt.

In the present case, it appears that the petitioner issued a cheque in favour of the complainant, on presentation, the cheque was dishonored for insufficiency of funds. Despite statutory notice, the petitioner failed to make the payment. Therefore, the prosecution discharged its onus. On the Other hand, the petitioner after issuance of the process obtained bail but did not face the trial and thereby did not explain to the Court under what circumstances he issued the cheque and at the time of presentation of the cheque whether there was any consideration or not. Hence, the Court below had no option but to hold the petitioner guilty under section 138 of the NI Act.

In the above facts and circumstances, I am of the view that the Courts below rightly passed the impugned judgment and order and do not find any reason to interfere.

Accordingly, I do not find any merit in the Rule.

In the result, the Rule is discharged.

The order of bail granted at the time of issuance of this Rule is hereby recalled.

The petitioner is directed to surrender before the trial Court within 30 days of receiving this judgment and order by the trial Court to serve his remaining sentence. The petitioner is also directed to pay the remaining fine within that period. Otherwise, the trial Court will proceed in accordance with the law.

Let a copy of this judgment be sent down to the concerned court for information and necessary action.