Present:

Mr. Justice Md. Khasruzzaman

Criminal Revision No. 1033 of 2024

Md. Abul Bashar
....Convict-appellant-petitioner.
-Versus-
The State and another
...Opposite parties.
Mr. Manabendra Dey
… For the convict-petitioner.
Mr. M. Masud Rana, D.A.G. with
Mr. Faruk Ahmed, A.A.G. and
Ms. Mahfuza Akhter, A.A.G.
.....For the State.
Mr. A.Z.M. Ali Hasan, Advocate
... For the complainant-respondent

Judgment on 27th August, 2025

The Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order of conviction and sentence dated 11.01.2024 passed by the learned Additional Sessions Judge, 4th Court, Gazipur in Criminal Appeal No. 150 of 2023 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 09.02.2023

passed by the learned Joint Sessions Judge, Additional Court, Gazipur in Sessions Case No. 2754 of 2019, arising out of C.R. Case No. 964 of 2019, convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him there under to suffer simple imprisonment for 6 (six) months and also to pay a fine of Tk. 1,50,000.00 (one lac and 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.

On 18.07.2019 one Dilruba Akter as a complainant filed C.R. Case No. 964 of 2019 before the learned Senior Judicial Magistrate, Cognizance Court No. 3, Gazipur against the petitioner as an accused under section 138 of the Negotiable Instruments Act, 1881.

The prosecution case, in short, is that the accused has been operating a business in Gazipur Chowrasta area through a business establishment called Messrs Bagerhat fish. The complainant and the accused took rent a house in the same area and therefore are family acquaintances. A relation of trust was created between the complainant and

the accused, and for that reason, the accused borrowed Tk.1,50.000.00 (one lac and fifty thousand) from the complainant on 02.01.2019, and he assured her that he would pay the same on 15.01.2019 but he did not pay the same rather he was taking time on different plea. The complainant gave presure to the accused to pay the borrowed money then the accused issued 3 (three) cheques to the complainant maintained in the name of his business establishment Messrs. Begerhat fish with First security Islami Bank Limited, Gazipur Chowrasta Branch being cheque Nos. FSIB/AWCD 9960285 amounting to Tk. 50,000.00, FSIB/AWCD 9960286 amounting to Tk. 50,000.00 and FSIB/AWCD 9960287 amounting to Tk. 50,000.00 in total Tk. 1,50,000.00 (one lac and fifty thousand) in Account No.0011100000104.

On 30.05.2019 the complainant presented the said 3 cheques to the concerned bank for encashment but it were dishonored and returned to the complainant due to insufficiency of funds. Then, on 12.06.2019 the complainant sent a legal notice to the accused by

registered post with acknowledgement due demanding him to pay the cheques amount within 30 (thirty) days from date of its receipt, and the accused received it but he did not pay the same. After expiry of 30 days, on 18.07.2019 the complainant filed the instant case against the accused under section 138 of the Negotiable Instruments Act, 1881.

After examining the complainant under section 200 of the Code of Criminal Procedure, the learned Senior Judicial Magistrate, Cognizance Court, Gazipur took cognizance of the offence under section 138 of the Negotiable Instruments Act, 1881 and issued summons against the accused to appear before the Court. Thereafter, on 21.11.2019 the accused appeared before the Court and prayed for bail, and on the same day he was granted on bail.

Subsequently, the case record was transmitted to the learned Sessions Judge, Gazipur and it was registered as Sessions Case No. 2754 of 2019 and after taking cognizance of the offence under section 138 of the

Negotiable Instruments Act, 1881 against the accused, the case record was transferred to the learned Joint Sessions Judge, Additional Court, Gazipur for holding trial and disposal. Thereafter, on 12.03.2020 a charge was framed under section 138 of the Negotiable Instruments Act, 1881 against the accused and it was not read over and explained to the accused as he absconded.

The prosecution examined 2 (two) witnesses out of which the complainant was examined as P.W.1 to prove the charge and they were cross examined by the defence and thereafter, the accused was examined under section 342 of the Code of Criminal Procedure and he claimed to be innocent. On the other hand, the defence examined the accused, Md. Abul Basher, as D.W.1 and he was cross examined by the prosecution. Monzurur Rahman, Branch Manager of First Security Islami Bank Limited, Gazipur Chowrasta Branch and Md. Wasimuddin Ahmed Anny, Inspector, CID were examined as C.W-1 and C.W-2.

On 09.02.2023 the learned Joint Sessions Judge, Additional Court, Gazipur convicted the accused under

section 138 of the Negotiable Instruments Act,1881 and sentenced him there under to suffer simple imprisonment for 6 (six) months and also to pay a fine of Tk. 1,50,000.00 (one lac and fifty thousand) and the complainant would get the cheque amount.

Being aggrieved by and dissatisfied with the judgment and order, the accused as an appellant filed Criminal Appeal No. 150 of 2023 before the learned Sessions Judge, Gazipur and after hearing both the sides, on 11.01.2024 the appeal was dismissed.

Being aggrieved by and dissatisfied with the judgment and order dated 11.01.2024, the convict petitioner filed this revision and obtained the Rule.

Mr. Manabendra Dey, the learned Advocate for the convict-petitioner made his submissions on the point of facts and law.

Mr. A.Z.M. Ali Hasan, the learned Advocate for the complainant-opposite party submits that the convict-petitioner borrowed Tk. 1,50,000.00 (one lac and fifty thousand) from the complainant-opposite party but the

convict-petitioner failed to repay the same to the complainant-opposite party and as such, he issued 3 (three) cheques each valued at Tk. 50,000.00 to the complainant which were dishonored, and thus the complainant filed the case. He further submits that the complainant after exhausting all legal formalities filed the present case and gave oral and documentary evidence, and he exhibited and marked all relevant documents and as such, the Trial Court convicted the accused which was rightly affirmed by the Appellate Court. He also submits that the prosecution proved the case all reasonable doubt and the Trial Court after elaborate discussions on the point of facts and law convicted the petitioner which was affirmed by the Appellate Court which calls for no interference.

Heard the learned Advocate for both the sides, perused the application and the records along with all relevant documents.

P.W.1, Dilruba Akter, in her examination-in-chief deposed that the accused, Abul Bashar, issued

three cheques dated 30.05.2019 for Tk. 50,000.00 each, aggregating to Tk. 1,50,000.00, which were dishonoured for insufficiency of funds on 30.05.2019. She further stated that, following the dishonour of the cheques, she issued a legal notice on 12.06.2019 and thereafter instituted the complaint case. In cross-examination, she denied the defence suggestions that the cheques did not bear the signatures of the accused, that her husband had stolen the cheques from the accused, or that the case had been falsely instituted. She further denied that her husband had been employed at the accused's fish trading establishment.

P.W.2 Abdur Rahman corroborated the complainant's version regarding the alleged advancement of Tk. 1,50,000/- to the accused and the subsequent issuance and dishonour of three cheques. In cross-examination, he referred to his previous employment at a fish trading establishment and stated that he had not been employed there for approximately five to six years. He denied the defence suggestion that

he had stolen the cheques while working at the accused's establishment or that a local arbitration had taken place in which he had agreed to return the cheques. He also denied the allegation of forgery of the accused's signatures and the institution of a false case through his wife.

In response to a query from the Court, P.W.2 stated that his wife had received money in cash from her father, who had been abroad for a considerable period, for the purpose of constructing a residential house. He admitted that no documentary evidence was available concerning the payment of the money by his father-in-law.

D.W.1, Md. Abul Basher, in his examination-in-chief, deposed that the husband (P.W.2) of the complainant worked as an employee at his fish business. He closed his business and found that 6(six) pages of the cheques were missing. He complained to the President and the Secretary of the bazaar committee. They asked orally P.W.2 to return the cheque to the complainant but

P.W. 2 did not return the same. He further deposed that the accused did not issue the cheques to the complainant. The complainant filed the false case against the accused by forging the signature of the accused and putting the amount on the cheques. In cross examination, he deposed that he did not file any case against the missing of his cheques. He admitted that the complainant filed Naragi petition against the hand writing report and then C.W. 1 and 2 were examined.

C.W.1, the Branch Manager of First Security Islami Bank Limited, Chowrasta Branch, Gazipur, deposed that he had compared the signatures appearing on the cheques in question with the specimen signatures maintained by the bank and found them to be in conformity with each other. He further deposed that the said cheques were subsequently dishonoured on the ground of insufficiency of funds. In course of cross-examination by the defence, nothing material could be elicited from this witness to contradict or discredit his testimony.

On the other hand, C.W.2, an officer of the Criminal Investigation Department (CID), deposed that, upon examination of the cheque in question, he had compared the signature appearing thereon with the specimen signature of the accused and found discrepancies between them.

It appears that Dilruba Akter, complainant, was examined as P.W. 1 and in her examination-in-chief, she categorically supported the prosecution case and she exhibited the petition of complaint and her signature, exhibit Nos. 1 and 1/1; dishonored cheques and its' slips, exhibit Nos. 2,2/1 and 2/2, and 2/3,2/4 and 2/5; postal receipt and legal notice, exhibit Nos. 2/6 and 2/7 respectively. P.W.1 was cross examined by the defence and the defence could not deviate from the petition of complaint and the examination-in-chief of the complainant by questioning P.W.1, and she denied the suggestions given by the defence. P.W. 2 Abdur Rahman, in his examination-in-chief, supported the prosecution

case and in cross examination he denied the suggestions given by the defence.

Upon careful examination of the evidence on record, it appears that C.W.1, the Branch Manager of First Security Islami Bank Limited, Chowrasta Branch, Gazipur, categorically stated that he had compared the signatures appearing on the cheques in question with the specimen signatures preserved in the bank and found them to be in conformity with each other. He further stated that the cheques were dishonoured on the ground of insufficiency of funds.

During cross-examination, C.W.1 explained that whenever any discrepancy in the signature of a drawer is apparent upon visual examination, the bank ordinarily returns the cheque with the endorsement "Drawer's Signature Differs". However, in the instant case, no such endorsement was made. Rather, the cheques were dishonoured for insufficiency of funds, as the signatures were found to be in conformity with the specimen signatures upon visual examination. He

also categorically denied the defence suggestion that the signatures appearing on the cheques were discrepant. Nothing material could be elicited in cross-examination to discredit his testimony in this regard.

On the other hand, C.W.2, the handwriting expert of the Criminal Investigation Department (CID), stated that he had detected certain dissimilarities between the disputed signature and the specimen signatures upon examination. Significantly, C.W.2 did not categorically opine that the disputed signature was forged. His opinion was confined to the existence of dissimilarities between the signatures examined.

It is to be borne in mind that the mere existence of certain dissimilarities between two signatures does not necessarily establish that they were made by different persons. Some degree of natural variation may occur even in genuine signatures of the same individual. It is also possible for a person to introduce variations in his own signature. However, whether any such variation was deliberately introduced in the

instant case must be determined from the evidence and cannot be presumed merely from the existence of dissimilarities.

The opinion of a handwriting expert, though relevant under section 45 of the Evidence Act, 1872, is not conclusive and must be considered along with the other evidence on record. In the present case, the evidence of C.W.1 assumes particular importance inasmuch as he specifically stated that the signatures had been verified with the specimen signatures maintained by the bank and that the cheques were dishonoured solely for insufficiency of funds. Although visual verification by a bank official is not equivalent to forensic examination, his evidence constitutes a material circumstance in appreciating the expert opinion.

Furthermore, the other witnesses have testified regarding the monetary transaction and the receipt of money by the accused. The evidence relating to the underlying transaction lends support to the

complainant's assertion that the cheques were issued in connection with the said transaction. It further appears that, following the dishonour of the cheques, a legal notice demanding payment was issued to the accused, to which no reply was furnished. Although mere failure to reply to a legal notice cannot be treated as an admission of liability, such conduct may be considered along with the other attending circumstances.

It also appears that a salish was held in connection with the dispute, but none of the salishdars was examined on behalf of the defence. Such non-examination does not establish the guilt of the accused; nevertheless, the alleged salish proceedings do not provide any independent evidentiary support for the defence version.

Thus, upon a cumulative consideration of the evidence of C.W.1 and C.W.2, the testimony concerning the monetary transaction, the documentary evidence relating to dishonour of the cheques and the subsequent conduct of the parties, this Court finds

sufficient reasons to place reliance upon the evidence supporting the complainant's case.

The dissimilarities pointed out by C.W.2 have been duly considered. However, in the absence of a categorical opinion of forgery, and having regard to the other positive evidence on record, such dissimilarities do not, in the facts and circumstances of the present case, necessarily negate the execution of the cheques by the accused.

Therefore, this Court is persuaded to accept the complainant's version regarding the issuance of the cheques, notwithstanding the dissimilarities noticed by the handwriting expert. Upon consideration of the evidence as a whole, this Court finds that the contrary expert opinion does not outweigh the cumulative evidentiary value of the other reliable materials establishing the complainant's case.

Thus, it can be finally said that the complainant orally and documentary supported the petition of

complaint and exhibited all relevant documents which were marked by the prosecution.

It is submitted by the complainant-opposite party that the legal notice was served upon the convict-petitioner by registered post with acknowledge due as per sections 138 (1) (b) and 138 (1A)(b) of the Negotiable Instruments Act, 1881. Moreover, the convict-petitioner did not raise any objection regarding the service of the legal notice. Thus, the notice was duly served upon the convict-petitioner.

I have gone through the provision of section 138 of the Negotiable Instruments Act,1881 and the records of the case and found nothing illegality in the procedure. Thus, the complainant after exhausting all legal formalities filed the case which was maintainable.

It also appears from the records that the Trial Court after elaborate discussions on the point of law and facts convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 and on appeal, the

learned Additional Sessions Judge, 4th Court, Gazipur rightly dismissed the appeal.

I have considered the cases of Md. Zahangir Alam Shaheen Vs. Md. Abu Tayab and others, 13 ALR (AD) 179; Md. Osman Goni Vs. State and others in Criminal Appeal No. 6469 of 2008; and Ratan Kha @ Rattan and others Vs. The State, 40 DLR 186, which are relevant in the facts of the present case.

I have also gone through the above judgments and orders of the Trial Court as well as Appellant Court but do not find any illegality in the above two judgments and orders and as such, I do not find any substance in the Rule.

In the result, the Rule is discharged.

The Trial Court is directed to pay the amount deposited by the convict petitioner before filing the appeal to the complainant-opposite party and issue process against the convict-petitioner to secure his arrest.

The complainant opposite party shall have the right to recover the remaining cheque amount under section 386 of the Code of Criminal Procedure.

Send down the records.

Communicate the order.

(Md. Khasruzzaman, J:)