

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

**Present:**

**Mr. Justice Md. Khairul Alam**

**Criminal Revision No. 5400 of 2023**

Mohammad Nayan Miah.

..... Petitioner.

-Versus-

The state and another.

..... Opposite parties.

Mr. Mohammad Abul Hasnat, Advocate

..... For the petitioner.

Mrs. Israt Jahan, Advocate

..... For the opposite party No. 2.

**Heard on 19.11.2024 and  
Judgment on 21.11.2024.**

**Md. Khairul Alam, J.**

This revision is directed against the judgment and order dated 30.05.2023 passed by the learned Sessions Judge, Mymensingh in Criminal Appeal No. 390 of 2023 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 28.04.2022 passed by the learned Joint Sessions Judge, 2<sup>nd</sup> Court, Mymensingh in Sessions Case No. 1063 of 2018 arising out of C.R. Case No. 411 of 2017 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 (shortly, the NI Act) and sentencing him to suffer simple imprisonment for 06 (six) months and also to pay a fine of Taka 5, 50, 000/-.

The prosecution case, in short, is that the present opposite party No. 2 as complainant filed C.R. Case No. 411 of 2017 before the court of Senior Judicial Magistrate, 4<sup>th</sup> Court, Mymensingh implicating the present petitioner as an accused alleging, inter-alia, that to disburse the liability the petitioner issued a cheque bearing No. CAB 0466529 dated 16.10.2017 amounting to Tk. 5, 50,000/- in favour of the complainant. The complainant placed the said cheque before the bank for encashment, but the cheque was dishonored on 16.10.2017 due to “Insufficient Fund”. Hence, the complainant filed the case following all the statutory provisions.

Ultimately, the case was renumbered as Sessions Case No. 1063 of 2018 and was tried by the learned Joint Sessions Judge, 2<sup>nd</sup> Court, Mymensingh who by the judgment and order of conviction and sentence dated 28.04.2022 convicted the appellant under section 138 of the NI Act and sentenced him as aforesaid.

Against the said judgment and order of conviction and sentence, the petitioner filed Criminal Appeal No. 390 of 2023 before the Court of learned Sessions Judge, Mymensingh. On 30.05.2023 date was fixed for the hearing of maintainability of the said appeal and on that day, when the matter was taken up for hearing, the learned Advocate for the petitioner of the appellate court below was not present, and the learned Sessions Judge, Mymensingh by the order dated 30.05.2023 dismissed the appeal summarily.

Being aggrieved thereby the petitioner moved before this Hon'ble Court and obtained the Rule.

Mr. Mohammad Abul Hasnat, the learned Advocate appearing on behalf of the petitioner at the outset of the hearing of the Rule informed this Court that meanwhile opposite party No. 2 amicably settled the issues by paying the amount covering the amount of the cheque to the complainant and accordingly, he prayed for quashing the impugned judgment and order of conviction and sentence.

Mrs. Israt Jahan, the learned Advocate appearing on behalf of opposite party No. 2 has approved the said submission.

In the case of Subash Chandra Sarker vs. The State and another reported in 26BLT(AD)28 a petition for leave to appeal was filed by a convict challenging his conviction and sentence passed under section 138 of the NI Act. In the said petition for leave to appeal a joint application was filed for recording and disposal of the case as per terms of the compromise setting aside the judgment and order of conviction and sentence. Our apex Court dispossessed of the said petition for leave to appeal in the following manner.

“A Joint Application has been filed for recording compromise and disposal of the case as per terms of the compromise setting aside the judgment and order of conviction and sentence passed against the petitioner. The complainant and the convict are present in the Court. We have perused the

compromise petition. The section is not a compoundable one. However, since the parties have settled matter amicably and the complainant has admitted before this Court that he received the half of the amount of the dishonoured cheque in the cash and the rest of the amount was deposited with the Sessions Court before filing the appeal before the High Court Division. We are inclined to reduce the sentence to the period already undergone and accordingly the sentence awarded against the petitioner is reduced to the period undergone. We also direct the Additional Sessions Judge, Chapainawabgonj to allow the complainant to withdraw the money deposited by the convict without making any delay.

This petition is disposed of accordingly.”

Considering the submissions advanced by the learned Advocates of both sides and also considering the facts and circumstances of the case, I am inclined to reduce the sentence to the period already undergone in the light of the above view of our apex Court.

Accordingly, the Rule is discharged with the modification of the sentence awarded against the petitioner, by reducing the sentence awarded against the petitioner to the period undergone.

The court concerned is hereby directed to allow the complainant to withdraw the money deposited by the convict petitioner without any delay.

Send down the lower court's record, if any, to the concerned court below with a copy of this judgment and order at once.

Kashem/B.O