

**IN THE SUPREME COURT OF
BANGLADESH
HIGH COURT DIVISION
(CRIMINAL REVISIONAL JURISDICTION)**

Present:

Mr. Justice Md. Shohrwardi

Criminal Revision No. 3608 of 2024

Mahbub Shikdar

..... convict-petitioner

-Vs-

The State and another

....respondents

No one appears

.....For the convict petitioner.

Mr. Md. Ohiduzzaman Sohel, Advocate

.....For the respondent No.2

Mr. Sultan Mahmood Banna, AAG with

Ms. Sharmin Hamid, AAG

.... For the State

Heard on 05.01.2025

Judgment delivered on: 13.01.2025

On an application filed under sections 439 and 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 of conviction and sentence dated 28.02.2024 passed by Additional Metropolitan Sessions Judge, Khulna in Metropolitan Criminal Appeal No. 137 of 2023 affirming the judgment and order of conviction and sentence dated 12.01.2023 passed by Metropolitan Joint Sessions Judge, Court No. 2, Khulna in Metropolitan Sessions Case No. 509 of 2021 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 06(six) months and fine of Tk. 700,000

should not be set aside and/or pass such other or further orders or orders as to this court may seem fit and proper.

The prosecution case, in short, is that the accused Mahbub Shikder received Tk. 700,000 to purchase land from the witness No. 2, Md. Khafi Khan who is the husband of the complainant Umme Salma. The accused issued cheque No. 1616312 on 21.11.2019 drawn on his Account No. 2801201805087001 maintained with Brac Bank Ltd, Khulna Branch for payment of Tk. 700,000 in favour of the husband of the complainant. The complainant presented the said cheque on 03.02.2020 through the Brac Bank Ltd, Khulna Branch for encashment which was dishonoured on the same date with the remark “insufficient funds”. She published a legal notice on 18.02.2020 in the “দৈনিক নব অভিযান” for payment of the cheque amount. Although the accused was notified by the publication of the notice in the newspaper on 18.02.2020 he did not pay the cheque amount within the specified time for which the complainant filed the complainant petition on 23.03.2020 on behalf of her husband.

After filing the complainant petition, the learned Magistrate, Cognizance Court No. 1, Khulna was pleased to take cognizance of the offence against the accused under section 138 of the Negotiable Instruments Act, 1881. After that, the convict petitioner surrendered before the Magistrate and obtained bail. Thereafter, the case was sent to the Metropolitan Sessions Judge, Khulna for trial and disposal of the case which was subsequently transferred to the Metropolitan Joint Sessions Judge, Khulna for trial and disposal of the case. During the trial, the charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881 which

was read over and explained to the accused and he pleaded not guilty to the charge.

The prosecution examined 01 witness to prove the charge against the accused. At the time of examination of the prosecution witness, the accused was absconding. After concluding the trial, the Metropolitan Joint Sessions Judge, Court No. 2, Khulna by judgment and order dated 12.01.2023 was pleased to convict the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer imprisonment for 06(six) months and fine of Tk. 700,000 against which the accused filed Metropolitan Criminal Appeal No. 509 of 2021. After hearing the appeal, the appellate court below by impugned judgment and order was pleased to affirm the judgment and order passed by the trial court against which the convict petitioner obtained the rule.

P.W. 1 Umme Salma is the wife of the payee Md. Khafi Khan. She stated that she deposed based on the power of attorney on behalf of her husband Md. Khafi Khan. On 21.11.2019 the accused issued a cheque for payment of Tk. 700,000 which was dishonoured on 03.02.2019. On 18.02.2020, she published a legal notice on the “দৈনিক নব অভিযান”. But he did not pay the cheque amount. Consequently, he filed the case on behalf of her husband. She proved the complaint petition as exhibit-1 and her signature on the complaint petition as exhibit-1/1, 1/2, cheque as exhibit-2, dishonoured slip as exhibit-3, legal notice published in the daily newspaper as exhibit-4 and the power of attorney as exhibit-5. The accused was absconding.

None appears on behalf of the convict petitioner.

The learned Advocate Mr. Wahiduzzaman Sohel appearing on behalf of the complainant opposite party No. 2 submits that on 21.11.2019 the accused Mahbub Shikder issued a cheque in favour of the payee Md. Khafi Khan who is the husband of the complainant Umme Salma for payment of Tk. 700,000 and the said cheque was dishonoured on 03.02.2019 for “insufficient funds” and the complainant filed the complaint petition following the procedure provided in clauses (a) to (c) of sections 138 and 141(b) of the Negotiable Instruments Act, 1881 and the complainant proved the charge against the accused beyond all reasonable doubt. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Wahiduzzaman Sohel who appeared on behalf of the appellant, perused the evidence, impugned judgment and order passed by the courts below and the records.

On perusal of the evidence, it appears that accused Mahabub Shikder issued cheque No. 1616312 on 21.11.2019 for payment of Tk. 700,000 in favour of Md. Khafi Khan who is the husband of the complainant Umme Salma. P.W. 1 proved the power of attorney as exhibit 5. The payee presented the cheque dated 21.11.2019 on 03.02.2020 for encashment which was dishonoured on the same date with the remark “insufficient funds”. P.W. 1 proved the said cheque as exhibit-2 and the dishonoured slip as exhibit-3. The payee complainant published a legal notice on 18.02.2020 in the “দৈনিক নব অভিযান” to pay the cheque amount which was proved as exhibit-4. Despite the legal notice published on 18.02.2020 in the “দৈনিক নব অভিযান” the accused did not pay the cheque amount in time and the complainant filed the case on 23.03.2021 complying with the

procedures under clauses (a) to (c) of section 138 and section 141 (b) of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the accused beyond all reasonable doubt and the courts below on correct assessment and evaluation of the evidence rightly convicted the accused.

Considering the gravity of the offence and the facts and circumstances of the case, I am of the view that the ends of justice would be best served if the sentence passed by the trial court is modified as under;

The accused Mahbub Shikder is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and he is sentenced to suffer imprisonment for 03 (three) months and fine of Tk. 700,000.

The payee complainant Md. Khafi Khan is entitled to get the fine amount.

However, the complainant is at liberty to apply to the trial court to get the fine amount.

The trial court is directed to allow the complainant to withdraw 50% of the cheque amount deposited by the accused before filing the appeal.

The convict petitioner is directed to surrender forthwith before the trial court and to deposit the remaining fine of Tk. 350,000 within 30 days from the date of receipt of a copy of this judgment failing which the trial court shall take step following law.

With the above findings, observation and direction, the appeal is disposed of with modification of the sentence.

Send down the lower Court's records at once.