

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision Case No. 1492 of 2023

Md. Zian Mollik

...Convict-petitioner

-Versus-

Abdur Kader Fokir and another

...Opposite parties

with

Criminal Revision Case No. 1490 of 2023

Md. Zian Mollik

...Convict-petitioner

-Versus-

Md. Sirajul Islam and another

...Opposite parties

with

Criminal Revision Case No. 1491 of 2023

Md. Zian Mollik

...Convict-petitioner

-Versus-

Md. Sirajul Islam and another

...Opposite parties

Mr. Md. Afzal H. Khan, Senior Advocate with

Mr. Md. Imran Hossain Rumel, Advocate

...For the convict-petitioner (In all criminal revisions)

No one appears.

...For the opposite parties (In all criminal revisions)

Heard on 06.03.2025, 26.06.2025 and 10.07.2025

Judgment delivered on 16.07.2025

The above-mentioned Rules have arisen out of the three cheques allegedly issued by the convict-petitioner in favour of Abdur Kader Fokir and Md. Sirajul Islam who were the complainants in the trial Court. All the Rules involved similar questions of law and facts, for which all the Rules were heard analogously and disposed of by this single judgment.

Criminal Revision Case No. 1492 of 2023

On an application filed under section 439 read with section 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 dated 25.01.2023 passed by the Additional Sessions Judge, Court No. 2, Narail in Criminal Appeal No. 119 of 2022 affirming the judgment and order dated 06.06.2022 passed by the Joint Sessions Judge, Court No. 2, Narail in Sessions Case No. 21 of 2020 arising out of C.R. Case No. 224 of 2019(L) convicting the petitioner under section 138(1) of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 1(one) year and fine of Tk. 25,00,000(twenty-five lakh) 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 on 15.05.2019 at 10.00 am, the complainant Abdul Kader Fokir requested the accused Md. Zian Mollik to pay the debt sitting in the house of the accused. At that time, he issued Cheque No. 1171-0814947 drawn on his Saving Account No. 0200005511528 maintained with Agrani Bank Limited, Amtali Branch, Barguna for payment of Tk. 25,00,000(twenty-five lakh) in favour of the complainant Abdul Kader Fokir. Following the instruction of the accused, the complainant presented the said cheque on 17.07.2019 through the Agrani Bank Limited, Dighalia Bazar Branch, Narail for encashment, and the said cheque was dishonoured on the same date with the remark 'insufficient funds'. The complainant sent a legal notice on 31.07.2019 to the accused for payment of the cheque amount through registered post with AD, and the accused received the notice on 05.08.2019, but he did not pay the cheque amount within 30(thirty) days from the date of receipt of the notice. Consequently, the complainant filed the case on 18.09.2019.

During the trial, charge was framed against the accused under section 138(1) of the Negotiable Instruments Act, 1881, and at the time of framing charge the accused was absconding. The prosecution examined 1(one) witness to prove the charge against the accused, and the defence cross-examined P.W. 1. After concluding trial, the trial

Court by judgment and order dated 06.06.2022 convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer imprisonment for 1(one) year and fine of Tk. 25,00,000(twenty-five lakh). The convict-petitioner filed Criminal Appeal No. 119 of 2022 before the Sessions Judge, Narail against the said judgment and order passed by the trial Court which was heard by the Additional Sessions Judge, Court No. 2, Narail who by impugned judgment and order affirmed the judgment and order passed by the trial Court against which the convict-petitioner obtained the Rule.

P.W. 1 Abdul Kader Fokir is the complainant. He stated that on 15.05.2019, the accused Md. Zian Mollik issued the Cheque No. 11710814947 drawn on his Account No. 0200005511528 maintained with Agrani Bank, Amtali Branch, Barguna for payment of Tk. 25,00,000. The said cheque was presented for encashment, but it was dishonoured on 17.07.2019 for 'insufficient funds'. The complainant sent the legal notice on 31.07.2019, and the accused received the said notice on 05.08.2019. The accused did not pay the cheque amount within the time. Thereafter, he filed the case. He proved the complaint petition and his signature on the complaint petition as exhibit 1 series, cheque as exhibit 2, dishonour slip as exhibit 3, postal receipt as exhibit 4, AD as exhibit 5, and the legal notice as exhibit 6. During cross-examination, he admitted that his daughter Kakoli Khanam is the wife of the accused. He stated that they did not receive the notice of divorce. He presented the cheque on 17.07.2019, and it was dishonoured on the same date. He denied the suggestion that during the subsistence of marriage, his daughter stole the cheque, or that using that cheque, he filed the false case, or that he tampered the date on the cheque and putting a new date on the cheque, filed the case, or that he deposed falsely.

Criminal Revision Case No. 1490 of 2023

On an application filed under section 439 read with section 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 dated 25.01.2023 passed by the Additional Sessions Judge, Court No. 2, Narail in Criminal Appeal No. 118 of 2022 affirming the judgment and order dated 06.06.2022 passed by the Joint Sessions Judge, Court No. 2, Narail in Sessions Case No. 20 of 2020 arising out of C.R. Case No. 223 of 2019(L) convicting the petitioner under section 138(1) of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 3(three) months and fine of Tk. 5,00,000(five lakh) 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 on 19.05.2019 at 10.30 am, sitting in the house of the accused Md. Zian Mollik, he issued Cheque No. 1171-0814948 drawn on his Saving Account No. 0200005511528 maintained with Agrani Bank Limited, Amtali Branch, Barguna in favour of the complainant Md. Sirajul Islam for payment of Tk. 5,00,000(five lakh). Following the instruction of the accused, the complainant presented the said cheque on 17.07.2019 through the Agrani Bank Limited, Dighalia Bazar Branch, Narail, for encashment, and the said cheque was dishonoured on the same date with the remark 'insufficient funds'. The complainant sent a legal notice on 31.07.2019 to the accused for payment of the cheque amount through registered post with AD, and the accused received the notice on 05.08.2019, but he did not pay the cheque amount within 30(thirty) days from the date of receipt of the notice. Consequently, the complainant filed the case on 18.09.2019.

During trial, charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881. At the time of framing charge, the accused was absconding. The prosecution examined 1(one) witness to prove the charge against the accused and the defence cross-examined P.W. 1. After concluding trial, the trial Court by impugned judgment and order dated 06.06.2022 convicted

the accused and sentenced him as stated above against which he filed Criminal Appeal No. 118 of 2022 before the Sessions Judge, Narail which was heard by the Additional Sessions Judge, Court No. 2, Narail who by impugned judgment and order affirmed the judgment and order passed by the trial Court against which he obtained the Rule.

P.W. 1 Md. Sirajul Islam is the complainant. He stated that on 19.05.2019, the accused Md. Zian Mollik issued a cheque in his favour for payment of the 500000. He presented the cheque on 17.07.2019, and it was dishonoured on the same date. On 31.07.2019, he sent a legal notice, and the accused received the said notice on 05.08.2019. The accused did not pay the cheque amount in time. He proved the complaint petition and his signature on the complaint petition as exhibit 1 series. He proved the cheque as exhibit 2, dishonour slip as exhibit 3, notice as exhibit 4, postal receipt and AD as exhibit 5 series. During cross-examination, he stated that Kakoli Khanam was known to him. She was the wife of the accused. He is not aware whether the accused divorced her. Abdul Kader is the father of Kakoli. He denied the suggestion that during the subsistence of their marriage, 2 cheques were kept in the custody of Kakoli Khanom or that tempering the date on the cheque, he filed the false case. He affirmed that no other document was handed over to him. He denied the suggestion that, in connivance with the Manager, he obtained the dishonour slip. He denied the suggestion that he deposed falsely.

Criminal Revision Case No. 1491 of 2023

On an application filed under section 439 read with section 435 of the Code of Criminal Procedure, 1898 the Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 25.01.2023 passed by the Additional Sessions Judge, Court No. 2, Narail in Criminal Appeal No. 120 of 2022 affirming the judgment and order dated 06.06.2022

passed by the Joint Sessions Judge, Court No. 2, Narail in Sessions Case No. 22 of 2020 arising out of C.R. Case No. 222 of 2019(L) convicting the petitioner under section 138(1) of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 1(one) year and fine of Tk. 25,00,000(twenty-five lakh) 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 on 15.05.2019 at 10.00 am, sitting in the house of the accused Md. Zian Mollik, he issued Cheque No. 1171-0814941 drawn on his Saving Account No. 0200005511528 in favour of the complainant Md. Sirajul Islam maintained with Agrani Bank Limited, Amtali Branch, Barguna for payment of Tk. 25,00,000(twenty five lakh) to pay the debt. Following the instruction of the accused, the complainant presented the said cheque on 17.07.2019 through the Agrani Bank Limited, Dighalia Bazar Branch, Narail, for encashment, and it was dishonoured on the same date with the remark 'insufficient funds'. He sent a legal notice on 31.07.2019 through registered post with AD to the accused for payment of the cheque amount, but he did not pay the cheque amount, although he received the notice on 05.08.2019. Consequently, the complainant filed the case on 18.09.2019.

During trial, charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881, and at the time of framing charge, the accused was absconding. The prosecution examined 1(one) witness to prove the charge against the accused and cross-examined P.W. 1. After examination of the prosecution witness, the accused again absconded. After concluding the trial, the trial Court, by judgment and order dated 06.06.2022, was pleased to convict the accused Md. Zian Mollik under section 138 of the Negotiable Instruments Act, 1881, and sentenced him to suffer imprisonment for 1(one) year and fine of Tk. 25,00,000(twenty-five lakh) against which the accused filed the Criminal Appeal No. 120 of

2022 before the Sessions Judge, Narail, which was heard by the Additional Sessions Judge, Court No. 2, Narail. After hearing the appeal, the appellate Court, by impugned judgment and order dated 25.01.2023, affirmed the judgment and order passed by the trial Court against which he obtained the Rule.

P.W. 1 Md. Sirajul Islam stated that the accused issued cheque No. 11710814941 drawn on his Account No. 020005511528 maintained with Agrani Bank Amtali Branch, Barguna for payment of Tk. 25,00,000. He presented the cheque on 17.07.2019 but it was dishonoured. On 31.07.2019, he sent a legal notice to the accused. The accused received the notice on 05.08.2019 but he did not pay the cheque amount. He proved the complaint petition and his signature on the complaint petition as exhibit 1 series, cheque as exhibit 2, dishonour slip as exhibit 3, postal receipt as exhibit 4, AD as exhibit 5 and legal notice as exhibit 6. He admitted that Kakoli Khanam was the wife of the accused. He is not aware of the fact that the accused divorced his wife. He denied the suggestion that during subsistence of their marriage, his wife kept the cheques in her custody or that using those cheques, he filed the case.

Learned Senior Advocate Mr. Md. Afzal H. Khan, appearing along with the learned Advocate Mr. Md. Imran Hossain Rumel on behalf of the convict-petitioner, submits that the complainant Abdul Kader Fokir is the father-in-law of the accused Md. Zian Mollik, and after the divorce between the Kakoli Khanam, daughter of the complainant Abdul Kader Fokir and the accused Md. Zian Mollik, the complaint petitions were filed using cheques kept in the custody of his wife, suppressing the fact that the complainant is the father-in-law of the accused. Having drawn the attention of this Court to the deposit slips learned Advocate submits that the deposit slips were written by the same person and all the cheques were also presented on the same date by the same person and legal notices were also sent through the same learned Advocate on the same date and the language of the three

complainant petitions are same except the date, cheque numbers and the complainants. Having drawn the attention of this Court to the dishonour slips issued regarding the dishonour of the Cheque No. 814941 dated 15.05.2019, he further submits that the said cheque was dishonoured on the ground 1. 'insufficient funds' and 2. drawer signature differ which proved that the Cheque No. 0814941 dated 15.05.2019 was not issued by the convict-petitioner and the complainant forged the signature of the accused on the Cheque No. 0814941 dated 15.05.2019 (exhibit 2). Having drawn the attention of this Court to the complaint petitions, he also submits that two cheques were allegedly issued by the accused on 15.05.2019 sitting in his house in favour of different payees which proved that the complainant Abdul Kader Fokir is the engineer of the three cases filed against the accused using the cheques kept in the custody of his daughter who is the former wife of the accused. He lastly submits that no statement is made in the complaint petition regarding the nature of the debts of the accused for which he issued three alleged cheques for a large amount, and the complainant Abdul Kader Fokir, using the cheques kept in the custody of his daughter, filed one case by himself and two other cases through the Md. Sirajul Islam, and there was no consideration of the cheques allegedly issued in favour of the complainants. He vehemently submits that the trial Court failed to consider that the complainant Abdul Kader Fokir, suppressed the relation between him and the accused and fraudulently filed the case, and he also engaged Md. Sirajul Islam to file two other false cases using the cheques kept in the custody of his daughter. He prayed for setting aside the impugned judgments and orders passed by the Courts below.

No one appears on behalf of the opposite parties in the Rules.

I have considered the submission of the learned Senior Advocate Mr. Md. Afzal H. Khan, who appeared along with the learned Advocate Mr. Md. Imran Hossain Rumel on behalf of the

convict-petitioner Md. Zian Mollik, perused the evidence, impugned judgments and orders passed by the Courts below, and the records.

On perusal of the evidence, it appears that the accused Md. Zian Mollik allegedly issued the Cheque No. 1171-0814947 dated 15.05.2019 in favour of Abdul Kader Fokir for payment of Tk. 25,00,000, Cheque Nos. 1171-0814941 dated 15.05.2019 and 1171-0814948 dated 19.05.2019 in favour of Md. Sirajul Islam for payment of Tk. 25,00,000 and 5,00,000 respectively. All the cheques were presented on 17.07.2019 through Agrani Bank Limited, Dighalia Bazar Branch, Narail, and Cheque Nos. 1171-0814947 dated 15.05.2019 and 1171-0814948 dated 19.05.2019 were dishonoured with the remark 'insufficient funds', and the Cheque No. 1171-0814941 dated 15.05.2019 was dishonoured with the remark 1. 'insufficient funds' and 2. drawer signature differs.

During trial, the accused filed an application under section 540 of the Code of Criminal Procedure, 1898 for calling the Manager of Agrani Bank Limited, Dighalia Bazar Branch, Narail as a witness. In the order dated 08.05.2022, it has been mentioned that the state is not willing to examine any further witnesses, which proved that the prosecution declined to examine the Manager of the Agrani Bank Limited, Dighalia Bazar Branch, Narail, who issued the dishonour slip (exhibit 2) regarding cheque No. 1171-0814941 and malafide withheld the Manager of the said branch.

In the dishonour slip (exhibit 3) regarding the cheque No. 0814941, it has been mentioned that the 'drawer signature differs', which proves that the signature of the accused Md. Zian Mollik is not identical to the specimen signature of the accused maintained with the bank. I am of the view that the Cheque No. 0814941 dated 15.05.2019 was not issued by the accused Md. Zian Mollik in favour of the complainant Md. Sirajul Islam and he forged the signature of the accused Md. Zian Mollik on the Cheque No. 0814941 and committed forgery.

On perusal of the records, it further appears that the three deposit slips dated 17.07.2019 regarding the deposit of the three cheques are lying with the records, which were not proved by the prosecution. Without proof, the prosecution materials cannot be used against the accused, but the accused can rely on the admitted documents or materials of the prosecution in his defence. On perusal of the three deposit slips dated 17.07.2019 regarding the presentation of the three cheques, it transpires that the handwriting of the three deposit slips are identical, which proves that the three cheques were presented by a single person.

On perusal of the complaint petitions filed by the complainants, Abdur Kader Fokir and Md. Sirajul Islam, it further transpired that the languages of the three complaint petitions is same, and all the complaint petitions were filed on 18.09.2019 through the learned Advocate Mr. Uttam Kumar Ghosh, Judge Court, Narail. Before filing the complaint petition, legal notices were sent on 31.07.2019 through the learned Advocate Mr. Khondaker Akramul Islam, Judge Court, Narail, for payment of the three cheques amount allegedly issued by the convict-petitioner. The evidence and the facts and circumstances of the case discussed hereinabove depict that from presenting the three cheques till filing the complaint petition, everything has been done by a single person.

During cross-examination in C.R. Case No. 224 of 2019, the P.W. 1 complainant Abdul Kader Fokir admitted that Kakoli Khanam is his daughter, and the accused Md. Zian Mollik is her husband. He also stated that he did not receive any document of divorce, which clearly proved that the complainant Abdul Kader Fokir, is the father-in-law of the accused Md. Zian Mollik. In the complaint petition, it has been alleged that the accused issued the cheque in favour of the complainant Abdul Kader Fokir for payment of the debt, but the complainant suppressed the fact that he is the father-in-law of the accused Md. Zian Mollik. The complainant ought to have made a

specific statement regarding the nature of the debt. No specific statement is made in the complaint petitions as to the mode of payment of money to the accused.

The defence case is that the accused divorced his wife Kakoli Khanam who is the daughter of the complainant Abdul Kader Fokir. During the subsistence of their marriage, several cheques were kept in the custody of Kakoli Khanam, and before the divorce, she took away those cheques beyond the knowledge of the accused, and subsequently, using those cheques, the complainant Abdul Kader Fokir filed one case and two other cases through Md. Sirajul Islam. On perusal of the evidence of P.W. 1 of all the cases, it reveals that the complainant Md. Sirajul Islam was examined in C.R. Case No. 223 of 2019(L) and C.R. Case No. 222 of 2019(L) as P.W. 1. He admitted that Kakoli Khanam is the daughter of Abdul Kader Fokir, which proved that said Kakoli Khanam and the complainant Md. Sirajul Islam were known to each other.

The fundamental principle of criminal jurisprudence is that the accused is innocent unless proven guilty by the Court. There is also a presumption under section 118(a) of the Negotiable Instruments Act, 1881 that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. The presumption under section 118(a) of the said Act is rebuttable. The presumption that the accused is innocent unless proven guilty by the Court is not rebuttable. The defence, either by cross-examining the prosecution witness or adducing evidence, is entitled to rebut the presumption under section 118(a) of the said Act. In the instant case, the defence did not examine any witness.

Having drawn the attention of this Court to the cheques (exhibit 2), AD (exhibit 5) and the Vokatnama filed by the accused in the trial Court as well as before this Court, the learned Advocate for the convict-petitioner submits that alleged signature of the accused on the cheque No. 0814941 (exhibit 2) is not identical to the admitted signature of the accused on the AD and the Vokatnamas filed by the accused and disputed cheque Nos. 0814947 and 0814948 (exhibit 2) were not issued by the accused.

It is admitted that the accused received the legal notice sent by P.W. 1 and signed the AD (exhibit 5) in all the C.R. Cases. The accused also signed the Vakalatnamas filed before the trial Court as well as before this Court. I have examined the alleged signatures of the accused on the disputed cheque Nos. 0814947 and 0814948 (exhibit 2) and his admitted signatures on the AD (exhibit 5) of three C.R. Cases, and the Vokatnamas lying with the records.

In all the cases, P.W. 1 stated that the accused received the legal notices on 05.08.2019. On examination of the AD (exhibit 5) of three C.R. cases, it reveals that the accused Md. Zian Mollik received the legal notices on 05.08.2019 and signed the ADs. The signatures of the accused on the ADs of three C.R. cases and the Vokatnamas filed before the trial Court, as well as before this Court, are identical, but the signatures of the accused on the disputed cheque Nos. 0814947 and 0814948 are not identical to the signatures of the accused on the ADs (exhibit 5) and the Vokatnamas.

It is an admitted fact that the accused received the notice on 05.09.2019 and signed the AD. But the signature of the accused on ADs (exhibit 5) are not identical to the alleged signature of the accused on the cheque No. 0814941 (exhibit 2). The Manager of Agrani Bank Limited, Dighalia Bazar Branch, Narail, opined that the signature of the accused Md. Zian Mollik on the disputed Cheque No. 1171-0814941 (exhibit 2) is not identical to the signature of the accused. I am of the view that the Cheque No. 1171-0814941 dated

15.05.2019, Cheque No. 1171-0814948 dated 19.05.2019, and Cheque No. 1171-0814947 dated 15.05.2019 (exhibit 2) were not drawn by the accused in favour of Abdul Kader Fokir and Md. Sirajul Islam. They forged the signatures of the convict-petitioner on the said cheques. By cross-examining P.W. 1 in all the cases, the defence rebutted the presumption that there was consideration of the three cheques allegedly issued by the accused Md. Zian Mollik. The prosecution failed to prove the charge against the accused beyond all reasonable doubt. Both the Courts below arrived at a wrong decision that the accused Md. Zian Mollik issued the disputed cheques (exhibit 2) in all the cases in favour of the complainants.

It is found that the complainants Abdul Kader Fokir and Md. Sirajul Islam are resident of village Raipasha of Lohagara Thana of Narail, and the accused Md. Zian Mollik is a resident of the village Tepura under Amtali Thana of Barguna. It has been alleged that on 15.05.2019 at 10 am, sitting in the house of the accused Md. Zian Mollik, he issued the disputed two cheques. No explanation has been given by the complainant as to how they reached the same time to the house of the complainant on 15.05.2019 from Narail to the house of the accused at Amtali Thana of Barguna. I am of the view that Md. Sirajul Islam was engaged by Abdul Kader Fokir, father-in-law of the accused Md. Zian Mollik, to file two other cases against the accused Md. Zian Mollik using the cheques illegally taken by the Kakoli Khanom, wife of the accused Md. Zian Mollik.

In view of the above evidence, findings, observation, and the proposition, I am of the view that the prosecution failed to prove the charges against the accused Md. Zian Mollik beyond all reasonable doubt.

I find merit in the Rules.

In the result, the Rules are made absolute.

The impugned judgments and orders of conviction and sentence passed by both the Courts below against the accused Md.

Zian Mollik in Sessions Case Nos. 20 of 2020, 21 of 2020 and 22 of 2020 are hereby set aside.

The accused Md. Zian Mollik is entitled to get 50% of the cheques amount deposited by him in the trial Court before filing the appeals.

The complainants Abdul Kader Fokir and Md. Sirajul Islam are directed to deposit 50% of the cheques amount received by them within 30 days.

The trial Court is directed to take steps for the recovery of 50% of the cheques amount received by the complainants.

However, there will be no order as to costs.

Send down the lower Court's records at once.