

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Revision No. 742 of 2023

Rana Miah

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

Mr. A.N.M. Abed Raja, Advocate

...For the convict-petitioner

Ms. Hosnara Begum, Advocate

...For the complainant-opposite party No. 2

Heard on 06.03.2025

**Judgment delivered on 11.03.2025**

On an application 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 of conviction and sentence dated 18.01.2023 passed by the Sessions Judge, Moulvibazar in Criminal Appeal No.254 of 2022 affirming the judgment and order dated 01.06.2022 passed by the Joint Sessions Judge, Court No. 1, Moulvibazar in Sessions Case No. 1062 of 2018 arising out of C. R. Case No.192 of 2018 (Rajnagar) 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. 5,16,293 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution case, in short, is that the accused Rana Miah obtained a loan from the complainant Sonali Bank Ltd, Tarapasha Bazar Branch, Rajnagar, Moulvibazar. He issued Cheque No. 4186201 on 16.09.2018 drawn on his Account No. 5821433000112 maintained with Sonali Bank Ltd, Tarapasha Bazar Branch for payment of Tk. 5,16,293. The complainant-bank presented the said cheque on 16.09.2018 for encashment which was dishonoured on the same date with the remark 'insufficient funds'. The complainant-bank sent a legal notice on

18.09.2018 through the learned Advocate to the accused for payment of the cheque amount and he received the notice on 26.09.2018 but he did not pay the cheque amount. Consequently, the complainant filed the complaint petition on 30.10.2018.

During the trial, 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 and claimed to be tried following the law. The prosecution examined one witness to prove the charge against the accused and the defence cross-examined P.W. 1. After examination of the prosecution witness, the accused was examined under Section 342 of the Code of Criminal Procedure, 1898 and the defence declined to adduce any D.W.

After concluding the trial, the Joint Sessions Judge, Court No. 1, Moulvibazar by judgment and order dated 01.06.2022 convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer imprisonment for 3(three) months and fine of Tk. 5,16,293 against which the convict-petitioner filed Criminal Appeal No. 254 of 2022 before the Sessions Judge, Moulvibazar who by impugned judgment and order affirmed the judgment and order passed by the trial Court against which he obtained the instant Rule.

P.W. 1 Md. Ashraf Al Mamun is an Officer of Sonali Bank, Tarapasha Branch, Moulvibazar. He stated that he is authorized to depose in the case on behalf of the complainant bank. The accused Rana Miah issued a cheque on 16.09.2018 for payment of the loan amounting to Tk. 5,16,293 in favour of the complainant bank. The cheque was dishonoured on 16.09.2018. The complainant-bank sent a legal notice on 18.09.2018 and the accused received the notice on 26.09.2018 but he did not pay the cheque amount. Subsequently, Sydul Islam filed the complaint petition and thereafter, he was transferred. His signature is known to him. He proved the complaint petition as exhibit 1 and the signature of Sydul Islam on the complaint petition as exhibit 1/Ka. He

proved the dishonoured cheque as exhibit 2, the dishonour slip as exhibit 3, legal notice as exhibit 4 and the postal receipt and AD as exhibits 5 and 5/Ka respectively. During cross-examination, he stated that the accused took a loan of Tk. 4 lakh and the said loan was paid within 1 year. He admitted that at the time of disbursement of the loan, a blank signed cheque was received by the bank. He could not say whether Tk. 2 lakh 14 thousand was paid within one year. He denied the suggestion that the accused prayed for time to pay the remaining loan. He also denied the suggestion that filling up the blank cheque and writing an additional amount on the cheque filed the false case. He also admitted that in 2011 the accused took the loan.

The learned Advocate Mr. A.N.M. Abed Raja appearing on behalf of the convict-petitioner submits that at the time of disbursement of the loan the complainant-bank took a blank signed cheque in 2011 from the accused and the cheque was presented after long 8 years in violation of the provision made in clause (a) to Section 138 of the Negotiable Instruments Act, 1881 and the complainant failed to prove the charge under Section 138 of the Negotiable Instruments Act, 1881 by adducing legal evidence. Both the Courts below failed to interpret Section 138 of the Negotiable Instruments Act, 1881 and arrived at a wrong decision as to the guilt of the accused. He prayed for making the Rule absolute by setting aside the impugned judgments and orders passed by the Courts below.

The learned Advocate Ms. Hosnara Begum appearing on behalf of the complainant-opposite party No. 2 submits that the convict-petitioner issued a cheque on 16.09.2018 for payment of Tk. 5,16,293 in favour of the complainant bank for payment of the loan and the cheque was presented on the same date and was dishonoured on the ground of 'insufficient funds'. The complainant-bank sent a legal notice on 18.09.2018 through registered post with AD and the accused received the notice on 26.09.2018 but the accused did not pay the cheque amount. The complainant-bank complying with the procedure of clause (a) to (c)

of Section 138 and Section 141(b) of the Negotiable Instruments Act, 1881 filed the case and during trial proved the charge against the accused beyond all reasonable doubt. She prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. A.N.M. Abed Raja who appeared on behalf of the convict-petitioner and the learned Advocate Ms. Hosnara Begum who appeared on behalf of the complainant-opposite party No. 2, perused the evidence, impugned judgments and orders passed by the Courts below and the records.

On perusal of the evidence, it reveals that the accused Rana Miah allegedly issued a cheque on 16.09.2018 (exhibit 2) in favour of the Manager, Sonali Bank Ltd, Tarapasha Bazar Branch. P.W. 1 stated that the bank presented the said cheque on 16.09.2018 for encashment but it was dishonoured due to 'insufficient funds'. It reveals that there is no signature of any officer of the bank with the date on the disputed cheque (exhibit 2). The bank only put a seal to the effect that “ব্যাংকের হিসাবে জমা হয়েছে”। The alleged cheque was issued in favour of the Manager, Sonali Bank Ltd, Tarapasha Bazar Branch and the said cheque was also allegedly presented for encashment through the said Bank.

A payee or bearer of a cheque presents the cheque through a deposit slip. At the time of the presentation of the cheque for encashment, the bank put a seal and an officer of the bank put an initial with a date on the cheque. When a bank as payee presents the cheque for encashment through its branch it is required to prove the deposit slip to show the actual presentation of the cheque. No deposit slip is proved in the instant case. There is no signature of any officer of the bank with the date on the cheque (Exhibit 2). Therefore, I am of the view that the cheque was not presented on 16.09.2018 for encashment and the complainant-bank without presenting the cheque issued a dishonoured slip on 16.09.2018 (Exhibit 3).

During cross-examination, P.W. 1 stated that the accused took a loan in 2011. He admitted that at the time of disbursement of the loan, a blank cheque signed by the accused was received by the complainant's

bank. The defence suggested that the bank wrote the excess amount on the blank security cheque which has been denied by P.W. 1. From the cross-examination of P.W. 1, it appears that the disputed cheque was a blank cheque and it was issued in 2011 and the complaint petition was filed on 30.10.2018. In clause (a) to the proviso of Section 138 of the Negotiable Instruments Act, 1881 it has been stipulated that nothing contained in this section shall apply unless the cheque has been presented to the bank within six months from the date on which it is drawn or within the period of its validity, whichever is earlier. Admittedly, a blank undated cheque was received by the bank in 2011 and the cheque was allegedly presented on 16.09.2018 for encashment which is a clear fraud and violation of clause (a) of the proviso to Section 138 of the Negotiable Instruments Act, 1881. Therefore, the alleged offence does not attract Section 138 of the said Act.

The above view of this Court lends support from the decision made in the case of Mohammad Ali Fatik vs State and another reported in 66 DLR 228 para 21 in which the High Court Division relied on the decision made in the case of Taher N. Khambat vs Vinayak Enterprises (AP) reported in Company Cases, Vol. 86, the year 1996, pages 471 to 477. The High Court Division has held that;

“Moreso, from the materials on record it has been found that the cheque was drawn sometime in 2004 and it was presented in the Bank in the month of September, 2007 i.e. beyond the period of six months from the date on which it was drawn. A cheque received in the year 2004, filling up the various columns later on, at the sweet will of the complainant, if presented in the Bank after a long gap of 3/4 years, undoubtedly the same is a fraud upon the drawer of the cheque and if this Court allows to continue such practice, that would be sheer indulgence to the creditors to be more oppressive to the debtors.”

From the evidence discussed hereinabove, it appears that the cheque was not presented within 6(six) months from the date of issuance of the cheque or within the period of its validity and the prosecution failed to prove the charge under Section 138 of the Negotiable Instruments Act, 1881 and both the Courts below failed to interpret clause (a) of the proviso to Section 138 of the said Act and arrived at a wrong decision as to the guilt of the convict-petitioner.

Because of the above evidence, findings, observation and proposition, I am of the view that the prosecution failed to prove the charge against the accused beyond all reasonable doubt.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgment and order passed by the Courts below against the convict-petitioner Rana Miah are hereby set aside.

The accused Rana Miah is entitled to get back 50% of the cheque amount Tk. 2,58,146.5 deposited by him before filing the appeal.

The trial Court is directed to allow the accused Rana Miah to withdraw 50% of the cheque amount deposited by him before filing the appeal within 15 days from the date of filing the application, if any.

Send down the lower Court's records at once.