

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 5514 of 2023

Choyful Ahmed alias Suza Miah

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

No one appears.

...For the convict-petitioner

Mr. Mridul Datta, Advocate

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

Heard on 14.05.2025 and 17.07.2025

Judgment delivered on 20.07.2025

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 29.11.2023 passed by Sessions Judge, Moulvibazar in Criminal Appeal No. 11 of 2023 modifying the judgment and order dated 14.01.2020 passed by the Joint Sessions Judge, Court No. 1, Moulvibazar in Sessions Case No. 765 of 2018 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 1(one) year and fine of Tk. 18,20,000(eighteen lakh twenty 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.

The prosecution's case, in short, is that the complainant Salim Miah and the accused Md. Choyful Ahmed alias Suza Miah are resident of the same Union. The accused is a UK resident. He received Tk. 18,50,000 to send Md. Shaun Ahmad, son of the complainant, to the UK, but he did not send him to the UK. He issued cheque Nos. 6014777 and 6014785 on 16.08.2017 and Cheque No. 6014783 on 20.08.2017 for payment of total Tk. 18,20,000 drawn on his Account No. 190411100001563. The complainant presented the cheque Nos. 6014777 and 6014785 on 16.08.2017, which were dishonoured with the remark

‘payment stopped’, and the Cheque No. 6014783 dated 20.08.2017 was dishonoured on 21.08.2017. Thereafter, he sent legal notice on 24.08.2017 through the registered post with AD. On 29.08.2017, he also published a notice in the ‘দৈনিক ভোরের ডাক’, and the accused received the notice on 29.08.2017, but he did not pay the cheque amount. Consequently, the complainant filed the case on 08.10.2017.

During the trial, the 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 examination of the prosecution witness, the accused was examined under section 342 of the Code of Criminal Procedure, 1898. The defence did not examine any D.W.

After concluding trial, the Joint Sessions Judge, Court No. 1, Moulvibazar, by judgment and order dated 14.01.2020, was pleased to convict 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. 18,20,000(eighteen lakh twenty thousand) against which the convict-petitioner filed the Criminal Appeal No. 11 of 2023 and the Sessions Judge, Moulvibazar, by impugned judgment and order, modified the judgment and order of conviction and sentenced passed by the trial Court and sentenced him to pay fine of Tk. 18,20,000(eighteen lakh twenty thousand) within 30(thirty) days, failing which the judgment and order of conviction and sentence passed by the trial Court shall stand restored against which the convict-petitioner obtained the Rule.

No one appears on behalf of the convict-petitioner.

Learned Advocate Mr. Mridul Datta, appearing on behalf of the complainant-opposite party No. 2, submits that the accused issued two cheques on 16.08.2017 and another cheque on 20.08.2017 for payment of total Tk. 18,20,000 in favour of the complainant P.W. 1

Salim Miah. He presented the said cheques on 16.08.2017 and on 21.08.2017 but those were dishonoured with the remark 'payment stopped'. Thereafter, he published a notice in the 'দৈনিক ভোরের ডাক' and the accused received the notice, but he did not pay the cheque amount, and the complainant filed the case complying with the provision made in sections 138 and 141(b) of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the accused beyond all reasonable doubt, and the trial Court, on correct assessment and evaluation of the evidence, passed the impugned judgment and order. He prayed for the discharging the Rule.

I have considered the submission of the learned Advocate Mr. Mridul Datta, who appeared on behalf of the complainant-opposite party No. 2, perused the evidence, the impugned judgments and orders passed by the Courts below, and the records.

On perusal of the evidence, it reveals that the accused Choyful Ahmed alias Suza Miah issued Cheque No. 6014777 on 16.08.2017 for payment of Tk. 6,50,000, Cheque No. 6014785 on 16.08.2017 for payment of Tk. 6,70,000 and Cheque No. 6014783 on 20.08.2017 for payment of Tk. 5,00,000, total Tk. 18,20,000 in favour of complainant Salim Miah drawn on his Account No. 190411100001563 maintained with Shahjalal Islami Bank, Moulvi Bazar Branch. The P.W. 1 proved the said cheques as exhibits 2, 2/1, and 2/2. The complainant presented the Cheque No. 6014777 and Cheque No. 6014785 on 16.08.2017, which were dishonoured with the remark 'payment stopped'. The complainant also presented the Cheque No. 6014783 on 20.08.2017, which was dishonoured with the remark 'payment stopped'. P.W. 1 proved the dishonoured slips as exhibits 3, 3/1, and 3/2. The complainant sent a legal notice on 24.08.2017 through registered post. P.W. 1 proved the legal notice as Exhibit 4 and the postal receipt as Exhibit 5. The complainant also published a notice in the 'দৈনিক ভোরের ডাক' on 29.08.2017 requesting the accused to pay the cheque amount Tk. 18,20,000 within 30 days from the date of receipt of the notice. P.W. 1 proved the said notice as Exhibit 6.

When a notice under section 138(1)(1A)(c) of the Negotiable Instruments Act, 1881 is published in the newspaper, the date of publication of the notice in the newspaper is to be reckoned as receipt of notice by the accused. The above evidence depicts that before filing the case on 17.10.2018, the complainant complied with the procedures provided in clauses a to c of the proviso to section 138, sections 138(1)(1A)(c) and 141(b) of the Negotiable Instruments Act, 1881. Despite the notice published on 29.08.2017 in the 'দৈনিক ভোরের ডাক', the accused did not pay the cheque amount within the specified time. Thereby, he committed an offence under section 138 of the Negotiable Instruments Act, 1881. I am of the view that the appellate Court below, on correct assessment and evaluation of the evidence, legally passed the impugned judgment and order.

I do not find any merit in the Rule.

In the result, the Rule is discharged.

The impugned judgment and order passed by the appellate Court is hereby affirmed.

The convict-petitioner Choyful Ahmed alias Suza Miah is directed to deposit the fine amount of Tk. 18,20,000 (eighteen lakh twenty thousand) within 30 days from the date of receipt of this judgment and order by the trial Court.

Send down the lower Court's records at once.