

Present
Mr. Justice Sheikh Abdul Awal
Criminal Revision No. 402 of 2011

Hamidul Alam

.....Convict-Petitioner.

-Versus-

Md. Nazim Uddin and another

.....Opposite parties

Mr. Mohd. Motahar Hossain, Advocate

.....For the Convict Petitioner.

None appears

..... for the opposite party No.1

Ms. Shahida Khatoon, D.A.G with

Ms. Sabina Perven, A.A.G with

Ms. Kohenoor Akter, A.A.G.

..... For the Opposite party No.2.

Heard on 25.01.2024, 04.02.2024 and
Judgment on 12.02.2024.

Sheikh Abdul Awal, J:

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 21.03.2011 passed by the learned Sessions Judge, Chattogram in Criminal Appeal No. 20 of 2011 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 17.06.2010 passed by the learned Joint Sessions Judge,

Patiya Court, Chattogram in Sessions Case No. 31 of 2010 arising out of C. R. Case No. 60 of 2009 convicting the accused-petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple imprisonment for a period of 1(one) year and to pay a fine of Taka 52,50,000/- should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The gist of the case is that the opposite party No.1 as complainant filed a petition of complaint being C.R Case No. 60 of 2009 before the learned Senior Judicial Magistrate, Court No.3, Chattogram against the convict-appellant under section 138 of the Negotiable Instrument Act, 1881 stating, inter-alia, that in order pay the outstanding money the convict-appellant issued a cheque of Tk 17,50,000/- (seventeen lakhs fifty thousand) vide cheque No. 18649 dated 27.03.2009 of A/C No. 1101200306479001, BRAC Bank, Agrabad Branch, Chattogram in favour of the complainant opposite party No. 1 and thereafter, the complainant opposite party No. 1 presented the said cheque in bank for encashment which was dishonoured for insufficient of fund and thereafter, the complainant sent a legal notice through his Advocate to the accused appellant on 25.08.2009

asking him to pay the cheque's amount within 30 days but the accused-appellant did not pay any heed to it and hence, the case.

On receipt of the petition of complaint, the learned Senior Judicial Magistrate, Chattogram examined the complainant under Section 200 of the Code of Criminal Procedure and took cognizance against the accused-petitioner under section 138 of the Negotiable Instrument Act, 1881 and accordingly, issued summon against him fixing next date 08.12.2009. Thereafter, the accused-petitioner surrendered before the Court concerned and obtained bail.

Ultimately, the accused-petitioner was put on trial in the Court of the learned Joint Sessions Judge, Patiya Court, Chattogram, who framed charge under section 138 of the Negotiable Instruments Act, 1881 in-absentia against the accused-petitioner as the accused became absconding after being enlarged on bail. Trial was also held in-absentia as the accused-petitioner was absconding.

At the trial, the complainant himself was examined as PW-1 and exhibited some documents to prove his case, while the defence examined none.

On conclusion of the trial, the learned Joint Sessions Judge, Patiya Court, Chattogram by his judgment and order dated 17.06.2010 found the accused-appellant guilty under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer rigorous imprisonment for a period of 01 (one) year and to pay a fine of Tk. 17,50,000/- (seventeen lakhs fifty thousand).

Against which the present accused-petitioner preferred Criminal Appeal No. 20 of 2011 before the learned Sessions Judge, Chattogram, who by the impugned judgment and order dated 21.03.2011 dismissed the appeal and affirmed the judgment of the trial Court.

Being aggrieved by the aforesaid impugned judgment and order dated 21.03.2011 passed by the learned Sessions Judge, Chattogram the convict-petitioner moved before this Court and obtained the present Rule.

Mr. Mohd. Motahar Hossain, the learned Advocate appearing for the convict-petitioner could not show any legal infirmity of the impugned judgment and order as well as from the judgment and order of conviction and sentence passed by the trial Court below.

On going through the impugned judgment and order dated 21.03.2011, it appears that the learned Sessions dismissed the appeal summarily on the ground that the accused-petitioner without depositing 50% cheque's amount filed the criminal appeal, which is not maintainable in law.

On an analysis of the impugned judgment, I find no flaw in the reasonings of the impugned judgment and order.

However, at the end of the day the learned Advocate by filing a supplementary affidavit submits that the petitioner has already paid entire cheque's amount i.e. Taka 17,50,000/- to the complainant opposite party No.1 in presence of the witnesses and the witnesses are now present in Court and the complainant after receiving the money left this country to America but the innocent convict-petitioner due to wrong advice having failed to deposit the money before the Court as per law and in such facts and circumstances, the case may be remanded to the trial Court below to proper adjudicate the matter by taking further evidence in accordance with laws.

I have gone through the supplementary affidavit dated 11.02.2024, examined the contents of the

supplementary affidavit and bail order No. 14 dated 27.02.2011 passed by the learned Joint Sessions Judge, Patiya Court, Chattogram which reads as follows:

অদ্য ধার্য তারিখ নহে। সাজা প্রাপ্ত আসামী পক্ষে একখানা দরখাস্ত দিয়া নথি উপস্থাপন এর আবেদন করেন। অনুলিপি দেন। আসামী হামিদুল আলম পক্ষে অপর একখানা দরখাস্ত দিয়া দরখাস্ত বর্ণিত কারণে আসামীকে আপীল করার শর্তে জামিনে মুক্তি দানের আবেদন করেন। অনুলিপি দেন। ফিরিস্তি যোগে কতক ফটোকপি দলিল দেন অত্র মামলায় বাদীপক্ষ ওকালতনামাসহ একখানা দরখাস্ত দিয়া আসামী জামিনে যাইতে বাদীপক্ষে আপত্তি নাই মর্মে দরখাস্ত দেন। অনুলিপি দেন। শুনানীর জন্য পেশ করা হইল। আসামী পক্ষের বিজ্ঞ আইনজীবী, অভিযোগকারীর বিজ্ঞ আইনজীবী ও রাষ্ট্রপক্ষের বিজ্ঞ অতিঃ পিপির বক্তব্য শুনানী শেষে নথি আদেশের জন্য পেশ করা হইল। আসামীগণের বিজ্ঞ আইনজীবীর ও প্রসিকিউশন পক্ষের বিজ্ঞ এ, পি,পি এর বক্তব্য শুনলাম। দরখাস্ত ও নথি পর্যালোচনা করিয়া দেখিলাম। নথি পর্যালোচনায় দেখা যাইতেছে আসামী ১৭/৬/২০১০ ইং তারিখের রায় মূলে ১ বৎসরের কারাদণ্ড ও ৫২,৫০,০০০/- টাকা অর্থ দণ্ডে দণ্ডিত করা হইয়াছে।

আসামীর দাবী হইতেছে যে, তর্কিত চেকের সাকুল্য টাকা রায়ের পর অভিযোগকারীর বরাবরে পেশ করিয়া দিয়াছে। সে আপীলের সুবিধার্থে জামিনের প্রার্থনা করিতেছে। অভিযোগকারী স্বয়ং আদালতে হাজির হইয়া দরখাস্ত যোগে আসামীর দাবী স্বীকার করিয়াছে তদহেতু আসামী প্রার্থিত মতে জামিন পাওয়া হকদার। আসামীকে আপীল করার সুবিধার্থে ৩০ কর্মদিবসের অন্তবর্তী কালীন জামিন দেওয়া হইল। উক্ত সময়ের মধ্যে আপীল দায়েরক্রমে জামিন লাভে ব্যর্থ হইলে আসামীর অত্র জামিনাদেশ সরাসরি বাতিল বলিয়া সাব্যস্ত হইবে। ১ জন বিজ্ঞ আইনজীবী ও ১ জন স্থানীয় গণ্যমান্য ব্যক্তির

জিম্মায় এবং ৫০,০০০/- টাকায় জামানতের জামিন নামা সত্বর দাখিল করা হউক। From the above, it appears to me that the convict-petitioner having been paid entire cheque's money.

However, considering all these aspects of the case I find merit in the last branch of submissions of the learned Advocate for the petitioner that in the facts and circumstances the case may be remanded to the trial Court below.

In the facts and circumstances of the case as revealed from the materials on record and in view of the submissions of the learned for the petitioner, I am of the view that in the interest of justice it is necessary to send back the case to the trial Court for fresh trial in accordance with law. In this connection the trial Court below is at liberty to allow the parties to adduce evidence both oral and documentary in support of their respective cases, if so required.

The case is, accordingly, remanded to the trial Court below for deciding the same afresh in the light of the observation made above.

In the result, the Rule is disposed of in the above manner.

Let a copy of the judgment along with lower Courts' record be sent down at once.