

Present:

Mr.Justice Md. Mansur Alam

CRIMINAL REVISION NO. 3917 of 2023.

Md. Abbas Ali Talukder

...Complainant-Respondent- Petitioner

-Versus-

Md. Mazharul Islam Tipu and others

.....opposite parties

Mr. Md.Golam Mostofa, Advocate

...for the Petitioner

No one appear

... For the Opposite Party No.1

Heard on:02.09.2025 and 03.09.2025

Judgment on:04.09.2025.

On an application under section 439 read with section 435 of the Code of Criminal Procedure this Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and order dated 12.06.2023 passed by the learned Additional Sessions Judge, 1st Court, Mymensingh in Criminal Appeal No.402 of 2021 allowing the appeal and setting aside the judgment and order dated 06.10.2021 passed by the Learned Joint Session Judge, 2nd Court, Mymensingh in Sessions Case No.1051 of 2012 should not be set aside and/or to pass such other or further order or orders passed as to this Court may seem fit and proper.

The facts relevant for the purpose of disposal of this case are that the accused appellant opposite party Md. Mazharul Islam Tipu took loan of Tk.27,00,000/- from the complainant Md. Abbas Ali Talukder on different date and on failure to pay the alleged loan within the stipulated time of two months, appellant opposite party issued check No. CBL.1568781 dated on 09.04.2012 drawn on his Account No.4101201207137001 maintained with Brank Bank Ltd. Mymensingh branch for payment of Tk.27,00,000/-. Thereafter the Complainant presented the said cheque for encashment in the Agrani bank Ltd. which was dishonoured with a remark “Insufficient funds” on 14.06.2012. The Complainant thereafter sent a legal notice on 27.06.2012 to the accused appellant which was returned back on 04.07.2012. But the accused appellant did not pay the cheque amount to the complainant. Consequently, the complainant filed the complaint case on 08.08.2012 against the accused appellant.

At the time of filing the complaint the learned Senior Judicial Magistrate, Mymensingh took cognizance of the offence against the accused under section 138 of Negotiable Instrument

Act (hereinafter referred as N. I. Act), 1881. Later on the case was sent to Sessions Judge, Mymensingh and the case was

renumbered as Sessions Trial Case No.1051 of 2012. On 09.01.2013 charge was framed against the accused under section 138 of the N. I. Act which was read over and explained to him and he pleaded not guilty to the charge and claimed to be tried in accordance with law.

During the trial, the complainant respondent examined 1 (one) witness to prove the charge against the accused and the defense accused appellant cross examined this witness. On examination of the prosecution witness, the accused appellant examined under section 342 of the Criminal procedure, 1898 and the accused pleaded not guilty and claimed to be innocence. After concluding the trial, Learned Joint Sessions Judge, 2nd Court, Mymensingh by the impugned judgment and order convicted the accused and sentenced him as stated above against which the accused appellant filed the appeal before Learned Additional Sessions Judge who by his judgment and order allowed the appeal and set aside the conviction and sentence awarded by the trial Court.

Being aggrieved by and dissatisfied with the judgment and order dated 12.06.2023 passed by the learned Additional Sessions judge 1st Court, Mymensingh in Criminal Appeal No.

402 of 2021 the Complainant respondent petitioner filed the instant Criminal Revision application before this Division.

The learned Advocate Mr. Md. Golam Mostafa appearing for the Complainant Respondent petitioner submits that the learned appellate Court without applying its judicial mind into the facts of the case and law bearing on the subject most illegally allowed the appeal and set aside the judgment of the trial Court. The accused appellant did not produce any witness to disprove the case of the Complainant respondent and also has failed to discover that he did not take loan from the Complainant on the date and time. The accused appellant did not put any question regarding the cheque, dishonor slips, legal notice etc. The learned Counsel further submits that learned Appellate Court was quite misconceived in observing that the Complainant Respondent issued legal notice after expiry of stipulated period of 30 days as it is contemplated in section 138(1) (b) of N. I. Act. Learned Appellate Court wrongly quoted in his judgment that the alleged cheque was dishonored on 12.04.2012 and the

Complainant Respondent issued legal notice on 27.06.2012 more than two months later. Learned Appellate Court also failed to conceive that the Complainant respondent did not submit the

Power of Attorney and referring the contention of the accused appellant learned Appellate Court found that the Complainant has not delegated his power to the Attorney to represent the present case.

No one appears for the opposite party No.1 at the time of hearing although this matter appeared in the list for hearing on several dates.

Having heard the learned Advocate appearing for the Complainant Respondent-petitioner and having gone through the impugned judgment of the learned trial Court and that of the learned appellate Court and materials on record the only question that calls for my consideration in this revision is whether appellate Court was justified in setting aside the judgment and order of the trial court in acquitting the accused petitioner from the charge of section 138 of N. I. Act.

Let us scrutinize the testimony of Pw1, Attorney of the complainant Mr. Tofazzal Hossain. He categorically supported the version of the petition Exbt. as 1. Pw1 deposed in his chief

that that accused appellant took loan from the petitioner an amount of Tk.27,00,000/ on different date, being failed to pay in time the accused appellant handed over a cheque amounting

Tk8,00,000/ on 09.04.2012, that cheque was dishonored on 14.06.2012, legal notice was issued on 04.07.2012. Learned Appellate Court found that the Legal notice Exbt. as 6 discloses that the alleged cheque was dishonored on 09.04.2012. On perusal of the legal notice it is found that the alleged cheque was handed over to the Complainant on 09.04.2012. Learned Advocate for the Complainant argues that concerned notice issuing Advocate Mr. Sree Badhon Kumar Goswami inadvertently drafted the date of 09.04.2012 as cheque dishonor date. He took me to consider the most acceptable and credible document, the dishonor slip issued by the concerned bank. It appears on a close perusal that the dishonor slip contains the account number, cheque number, amount of the money which the accused appellant handed over to the Complainant on 09.04.2102. It is very much apparent here on the dishonor slip that the same was issued on 14.06.2012. So the observation of the learned Appellate Court to the effect that the alleged cheque was dishonored on 09.04.2012 and for that reason the legal

notice issued on 27.06.2012 is more than 1(one) month later violating the provisions of section 138(1)(b) of N. I. Act is totally misconceived and a consequence of inattention in

perusing the evidence. More so learned Appellate Court ignored the cross examination of Pw1 as to why the accused appellant did not ask anything regarding the date of dishonor of the alleged cheque. The natural principle of law is 'the matter not challenged is presumed to be accepted'.

Learned Appellate Court further observed that the Complainant did not submit the power of attorney though Pw1 Md. Tofazzal Hossain deposed before the Court by virtue of that power of attorney. But on scrutiny of the evidence of Pw1 it is discloses that the accused appellant accepted the existence of the said power of attorney in Pw1's cross examination. Pw1 denied the suggestion of the accused appellant by saying that he is not delegated by the power of attorney to conduct the case of cheque by Brac Bank. This testimony of Pw1 supported the existence of the alleged power of attorney.

In the light of discussion made here above, this Court is led to find that the trial Court rightly passed the impugned judgment and order sentencing the accused appellant for 6(six)

months imprisonment and a fine of Tk.8,00,000/ and the judgment and order passed by the appellate Court on 12.06.2023

acquitting the accused appellant from the charge of section 138 of N. I. Act is liable to be set aside.

In the result this criminal revision is made absolute without any order as to cost.

The impugned and order of Learned appellate Court is hereby set aside.

The accused appellant Md. Majaharul Islam Tipu is directed to surrender before the trial Court within 15 (fifteen) days from the date, failing which law enforcing agency will ensure the arrest of the accused appellant Md. Majaharul Islam.

Send down the lower Courts record with a copy of this Judgment to the Courts below at once.