Present:

Mr. Justice Md. Khasruzzaman

Criminal Revision No. 6065 of 2024

Md. Lal Miah
....Convict-appellant-petitioner.
-Versus-
The State and another
...Opposite parties.
Mr. Md. Masudur Rahman Rana, Advocate
… For the convict-petitioner.
Mr. SM Younus Ali Robi, D.A.G. with
Mrs. Asma Hosen, A.A.G.
Mr. George Chowdhury, A.A.G. and
Mr. Md. Rashedul Hasan Sumon, A.A.G.
.....For the State.
Mr. Md. Rashed Khan, Advocate
... For the complainant-opposite party

Judgment on 26.02.2026

The Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order of conviction and sentence dated 01.02.2024 passed by the learned Additional Sessions Judge, 3rd Court, Gazipur in Criminal Appeal No. 158 of 2023 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence

dated 20.02.2023 passed by the learned Joint Sessions Judge, 1st Court, Gazipur in Sessions Case No. 2598 of 2019, arising out of C.R. Case No. 2002 of 2018, convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him there under to suffer simple imprisonment for 2 (two) months and also to pay a fine of Tk. 2,00,000.00 (Two Lac), should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

On 02.10.2018 one Abdur Razzak, as a complainant, instituted C.R. Case No. 2002 of 2018 before the learned Senior Judicial Magistrate, Cognizance Court, Gazipur against the accused alleging commission of an offence punishable under section 138 of the Negotiable Instruments Act, 1881.

The prosecution case, in brief, is that the complainant and the accused had business transactions, in course of which the complainant owed Tk. 2,00,000/- (Two Lac) from the accused. In discharge of

the said liability, the accused issued Cheque No. 4682844, dated 31.05.2018, for Tk. 2,00,000/-, bearing Account No. 019811100010180 maintained by him with Mercantile Bank Limited, Konabari Branch, Gazipur. The complainant presented the said cheque for encashment on 31.07.2018, but the same was dishonoured and returned unpaid on the same date due to insufficiency of funds. Thereafter, on 16.08.2018 the complainant through his learned Advocate issued a legal notice to the accused demanding payment of the cheque amount within 30 days. Despite receiving the notice, the accused failed to make payment and upon a subsequent demand on 25.08.2018, expressed inability to pay the cheque amount. Consequently, on 02.10.2018 the complainant instituted the case against the accused under section 138 of the Negotiable Instruments Act, 1881.

After examining the complainant under section 200 of the Code of Criminal Procedure, the learned Senior Judicial Magistrate, Cognizance Court, Gazipur

took cognizance of the offence under section 138 of the Negotiable Instruments Act, 1881 against the accused and issued summons directing him to appear before the Court. Pursuant thereto, on 13.02.2019 the accused appeared before the learned Senior Judicial Magistrate, Gazipur and prayed for bail, which was granted on the same day.

Subsequently, the case record was transmitted to the learned Sessions Judge, Gazipur, whereupon it was registered as Sessions Case No. 2598 of 2019. After taking cognizance of the offence under section 138 of the Negotiable Instruments Act, 1881 against the accused, the learned Sessions Judge transferred the case to the learned Joint Sessions Judge, 1st Court, Gazipur for holding trial and disposal. Thereafter, on 22.03.2021 charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881. However, the charge could not be read over and explained to the accused as he had absconded.

During the trial, the prosecution examined the complainant as P.W.1 in order to substantiate the charge brought against the accused and the defence cross-examined him. On the other hand, the defence examined 2 (two) witnesses in support of its case. The accused was examined under section 342 of the Code of Criminal Procedure, during which he pleaded not guilty, claimed to be innocent and prayed for justice.

Upon conclusion of the trial, the learned Joint Sessions Judge, 1st Court, Gazipur, by judgment and order dated 20.02.2023, found the accused guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and accordingly convicted and sentenced him to suffer simple imprisonment for 2 (two) months and also to pay a fine of Tk. 2,00,000.00 (Two Lac).

Being aggrieved by and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict-petitioner, as an appellant, preferred Criminal Appeal No. 158 of 2023 before the

learned Sessions Judge, Gazipur. Subsequently, the appeal was transferred to the learned Additional Sessions Judge, 3rd Court, Gazipur for hearing and disposal. Upon hearing the learned Advocates for both sides and considering the evidence and materials on record, the Appellate Court, by judgment and order dated 01.02.2024, dismissed the appeal, thereby affirming the judgment and order of conviction and sentence passed by the Trial Court.

Being aggrieved by and dissatisfied with the aforesaid judgment and order dated 01.02.2024 passed by the Appellate Court, the convict-petitioner preferred the instant criminal revision before and obtained the present Rule.

Mr. Md. Masudur Rahman Rana, the learned Advocate appearing on behalf of the convict-petitioner submits that the mandatory requirement of service of notice under section 138(1A)(b) of the Negotiable Instruments Act, 1881 has not been complied with in the present case. He contends that the prosecution

failed to establish that the statutory notice was sent to the accused by registered post with acknowledgement due and that the acknowledgement due card was neither produced nor exhibited at the trial. Accordingly, in the absence of proof of due service of the statutory notice, the conviction and sentence, as affirmed by the Appellate Court, cannot be sustained in law.

In support of his contention, the learned Advocate relies upon the judgment dated 01.12.2024 passed in Criminal Appeal No. 218 of 2019, Dipayan Mondal Vs. The State and another, and submits that the failure to prove service of the statutory notice is fatal to the prosecution. Accordingly, he prays that the Rule be made absolute and the impugned judgments and orders of conviction and sentence be set aside.

On the other hand, Mr. Md. Rashed Khan, the learned Advocate appearing on behalf of the complainant-opposite party, submits that the accused owed Tk. 2,00,000.00 of the complainant but he did

not repay the same and as such, the complainant filed the case. He further submits that in order to refund the money, the convict-petitioner issued the cheque in question in favour of the complainant, which was subsequently dishonoured upon presentation for encashment. Consequently, the complainant, after complying with all the statutory requirements, instituted the instant case under section 138 of the Negotiable Instruments Act, 1881. He also submits that the complainant adduced both oral and documentary evidence in support of the prosecution case and duly proved the relevant documents, which were marked as exhibits. He contends that the prosecution successfully proved the charge against the convict-petitioner beyond reasonable doubt and that the Trial Court, upon proper appreciation of the evidence on record and consideration of the relevant facts and law, rightly convicted and sentenced the convict-petitioner which was affirmed by the Appellate Court. He finally submits that the concurrent findings of the Courts

below, being based on the evidence on record and sound appreciation of law, do not call for any interference by this Court in the exercise of its revisional jurisdiction.

Heard the learned Advocates for both sides, perused the revisional application, the impugned judgments and orders passed by the Courts below, and the other relevant materials available on record.

PW-1, Md. Abdur Razzak, in his examination-in-chief deposed that on 31.05.2018 the accused issued a cheque for Tk. 2,00,000/- (two lac) to him. The said cheque was dishonoured on 31.07.2018. Thereafter, he served a legal notice upon the accused on 16.08.2018. As the accused failed to pay the cheque amount, he instituted the instant case against him. He identified the petition of complaint and his signature thereon, which were marked as Exhibit-1 and Exhibit-1/1, respectively. The original cheque, cheque dishonour slip, postal receipt and legal notice were also marked as

Exhibit-2 series i. e. Exhibits- 2, 2/1, 2/2 and 2/3 respectively.

In cross-examination, he stated that the accused was his friend and that he had not committed any fraud upon him. He further stated that the accused had borrowed money from him. He admitted that the accused had given him a cheque. He denied the suggestion that he had subsequently received the money from the accused and signed an acknowledgment of receipt. He further denied the suggestion that the accused had repaid the money and that he had instituted a false case against him.

DW-1, Lal Miah in his examination-in-chief, deposed that the complainant had given him money for business purposes. Subsequently, he repaid the outstanding amount to the complainant and put his signature in a diary in acknowledgment of such repayment. He further deposed that one Zahid Hossain was present as a witness at the time of repayment.

In cross-examination, he stated that he had issued the cheque in question to the complainant after receiving money from him. He denied the suggestion that he was falsely claiming to have repaid the money to the complainant.

DW-2, Md. Zahidul Islam, in his examination-in-chief, deposed that he had witnessed the payment of money by the accused Lal Miah to the complainant. He stated that the transaction had taken place in his presence.

In cross-examination, he stated that no written document had been prepared acknowledging the repayment of the complainant's money by Lal Miah. He further admitted that he had not put his signature on any document in connection with such repayment. He denied the suggestion that he had given false evidence in favour of the accused Lal Miah because Lal Miah was his Mahajan (business principal).

Upon a careful examination and scrutiny of the evidence on record, it appears that the complainant,

Abdur Razzak, was examined as P.W.1 and in his examination-in-chief, he categorically supported the prosecution case as narrated in the petition of complaint. He also proved the petition of complaint and his signature there on which were marked as exhibit Nos. 1 and 1/1 respectively. He also proved the cheque in question and the cheque dishonour slip, which were marked as Exhibit Nos. 2 and 2/1 respectively. The legal notice and postal receipt were also proved and marked as Exhibit Nos. 2/3 and 2/2 respectively. It appears that the oral testimony of P.W.1, being supported and corroborated by the documentary evidence on record, lends substantial support to the material allegations made in the petition of complaint. In the absence of any evidence to the contrary, and there being nothing inherently improbable or inconsistent in his testimony, I find no cogent reason to disbelieve the evidence of P.W.1.

It is further submitted by the learned Advocate for the complainant-opposite party that the statutory

legal notice was duly served upon the convict-petitioner by registered post with acknowledgement due in compliance with the provisions of sections 138(1)(b) and 138(1A)(b) of the Negotiable Instruments Act, 1881. It is evident from the materials on record, particularly the postal receipt that the notice was duly sent and received by the convict-petitioner. Furthermore, the defence did not raise any objection regarding the service of the said notice.

In Dipayan Mondal Vs. The State and another, Criminal Appeal No. 218 of 2019, the Court found that the complaint petition contained no statement regarding service of the statutory notice upon the accused, that no acknowledgement due had been proved, and that the prosecution had failed at the trial to establish service before institution of the complaint. The finding concerning notice must be understood in that factual and evidentiary context.

The present case contains materially different particulars. The complainant specifically stated in the

petition of complaint that a legal notice was sent on 16.08.2018 demanding payment within 30 (thirty) days and that, upon receiving the notice, the accused continued to defer payment on assurances that the amount would be paid. Furthermore, the registered postal receipt was exhibited as Exhibit-2/2 and bears the endorsement “AD”. Thus, there is both an express assertion of receipt in the complaint and documentary material indicating dispatch by registered post with acknowledgement due. The cited judgment does not record the presence of a corresponding “AD” endorsement on the postal receipt considered in that case.

The absence of the returned acknowledgement card and the absence of evidence that the notice was dispatched with acknowledgement due are distinct matters. Although the endorsement “AD” is not itself the recipient’s acknowledgement of delivery, it is relevant to determining the mode of dispatch and cannot be disregarded when examining the objection

raised by the petitioner. Equally, the allegation of receipt must be assessed with the evidence on record; it is not an admission by the accused merely because it appears in the complaint.

The approach of considering these matters together finds support in Md. Delwar Hossain (Titu) v. The State and another, Criminal Revision No. 3921 of 2025, judgment dated 26.01.2026. In that case, notwithstanding the non-exhibition of the acknowledgement due card, the Court accepted service upon consideration of the postal receipt bearing “AD”, the statement of receipt in the complaint, the supporting testimony and the other circumstances appearing in the record. That decision demonstrates that non-production of the acknowledgement card is not, irrespective of the remaining evidence, necessarily conclusive against service.

Accordingly, the decision in Criminal Appeal No. 218 of 2019 cannot be applied mechanically to the present case merely because the acknowledgement due

card was not separately exhibited. The material differences concerning the pleaded receipt of notice and the “AD” endorsement on Exhibit-2/2 require an assessment of the present record on its own merits. The contention that non-exhibition of the acknowledgement due card, by itself, necessarily entitles the petitioner to have the Rule made absolute is not accepted. The decision relied upon is distinguishable on the relevant facts and does not warrant interference with the impugned judgments on that ground alone.

In the present case, the complainant specifically stated in the petition of complaint that the legal notice was sent on 16.08.2018 and that, upon receipt thereof, the accused continued to defer payment on assurances that the amount would be paid. The registered postal receipt, marked as Exhibit-2/2, bears the endorsement “AD”, indicating that the notice was dispatched by registered post with acknowledgement due. These material particulars distinguish the present case from Criminal Appeal No. 218 of 2019, wherein the Court

found that service of notice was neither stated in the complaint petition nor established at the trial.

In the circumstances of the present case, the mere non-exhibition of the returned acknowledgement due card does not, by itself, justify setting aside the conviction and sentence. The decision relied upon by the learned Advocate for the convict-petitioner is distinguishable on facts and does not support his contention in the present case. Accordingly, the submission is not accepted.

It further appears that the complainant, upon receiving information regarding dishonour of the cheque, issued the statutory demand notice within the prescribed period and that the notice was duly received by the convict-petitioner. Despite receipt of the notice, the convict-petitioner failed to make payment of the cheque amount within the statutory period of 30 (thirty) days. Thereafter, the complainant instituted the complaint on 02.10.2018, within the period prescribed by law. Thus, the necessary statutory requirements for

maintaining a prosecution under section 138 of the Negotiable Instruments Act, 1881 appear to have been duly complied with. Therefore, I find that the complainant instituted the case after complying with the mandatory requirements of law and that the proceeding was legally maintainable.

It also appears from the record that the Trial Court, upon an elaborate consideration of the facts and circumstances of the case, the oral and documentary evidence adduced by the prosecution and the relevant provisions of law, found the accused guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and accordingly convicted and sentenced him. The Appellate Court, upon independent consideration of the evidence and materials on record and examination of the findings arrived at by the Trial Court, affirmed the judgment and order of conviction and sentence. The findings recorded by both the Courts below are supported by the evidence on record, and I do not find any material infirmity in their appreciation

of the evidence relating to the issuance of the cheque, its dishonour, service of the statutory notice and failure of the convict-petitioner to make payment within the prescribed period.

It is well settled that the revisional jurisdiction of this Court is primarily intended to examine the legality, correctness and propriety of the findings, sentence or order passed by the Courts below and to prevent miscarriage of justice arising from any material illegality or irregularity. Ordinarily, this Court, while exercising its revisional jurisdiction, does not interfere with concurrent findings of fact recorded by the Courts below merely for the purpose of substituting its own appreciation of the evidence, unless such findings are shown to be perverse, contrary to the evidence on record or vitiated by any manifest illegality or material irregularity. In the instant case, the Trial Court as well as the Appellate Court have arrived at concurrent findings regarding the guilt of the convict-petitioner upon consideration of the evidence and materials

available on record. Upon scrutiny of those findings, I do not find any misreading or non-consideration of material evidence warranting interference by this Court.

Having given my anxious consideration to the submissions advanced by the learned Advocates for both sides, the evidence and materials on record, the relevant provisions of law and the judgments and orders passed by the Courts below, I am of the considered view that the prosecution has successfully established the charge against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 beyond reasonable doubt. The Trial Court, upon proper appreciation of the evidence and application of the relevant law, rightly convicted and sentenced the convict-petitioner, and the Appellate Court committed no error in affirming the said judgment and order of conviction and sentence. I do not find any illegality, infirmity, perversity or misreading or non-consideration of material evidence in the impugned

judgments and orders warranting interference by this Court in the exercise of its revisional jurisdiction. Accordingly, I find no merit in the instant Rule, and the same is liable to be discharged.

In the result, the Rule is discharged.

The Trial Court is directed to pay the amount deposited by the convict-petitioner before filing the appeal to the complainant-opposite party and issue process against the convict-petitioner to secure his arrest for execution of the sentence.

The Trial Court shall also take necessary steps for realization of the remaining amount of fine, if any, as per the provisions of section 386 of the Code of Criminal Procedure.

Send down the records.

Communicate the order.

(Md. Khasruzzaman, J:)