

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No.3155 of 2017

Ayub Ali

.....convict-petitioner

-Versus-

The State and another

..... opposite-parties

No one appears

.....For the convict-petitioner

Mrs. Umme Masumun Nesa, A.A.G with

Mr. Ashiqul Haque, A.A.G

.....For the State

Mr. Md. Azharul Islam Chowdhury, Advocate

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

Heard on 30.11.2023 and

Judgment on:03.12.2023

Md. Kamrul Hossain Mollah.J:

This is an application filed by the petitioner under Section 439 read with section 435 of the Code of Criminal Procedure. This Rule was issued calling upon the opposite parties to show cause as to why the impugned and order of conviction and sentence dated 15.10.2017 passed by the learned Metropolitan Sessions Judge, Khulna in Criminal Appeal No.48 of 2017 dismissing the appeal and thereby confirming the judgment and order of conviction and sentence dated 27.10.2016 passed by the learned Joint Metropolitan

Sessions Judge, 1st Court, Khulna in Metropolitan Sessions Case No.2829 of 2013 arising out of C.R. Case No.180C of 2012 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 sentenced him to suffer simple imprisonment for a period of 03(three) months and also to pay a fine of Tk.6,00,000/- but the appellate Court set-aside the simple imprisonment for a period of 03(three) months of the convict-petitioner should not be set-aside and or pass such other order or further order or orders as to this court may seem fit and proper.

At the time of issuance of the Rule this Court granted bail to the convict-petitioner for a period of 01(one) year and stayed the realization of fine.

The relevant facts necessary for disposal of the Rule are as follows:-

The prosecution case, in short is that the convict-petitioner Ayub Ali issued a cheque numbering CCa 0000926 amount of Tk.6,00,000/- in favour of the complainant on 08.01.2012 and the cheque was placed before the bank for encashment, but unfortunately it was dishonoured on 08.01.2012 for insufficient fund. A legal notice was served upon the petitioner on 16.01.2012 and that was received by the

petitioner on 19.01.2012, but he took no step for the payment of the money mentioned in the cheque within time. Thereafter, the complainant opposite party No.2 filed a complaint-petition before the learned Chief Metropolitan Magistrate, Khulna under section 138 of the Negotiable Instruments Act, 1881 against the petitioner.

The learned Magistrate examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 as C.R. Case No.180C of 2012 and issued summons against him. The convict-petitioner surrendered before the concerned Court with a prayer for bail and obtained bail. Thereafter, this case was transferred to the learned Metropolitan Sessions Judge, Khulna for trial, where the case was registered as Metropolitan Sessions Case No.2829 of 2013. The learned Metropolitan Sessions Judge, Khulna transferred the case to the learned Joint Metropolitan Sessions Judge, 1st Court, Khulna for trial and disposal. Later charge was framed against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881. The charge was read over and explained to the convict-petitioners to which he pleaded not

guilty and claimed to be tried. The prosecution examined 03(three) witnesses to prove the case and the defence cross-examined them and produced one witness for proving his case. The petitioner was examined under section 342 of the Code of Criminal Procedure and he claimed himself innocent.

The learned Joint Metropolitan Sessions Judge, 1st Court, Khulna after hearing the parties and perusing the evidence on record found guilty the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 03(three) months and also to pay a fine of Tk.6,00,000/- by his judgment and order of conviction and sentence dated 27.10.2016.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 27.10.2016 the convict-petitioner filed Criminal Appeal No.48 of 2017 before the learned Metropolitan Sessions Judge, Khulna and after hearing the appeal the learned Metropolitan Sessions Judge, Khulna dismissed the Appeal and affirmed the judgment and order of conviction and sentence dated 27.10.2016 by his judgment and order of conviction and sentence dated 15.10.2017.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 15.10.2017 passed by the learned Metropolitan Sessions Judge, Khulna in Criminal Appeal No.48 of 2017, the convict-petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

No one appears for the convict-petitioner to press the instant Rule, when this matter was taken up for hearing disposal although it appears in the daily cause list several times.

On the other hand, Mr. Md. Azharul Islam Chowdhury, the learned Advocate appearing on behalf of the opposite party No.2 submits that the convict-petitioner Ayub Ali issued a cheque numbering CCa 0000926 worth of Tk.6,00,000/- in favour of the complainant on 08.01.2012 and the cheque was placed before the bank for encashment, but unfortunately it was dishonoured on 08.01.2012 for exits arrangements. A legal notice was served upon the petitioner on 16.01.2012 and that was received by the petitioner on 19.01.2012, but he took no step for the payment of the money mentioned in the cheque within time. Thereafter, the complainant opposite party No.2 filed a complaint-petition before the learned Chief Metropolitan

Magistrate, Khulna under section 138 of the Negotiable Instruments Act, 1881 against the petitioner following all legal formalities. Thereafter, this case was transferred to the learned Metropolitan Sessions Judge, Khulna for trial, where the case was registered as Metropolitan Sessions Case No.2829 of 2013. The learned Metropolitan Sessions Judge, Khulna transferred the case to the learned Joint Metropolitan Sessions Judge, 1st Court, Khulna for trial and disposal. The learned Joint Metropolitan Sessions Judge, 1st Court, Khulna after hearing the parties and perusing the evidence on record found guilty the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 03(three) months and also to pay a fine of Tk.6,00,000/- by his judgment and order of conviction and sentence dated 27.10.2016. Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 27.10.2016 the convict-petitioner filed Criminal Appeal No.48 of 2017 before the learned Metropolitan Sessions Judge, Khulna and after hearing the appeal the learned Metropolitan Sessions Judge, Khulna dismissed the Appeal and affirmed the judgment and order of conviction and sentence

dated 27.10.2016 by his judgment and order of conviction and sentence dated 15.10.2017 rightly. Therefore, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and order of conviction and sentence of the Courts' below, the submissions of the learned Advocate for the opposite party No.2, the papers and documents as available on the record.

On perusal of the record, it has been found that the cheque was issued on 08.01.2012 in favour of the complainant for an amount of Tk.6,00,000/- which was dishonoured on 08.01.2012 for insufficient fund. The complainant issued the legal notice on 16.01.2012 within the statutory period and filed the case within the statutory period having no response from the petitioner as per section 138(1)(C) of the Negotiable Instruments Act, 1881 following all legal formalities, which is maintainable in the eye of law.

Upon careful scrutiny the deposition of the P.W.1 it appears that the P.W.1 as complainant fully supported his case in his deposition. P.W.1 has stated in his examination-in-chief that the convict-petitioner Ayub Ali issued a cheque numbering

CCa 0000926 amount of Tk.6,00,000/- in favour of the complainant on 08.01.2012 and the cheque was placed before the bank for encashment, but unfortunately it was dishonoured on 08.01.2012 for insufficient fund. Thereafter, the complainant has given legal notice to the petitioner on 16.01.2012, but he did not respond the notice and did not take any step for payment of the cheque amount.

Therefore, considering the facts and circumstances and the evidence on record, this Court is of the view that the prosecution has been able to prove the case beyond all reasonable doubt.

In the light of the above discussion, it is clear before me that the complainant-opposite party No.2 filed this case following all legal formalities and judgment and order of conviction and sentence dated 15.10.2017 passed by the learned Metropolitan Sessions Judge, Khulna in Criminal Appeal No.48 of 2017 rightly, which is maintainable in the eye of law and there is no any scope to interference there.

Accordingly, I do not find any cogent and legal ground to interfere with the impugned judgment and order of

conviction and sentence dated 15.10.2017. Therefore, the instant Rule has no merit.

In the result, the Rule is discharged.

The judgment and order of conviction and sentence dated 15.10.2017 passed by the learned the learned Metropolitan Sessions Judge, Khulna in Criminal Appeal No.48 of 2017 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 27.10.2016 passed by the learned Joint Metropolitan Sessions Judge, 1st Court, Khulna in Metropolitan Sessions Case No.2829 of 2013 arising out of C.R. Case No.180C of 2012 is hereby upheld and confirmed.

Further, the concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.3,00,000/-, which has been deposited by the convict-petitioner through Chalan at the time of filing appeal to the complainant-opposite party No.2 (if he did not withdraw the said amount).

The order of bail granted earlier by this Court is hereby cancelled and recalled and the order of stay the realization of fine is hereby vacated.

Send down the lower Court's records with a copy of this judgment and order to the concerned Court below at once.

Md. Anamul Hoque Parvej
Bench Officer