

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No.2127 of 2021

Md. Ohid

.....convict-petitioner

-Versus-

The State and another

..... opposite-parties

Mr. Md. Al Amin, Advocate

.....For the convict-petitioner

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. Md. Shahadat Hossain, Advocate

Heard on 19.11.2023and
Judgment on: 27.11.2023

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 judgment and order dated 18.10.2021 passed by the learned Additional Metropolitan Sessions Judge, Chattogram in Criminal Appeal No.386 of 2019 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 22.02.2019 modifying the sentence to 04(four) months simple imprisonment instead of 10(ten) months passed by the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram in Sessions Case No.3259 of

2016 arising out of C.R. Case No.1151 of 2015 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 10(ten) months and also to pay a fine of Tk.1,50,000/- (one lac and fifty thousand) 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 issued a cheque in favour of the complainant-opposite party No.2 being Cheque No.5221941, dated 09.06.2015 for amount of Tk.1,50,000/ maintained with Janata Bank Limited, Sheikh Mujib Corporate Branch, Chattogram. Thereafter, the complainant deposited the said cheque to the concerned bank for encashment, but the same was dishonoured for insufficient fund on 20.08.2015. Accordingly, the complainant issued a legal notice through his lawyer on 20.08.2015 requesting him to pay the aforesaid amount of

Tk.1,50,000/- within 30 days, but the petitioner did not take any steps to refund the aforesaid money. For this reason, the complainant-opposite party No.2 filed a complaint-petition before the learned Chief Judicial Magistrate, Chattogram under section 138 of the Negotiable Instruments Act, 1881 against the convict-petitioner on 15.10.2015.

The learned Metropolitan Magistrate after examination the complainant under section 200 of the Code of Criminal Procedure took cognizance against the petitioner under sections 138/140 of the Negotiable Instruments Act, 1881 as C.R. Case No.1151 of 2015 (Doublemooring) and issued summons upon the convict-petitioner. Thereafter, when the case is ready for trial the said case was sent to the learned Metropolitan Sessions Judge, Chattogram for disposal. Further, it was transferred to the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram for hearing and disposal. The learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram framed charge against the convict-petitioner under section 138 of the Negotiable Instruments Act, 1881 on 19.02.2017 and the said charge was read over and explained the convict-petitioner, in which pleaded not guilty and claimed to be tried.

The prosecution adduced as many as 01(one) witness in support of the case, but the defence did not examine none.

Due to abscondence of the convict-petitioner the trial Court could not examined him under section 342 of the Code of Criminal Procedure.

After conclusion of the trial the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram upon hearing both the parties and on perusal of the evidence on record and document convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 10(ten) months and also to pay a fine of Tk.1,50,000/- by his judgment and order of conviction and sentence dated 22.02.2019.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 22.02.2019 passed by the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram in Sessions Case No.3259 of 2016 arising out of C.R. Case No.1151 of 2015 convict-petitioner preferred the Criminal Appeal No.386 of 2019 before the learned Metropolitan Sessions Judge, Chattogram. Thereafter, it

was transferred to the learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram for hearing and disposal. The learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram after hearing both the parties dismissed the said appeal and thereby modified the judgment and order of conviction and sentence dated 22.02.2019 passed by the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram in Sessions Case No.3259 of 2016 arising out of C.R. Case No.1151 of 2015 by his judgment and order dated 18.10.2021.

Being aggrieved by and dissatisfied with the judgment and order dated 18.10.2021 passed by the learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram in Criminal Appeal No.386 of 2019 dismissing the said appeal and thereby modifying the judgment and order of conviction and sentence dated 22.02.2019 passed by the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram in Sessions Case No.3259 of 2016 arising out of C.R. Case No.1151 of 2015, the convict-petitioner filed this Criminal Revision, before this Hon'ble High Court Division.

Mr. Md. Al Amin, the learned Advocate appearing for the convict-petitioner submits that a amicable settlement has been reached between the parties through a deed of compromise dated 26.11.2023. The complainant has no claimed against the convict-petitioner if he be acquitted and the complainant got his claimed amount. Accordingly, he prays for making the Rule absolute.

On the other hand, Mr. Md. Shahadat Hossain, the learned Advocate appearing on behalf of the complainant-opposite party No.2 supported the submission of the learned Advocate for the petitioner and submits that the convict-petitioner paid the total cheque amount to the complainant and the peaceful compromise has been held between the parties and he has no objection if the convict-petitioner be acquitted and to absolute the Rule.

I have perused the revisional application, compromise application, the impugned judgment and order of the Courts' below, the submissions of the learned Advocates for the parties, the papers and documents as available on the record.

It appears from the submissions of the learned Advocates for both the parties that an amicable settlement became between the parties and there is no claim each to other.

Moreover, the main object of this case is recovery of cheque amount, which has been settled amicably between the parties.

In the light of the above discussion, it is clear before me that since the convict-petitioner paid the claimed cheque amount, an amicable settlement has been held between the parties and there is no any claim each to other, therefore, the judgment and order of conviction and sentence dated 18.10.2021 passed by the learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram in Criminal Appeal Case No.386 of 2019 is not maintainable against the convict-petitioner and it will be fair to interference there.

Accordingly, I find cogent and legal ground in the submissions of the learned Advocates for the parties and to interfere with the impugned judgment and order of conviction

and sentence dated 18.10.2021. Therefore, the instant Rule has merit.

In the result, the Rule is made absolute.

The impugned judgment and order of conviction and sentence dated 18.10.2021 passed by the learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram in Criminal Appeal Case No.386 of 2019 dismissing the said Appeal and thereby modifying the judgment and order of conviction and sentence dated 22.02.2019 passed by the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram in Sessions Case No.3259 of 2016 arising out of C.R. Case No.1151 of 2015 is hereby set-aside and the convict-petitioner be acquitted.

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

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.75,000/- to the complainant-opposite party No.2 (if he did not withdraw the said amount) in this case.

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

Md. Anamul Hoque Parvej
Bench Officer