

In the Supreme Court of Bangladesh  
High Court Division  
(Criminal Revisional Jurisdiction)

**Present:**

**Mr. Justice Md. Khairul Alam**

**Criminal Revision No. 3642 of 2024.**

In the matter of:

Mohammad Jahangir Alam

..... Convict-petitioner.

-Versus-

The State and another

..... Opposite parties.

None appears

..... For the petitioner.

Mr. Khandoker Sultan Ahmed, Advocate

... For the opposite party No. 2.

**Heard On: 07.11.2024 &**

**Judgment on: 13.11.2024**

**Md. Khairul Alam, J:**

By filing this revisional application the convict petitioner challenged the legality and propriety of the judgment and order dated 19.02.2024 passed by the learned Additional Metropolitan Sessions Judge, 2<sup>nd</sup> Court, Chattogram in Criminal Appeal No. 1087 of 2022 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 28.06.2022 passed by the learned Joint Metropolitan Sessions Judge, 6<sup>th</sup> Court, Chattogram in Sessions Case No. 3116 of 2019 arising out

of C.R. Case No. 1383 of 2017 (Kotwali) convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 (shortly, the NI Act) and sentencing him to suffer simple imprisonment for 03 (three) months and also to pay a fine of Tk. 2,43,465/-.

The prosecution story, in short, is that the present petitioner in the course of his business obtained loan from the opposite party No. 2, the City Bank Ltd. To adjust the liability the petitioner issued a cheque bearing number  $\frac{SB}{A}$  12118465 dated 17.04.2017 for an amount of Tk. 2,33,465/- in favour of City Bank Ltd. On presentation, the cheque was dishonoured on 22.05.2017 with the endorsement "Insufficient Fund". On 04.06.2017 the bank served notice to the petitioner, but the petitioner did not pay the amount. Hence, the City Bank Ltd. as complainant filed C.R. Case No. 1383 of 2017 (Kotwali) before the Court of Chief Metropolitan Magistrate, Chattogram through one of its authorized employees. Accordingly, cognizance was taken against the petitioner for the offence of section 138 of the NI Act. Ultimately, the case was renumbered as Sessions Case No. 3116 of 2019 and was transferred to the Court of Joint Metropolitan Session Judge, 6<sup>th</sup>

Court, Chattogram for trial. The trial Court framed charge against the petitioner under section 138 of the NI Act. During the trial, the prosecution examined 01 (one) witness to prove the charge. Since the trial was held in absentia the petitioner could not be examined under section 342 of the Code of Criminal Procedure. After the trial, the learned Joint Metropolitan Sessions Judge, 6<sup>th</sup> Court, Chattogram considering the evidence on record by the judgment and order of conviction and sentence dated 28.06.2022 found the petitioner guilty of the offence under section 138 of the NI Act and sentenced him to suffer simple imprisonment for 03 (three) months and also to pay a fine of Tk. 2,43,465/-.

Against the said judgment and order of conviction and sentence the petitioner preferred Criminal Appeal No. 1087 of 2022 before the Court of Metropolitan Sessions Judge, Chattogram which was transferred to the Court of Additional Metropolitan Sessions Judge, 2<sup>nd</sup> Court, Chattogram. The learned Additional Metropolitan Sessions Judge, 2<sup>nd</sup> Court, Chattogram after hearing the appeal by the judgment and order dated 19.02.2024 dismissed the said appeal and thereby affirmed the judgment and order of conviction and sentence dated 28.06.2022 passed by the trial Court.

Being aggrieved thereby the petitioner filed this revisional application and obtained this Rule.

None one appears for the petitioner to support the Rule though this matter appears in the delay cause list for a number of days.

Mr. Khandoker Sultan Ahmed, the learned Advocate appearing for respondent No. 2 supports the impugned judgment and order.

The point for determination is whether the courts below were legally justified in passing the impugned judgment and order of conviction and sentence.

Let's examine the prosecution witness to adjudicate the issue.

P.W-1, Hazi Md. Irfanul Rashid in his examination-in-chief stated that for payment of loan Md. Jahangir Alam issued a cheque for an amount of Tk. 2,43,465/- in favour of the complainant. After dishonour of the cheque, the petitioner was given legal notice, but he did not pay the amount, hence the case. P.W-1 exhibited the petition of complaint as exhibit-1, his signatures thereon as exhibit 1/1 series, the original cheque as

exhibit-2, dishonour slip as exhibit-3, the legal notice, postal receipt, and the returned envelopes as exhibit- 4 series, the power of attorney as exhibit 5.

From the said evidence it appears that the petitioner issued a cheque in favour of the complainant on 17.04.2017 (exhibit-2). On prosecution, the cheque was dishonored on 22.05.2017 for insufficiency of funds (exhibit-3). Statutory notice was served on 04.06.2017(exhibit-4 series), but the petitioner failed to make the payment of the said amount to the complainant. Hence, the complainant filed the petition of complaint on 16.07.2017 (exhibit-1). All the said acts were done within the statutory period.

In a criminal proceeding, no onus generally lies upon the accused, but in the case of the offence of section 138 of the NI Act, like the civil suit, the separate onus lies upon the prosecution and the defence, and while the prosecution by producing the cheque, dishonour slip, copy of the notice, and acknowledgment due proves that the cheque issued by the drawer was dishonour for insufficiency of funds and the drawer did not pay the amount despite serving the notice. Then the drawer would be required to satisfy the Court under what circumstances the cheque was issued

and at the time of presentation, the cheque was without having any consideration.

In the present case, it appears that the prosecution by adducing evidence proved that the petitioner issued a cheque in favour of the complainant, on prosecution, the cheque was dishonored for insufficiency of funds. Despite serving statutory notice, the petitioner failed to make the payment. Thereby, the prosecution discharged its onus. On the other hand, the petitioner did not face the trial and thereby did not explain to the Court under what circumstances he issued the cheque and at the time of presentation of the cheque whether there was any consideration.

A question may arise in this case, whether the service of notice was deemed service. I have compared the addresses given on the postal cover (exhibit 4 series) with the addresses of the petitioner given by himself in the memorandum of appeal and this revisional application and found that those are the same, hence, the notice sent by the registered post with acknowledgment due contains the correct addresses of the petitioner and the petitioner deliberately evaded to receive the said notice. Hence, the presumption of the deemed service of the said notice can be

drawn. Therefore, the Courts below rightly found the petitioner guilty of the offence of section 138 of the NI Act.

In the above facts and circumstances, I am of the view that the Courts below passed the impugned judgment and order legally and do not find any reason to interfere with the same.

Accordingly, I do not find any merit in the Rule.

In the result, the Rule is discharged.

The order of bail granted at the time of issuance of this Rule is hereby recalled.

The petitioner is directed to surrender before the trial Court within 30 days of receiving this judgment and order by the trial Court to serve his remaining sentence. The petitioner is also directed to pay the remaining amount of the fine within that period otherwise the trial court will proceed in accordance with the law.

Sent down the lower Courts' record.

Communicate this judgment and order at once.