

Present:

Mr. Justice Md. Khairul Alam

Criminal Revision No. 2187 of 2024

Kamrul Islam Chowdhury.

..... Petitioner.

-Versus-

The state and another.

..... Opposite parties.

Mr. K.M. Saiful Islam, Advocate

..... For the petitioner.

Mr. T.I.M. Nurun Nabi Chowdhury, Advocate

..... For the State.

**Heard on 12.11.2024 and
Judgment on 14.11.2024.**

This revisional application is directed against the judgment and order dated 08.11.2023 passed by the learned Additional Metropolitan Sessions Judge, 4th Court, Chattogram in Criminal Appeal No. 1071 of 2022 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 22.06.2022 passed by the learned Joint Metropolitan Sessions Judge, 3rd Court, Chattogram in Sessions Case No. 5433 of 2019 arising out of C.R. Case No. 361 of 2019 (Panchlaish)

convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 (shortly, the NI Act) and sentencing him to suffer simple imprisonment for 01 (one) year and to pay a fine of Taka 76, 43, 700/-.

The prosecution case, in short, is that the present opposite party No. 2 as complainant filed C.R. Case No. 361 of 2019 (Panchlaish) before the court of Chief Metropolitan Magistrate, Chattogram implicating the present petitioner alleging, inter-alia, that to disburse the liability the petitioner issued a cheque bearing No. 7679142 dated 31.03.2019 amounting to Tk. 76, 43,700/- in favour of the complainant. The complainant placed the said cheque before the bank for encashment, but the cheque was dishonored on 31.03.2019 due to “Insufficient

fund”. Hence, the complainant filed the case following all the statutory provisions.

Ultimately, the case was renumbered as Sessions Case No. 5433 of 2019 and was tried by the learned Joint Metropolitan Sessions Judge, 3rd Court, Chattogram who by the judgment and order of conviction and sentence dated 22.06.2022 convicted the appellant under section 138 of the NI Act and sentenced him as aforesaid.

Against the said judgment and order of conviction and sentence, the petitioner filed Criminal Appeal No. 1071 of 2022 before the Court of Metropolitan Sessions Judge, Chattogram which was heard by the learned Additional Metropolitan Sessions Judge, 4th Court, Chattogram who by the judgment and order dated 08.11.2023 dismissed the appeal and affirmed the judgment and order of conviction and sentence passed by the trial Court.

Being aggrieved thereby the petitioner moved before this Hon'ble Court and obtained the Rule.

Mr. K.M. Saiful Islam, the learned Advocate appearing on behalf of the petitioner at the outset of the hearing of the Rule informed this Court that meanwhile opposite party No. 2 amicably settled the issues by paying the amount covering the amount of the cheque to the complainant and accordingly, he prayed for quashing the impugned judgment and order of conviction and sentence.

Mr. T.I.M. Nurun Nabi Chowdhury, the learned Advocate appearing on behalf of opposite party No. 2 has approved the said submission.

In the case of Subash Chandra Sarker vs. The State and another reported in 26BLT(AD)28 a petition for leave to appeal was filed by a convict challenging his conviction and sentence passed under section 138 of the NI Act. In the said petition for leave to appeal a joint application

was filed for recording and disposal of the case as per terms of the compromise setting aside the judgment and order of conviction and sentence. Our apex Court dismissed the said petition for leave to appeal in the following manner.

“A Joint Application has been filed for recording compromise and disposal of the case as per terms of the compromise setting aside the judgment and order of conviction and sentence passed against the petitioner. The complainant and the convict are present in the Court. We have perused the compromise petition. The section is not a compoundable one. However, since the parties have settled matter amicably and the complainant has admitted before this Court that he received the half

of the amount of the dishonoured cheque in the cash and the rest of the amount was deposited with the Sessions Court before filing the appeal before the High Court Division. We are inclined to reduce the sentence to the period already undergone and accordingly the sentence awarded against the petitioner is reduced to the period undergone. We also direct the Additional Sessions Judge, Chapainawabgonj to allow the complainant to withdraw the money deposited by the convict without making any delay.

This petition is disposed of accordingly.”

Considering the submissions advanced by the learned Advocates of both sides and also considering the facts and circumstances of the case, I am inclined to reduce the

sentence to the period already undergone in the light of the above view of our apex Court.

Accordingly, the Rule is discharged with the modification of the sentence awarded against the petitioner, by reducing the sentence awarded against the petitioner to the period undergone.

The court concerned is hereby directed to allow the complainant to withdraw the money deposited by the convict without any delay.

The office is directed to receive the lower court's record and send down the same.

Communicate this order at once.