

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Revision No. 2799 of 2018

Md. Shakhawat Hossain Masum

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

No one appears.

...For the convict-petitioner

Mr. Mohammad Ali, Advocate with

Mr. Md. Amzad Hossain, Advocate

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

Heard on 16.11.2023

**Judgment delivered on 19.11.2023**

This Rule under Section 439 read with Section 435 of the Code of Criminal Procedure, 1898 was issued calling upon the opposite parties to show cause as to why the judgment and order dated 20.08.2018 passed by Sessions Judge, Chandpur in Criminal Appeal No. 54 of 2014 affirming the judgment and order dated 16.01.2013 passed by Joint Sessions Judge, Court No. 2, Chandpur in Session Case No. 196 of 2011 arising out of C.R. Case No. 212 of 2011 convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer rigorous imprisonment for 1(one) year and a fine of Tk. 4,62,000 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.

The prosecution case, in short, is that the complainant Md. Nuru Miah Sheikh, Secretary of Chandra Shikhita Bekar Jubo Bohumukhi Shamabai Shamity filed a petition of complaint in the Court of Chief Judicial Magistrate, Chandpur on 29.06.2011 against the convict-petitioner alleging, inter alia, that on 27.12.2009 convict-petitioner took loan of Tk. 3,00,000 from the said Shamity for purchasing goods for Rupa Hair Beauty Parlour owned by his wife and the convict-petitioner was a guarantor of the said loan. On 27.12.2010 date was fixed for payment of the installment of the said loan but the wife of the convict-petitioner did not pay the installment. On the same date, the convict-petitioner issued a

cheque drawn on his account maintained with National Bank, Chandpur Sadar Branch in favour of the said shamity for payment of Tk. 4,62,000(four lakh sixty two thousand). On 17.04.2011, the complainant presented the Cheque No. 6522910 for encashment but the said cheque was dishonoured with a remark 'insufficient funds'. After that, he issued a notice on 22.05.2011 upon the convict-petitioner for payment of the cheque amount within 30 days but he did not pay the cheque amount. Consequently, the complainant filed the complaint petition on 29.06.2011.

After filing the complaint petition, the learned Magistrate was pleased to take cognizance of the offence against the accused under Section 138 of the Negotiable Instruments Act, 1881. After that, the accused obtained bail from the Court of Magistrate, Chandpur. The case record was sent to the Sessions Judge, Chandpur who was pleased to send the case to Joint Sessions Judge, Court No. 2, Chandpur for trial. The Joint Sessions Judge, Court No. 2, Chandpur framed charge against the accused under Section 138 of the Negotiable Instruments Act, 1881 and the charge was read over and explained to the accused who pleaded not guilty to the charge. After that, the accused absconded. During trial, the complainant examined himself as P.W. 1 to prove the charge against the accused and the defence did not cross-examine P.W. 1. The trial Court by impugned judgment and order convicted the accused and sentenced him as stated above against which he filed Criminal Appeal No. 54 of 2014 before the Sessions Judge, Chandpur who by impugned judgment and order affirmed the judgment and order passed by the trial Court against which the convict-petitioner obtained the instant Rule.

P.W. 1 Nuru Mia Sheikh stated that he is the Secretary of Chandra Shikhita Bekar Jubo Bohumukhi Shamabai Shamity Ltd. He filed the case on behalf of the shamity. The accused took loan of Tk. 3,00,000 to purchase the goods. He was the guarantor of the loan. On 27.12.2010, the date was fixed to pay the installment of the loan taken by his wife. She could not pay the installment. Thereafter, the accused issued a cheque on the date of occurrence for payment of Tk. 4,62,000. The cheque was presented on 17.04.2011 for encashment. The same was returned unpaid

due to insufficient funds. On 22.05.2011, a legal notice was served upon the accused, he did not pay the cheque amount. He proved the complaint petition and his signature as exhibit 1 series. He proved the Cheque No. 6522910 drawn on his account maintained with National Bank Ltd as exhibit 2. He proved the dishonour slip as exhibit 3. He proved the legal notice dated 22.05.2011 as exhibit 4. He proved the postal receipt as exhibit 5. The defence did not cross-examine P.W. 1.

No one appears on behalf of the convict-petitioner to press the Rule.

Learned Advocate Mr. Mohammad Ali appearing along with learned Advocate Mr. Md. Amzad Hossain on behalf of the complainant-opposite party No. 2 submits that the complainant is the Secretary of the Chandra Shikhita Bekar Jubo Bohumukhi Shamabai Shamity and the wife of the convict-petitioner took loan of Tk. 3,00,000 from the said shamity in the name of Rupa Hair Beauty Parlour and the convict-petitioner was a guarantor of the said loan. Since the wife of the accused failed to pay the loan, the accused as guarantor issued the cheque on 27.12.2010 for payment of Tk. 4,62,000 in favour of the said shamity and the complainant presented the said cheque on 17.04.2011 but it was dishonoured with a remark 'insufficient funds'. Consequently, the complainant issued a notice upon the accused for payment of the cheque amount but he did not pay the money and after complying all the procedure the complainant filed the complaint petition and both the Courts below on proper assessment of the evidence of the prosecution legally passed the impugned judgment and order. Therefore, he prayed for discharging the Rule.

No one appears on behalf of the convict-petitioner.

I have considered the submission of the learned Advocate Mr. Mohammad Ali who appeared on behalf of the opposite party No. 2, perused the impugned judgments and orders passed by the Courts below, evidence and the records.

On perusal of the records, it appears that the convict-petitioner issued Cheque No. 6522910 dated 27.12.2010 drawn on his account maintained with National Bank, Chandpur Sadar Branch for payment of

Tk. 4,62,000 in favour of the complainant and the said cheque was presented on 17.04.2011 for encashment which was dishonoured with a remark 'insufficient funds'. After that, the complainant sent a legal notice to the accused through registered post with A/D on 22.05.2011 but he did not pay the cheque amount within the statutory period. Consequently, the payee-complainant filed the case on 29.06.2011. P.W. 1 proved the complaint petition and his signature as exhibit 1 series. He also proved the cheque as exhibit 2, dishonoured slip as exhibit 3, legal notice as exhibit 4 and postal receipt with AD as exhibit 5. During the trial, the accused was absconding. The defence did not cross-examine P.W. 1.

There is a presumption under Section 118(a) of the Negotiable Instruments Act, 1881 that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration.

The presumption under Section 118(a) of the said Act is rebuttable. The accused neither adduced evidence nor cross-examined P.W. 1 to rebut the presumption under Section 118(a) of the said Act. Therefore I am of the view that the accused Md. Shakhawat Hossain Masum issued the cheque in favour of the payee-complainant for consideration. After service of notice in writing under Section 138(1)(b) of the said Act, he failed to pay the cheque amount. Thereby he committed an offence under Section 138 of the Negotiable Instruments Act, 1881 and the complainant filed the case following all procedure provided in Section 138 of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the accused beyond all reasonable doubt and the Courts below on proper assessment of evidence legally passed the impugned judgments and orders.

I do not find any merit in the Rule.

In the result, the Rule is discharged.

Send down the lower Court's records at once.