

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 3410 of 2022

Md. Abuzar Gaffari

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

Mr. A.S.M. Sayem Bhuiyan, Advocate

...For the convict-petitioner

Mr. Ratan Kumar, Advocate

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

Heard on 03.06.2024, 04.06.2024, 07.07.2024,
23.10.2024, 30.10.2024 and 12.02.2025**Judgment delivered on 16.02.2025**

On an application filed under Section 439 read with Section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order of conviction and sentence dated 12.07.2022 passed by the Sessions Judge, Joypurhat in Criminal Appeal No. 8 of 2021 affirming the judgment and order of conviction and sentence dated 30.01.2020 passed by the Joint Sessions Judge, Court No. 1, Joypurhat in Sessions Case No. 133 of 2017 arising out of C.R. Case No. 122 of 2016(Pachbibi) convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer imprisonment for 1(one) year and fine of Tk. 24,00,000 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The prosecution case, in short, is that the convict-petitioner Md. Abuzar Gaffari was previously known to the complainant Md. Mostafizur Rahman. The convict-petitioner took loan of Tk. 12,00,000(twelve lakh) from the complainant for business and he undertook to pay the loan within the next 01 month but he did not pay the said amount. When the complainant demanded money from

the convict-petitioner, he issued a cheque on 19.06.2016 drawn on his Account No. 22666 maintained with Islami Bank Bangladesh Ltd, Joypurhat Branch for payment of Tk. 12,00,000(twelve lakh). The complainant presented the said cheque on 27.06.2016 for encashment which was dishonoured on 27.06.2016 with the remark 'insufficient fund' on 27.06.2016. He sent the legal notice on 24.07.2016 to the convict-petitioner through registered post with A/D. The convict-petitioner received the said notice on 01.08.2016 but he did not pay the cheque amount. Consequently, he filed the case on 04.09.2016.

During the trial, the charge was framed against the convict-petitioner under Section 138 of the Negotiable Instruments Act, 1881 which was read over and explained to the convict-petitioner and he pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 1 (one) witness to prove the charge against the convict-petitioner. After examination of the prosecution witness, the convict-petitioner was examined under Section 342 of the Code of Criminal Procedure, 1898 and he declined to adduce any D.W.

After concluding the trial, the Joint Sessions Judge, Court No. 1, Joypurhat by judgment and order dated 30.01.2020, convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer imprisonment for 1(one) year and fine of Tk. 24,00,000 against which the convict-petitioner filed Criminal Appeal No. 8 of 2021 in the Court of Sessions Judge, Joypurhat. After hearing the appeal, the Sessions Judge, Joypurhat by impugned judgment and order affirmed the judgment and order of conviction and sentence passed by the trial Court against which the convict-petitioner obtained the Rule.

P.W. 1 Mostafizur Rahman is the complainant. He stated that the convict-petitioner was known to him. He took loan of Tk. 12,00,000 for business purposes. He issued a cheque on 19.06.2016

for the payment of the loan taken from him. The complainant presented the cheque on 27.06.2016 for encashment which was dishonoured on the same date with the remark 'insufficient fund'. He sent the legal notice on 24.07.2016. The convict-petitioner received the notice on 01.08.2016. Thereafter, he filed the complaint petition. He proved the complaint petition as exhibit 1 and his signature as exhibit 1/1, dishonour cheque as exhibit 2, legal notice as exhibit 3, dishonour slip as exhibit 4, postal receipt as exhibit 5, A/D as exhibit 6 and deposit slip as exhibit 7. The accused issued the cheque in favour of his business establishment Mampy Traders. During cross-examination, he stated that in the complaint, it has been mentioned that the legal notice was sent on 24.07.2016 and the convict-petitioner received the said notice on 01.08.2016. He affirmed that there is no agreement regarding the loan taken from him. The statement made by the convict-petitioner in the GD No. 1305 dated 26.06.2016 that he lost the cheque is false. He denied the suggestion that on 23.06.2016, the cheque was lost.

Learned Advocate Mr. A.S.M. Sayem Bhuiyan, appearing on behalf of the convict-petitioner, submits that the convict-petitioner Md. Abuzar Gaffari issued a cheque in favour of the complainant for payment of Tk. 12,00,000 but due to his financial hardship, he could not pay the cheque amount in time after receipt of the legal notice on 01.08.2016. However, he submits that in the meantime, the convict-petitioner and the complainant-opposite party No. 2 settled the dispute out of Court and paid 50% of the cheque amount Tk. 6,00,000 on 26.01.2025 and executed a compromise and 50% of the cheque amount deposited by the convict-petitioner had been withdrawn by the complainant-opposite party No. 2 and the complainant-opposite party No. 2 received the entire cheque amount. He prayed to make the Rule absolute accepting the compromise dated 26.01.2025.

Learned Advocate Mr. Ratan Kumar, appearing on behalf of the complainant-opposite party No. 2, submits that the convict-petitioner issued the cheque for payment of Tk. 12,00,000 in favour of the complainant and he presented the said cheque complying the procedure of clause a to Section 138 of the Negotiable Instruments Act, 1881 which was dishonoured on 27.06.2016 and he issued the legal notice on 24.07.2016 and the convict-petitioner received the same on 01.08.2016 and complying with all the procedures under Section 138 and 141(b) of the Negotiable Instruments Act, 1881 filed the case and the convict-petitioner committed offence under Section 138 of the Negotiable Instruments Act, 1881. However, he admitted that in the meantime, he received the entire cheque amount and executed the agreement on 26.01.2025 regarding the compromise made between the convict-petitioner and the complainant-opposite party No. 2.

I have considered the submission of the learned Advocates of both parties, perused the evidence, the impugned judgments and orders passed by the Courts below, the joint application sworn on 05.02.2025 by both parties and the records.

On perusal of the records, it appears that both the convict-petitioner Md. Abuzar Gaffari and the complainant-opposite party No. 2 Md. Mostafizur Rahman filed a joint application for compromise sworn on 05.02.2025 stating that in the meantime, the complainant-opposite party No. 2 received the entire cheque amount and executed a compromise on 26.01.2025 which has been annexed as Annexure-I. The Negotiable Instruments Act, 1881 is a special law, and the offence under Section 138 of the Negotiable Instruments Act, 1881 is not compoundable. After filing the complaint petition, the Court is not empowered to dispose of the case considering the compromise made between the parties. The Court shall dispose of the case considering merit. Therefore, the

Rule cannot be disposed of considering the compromise made between the parties.

On perusal of the evidence of P.W. 1, it appears that the convict-petitioner issued the Cheque No. MSN 0769504 dated 19.06.2016 drawn on his account maintained with Islami Bank Bangladesh Limited, Joypurhat Branch in favour of Mampy Traders and the complainant-P.W. 1 Mostafizur Rahman stated that the accused is the Proprietor of the Mampy Traders. The complainant presented the said cheque on 27.06.2016 for encashment but the same was dishonoured for 'insufficient funds'. He proved the cheque as exhibit 2 and the dishonour slip as exhibit 4. He sent the legal notice on 24.07.2016 (exhibit 3). P.W. 1 proved the postal receipt as exhibit 5, A/D as exhibit 6, and the deposit slip as exhibit 7. It transpires that the complainant filed the case complying with the procedures of clauses (a) to (c) of Section 138 and Section 141(b) of the Negotiable Instruments Act, 1881. During the trial, the P.W. 1 proved the charge against the accused beyond all reasonable doubt.

Considering the gravity of the offence and the facts and circumstances of the case, I am of the view that the ends of justice would be best served if the sentence passed by the Courts below is modified as under;

The convict-petitioner Md. Abuzar Gaffari is found guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881, and he is sentenced to pay a fine of Tk. 12,00,000(twelve lakh).

The complainant-opposite party No. 2 admitted that he received the entire cheque amount. Therefore, the convict-petitioner is not required to deposit the fine amount again.

In the result, the Rule is disposed of with a modification of the sentence.

Send down the lower Court's records at once.