Present:

Mr. Justice Md. Khasruzzaman

Criminal Revision No. 2346 of 2023

Dr. Md. Nazrul Islam
....Convict-appellant-petitioner.
-Versus-
The State and another
...Opposite parties.
Mr. Md. Mokhlesur Rahman
… For the convict-petitioner.
Mr. Mohammad Abdul Karim, D.A.G. with
Mr. Md. Azgarul Islam, A.A.G. and
Ms. Mahfuza Akhter, A.A.G.
.....For the State.
Mr. Md. Al Kayum, Advocate
... For the complainant-opposite party

Judgment on 07.01.2025

The Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order of conviction and sentence dated 07.05.2023 passed by the learned Additional Sessions Judge, 2nd Court, Tangail, in Criminal Appeal No. 27 of 2022 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 23.08.2021 passed by the learned Joint Sessions Judge, 1st Court,

Tangail in Sessions Case No. 949 of 2020, arising out of C.R. Case No. 253 of 2020 (Sadar), convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him there under to suffer simple imprisonment for 8 (eight) months and to pay a fine of Tk. 10,50,000.00 (Ten Lac and Fifty Thousand), out of which the complainant would get Tk. 10,00,000.00 (Ten Lac) and the remaining amount of fine would be deposited in the Government Treasury should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

On 25.02.2020 Md. Abdur Rahim, as a complainant, instituted C.R. Case No. 253 of 2020 (Sadar) before the learned Senior Judicial Magistrate, Cognizance Court, Sadar, Tangail against the petitioner as an accused under section 138 of the Negotiable Instruments Act, 1881.

The prosecution case, in short, is that on 23.09.2019 the accused, Dr. Md. Nazrul Islam, who was known to the complainant, Md. Abdur Rahim, borrowed Tk. 10,00,000.00 (Ten Lac) from him to augment the capital of

his clinic business. On the same day, at the complainant's residence at Mouza Mujahati, Ghatail, Tangail, the accused delivered to him, towards repayment of the loan, a post-dated cheque bearing No. 0139369 MCG 3064814, dated 05.01.2020, for the said sum, drawn on the accused's Account No. 20502030203861617 maintained with Islami Bank Bangladesh Limited, Cantonment Branch, Dhaka. On 05.01.2020 the complainant presented the cheque for encashment in Islami Bank Bangladesh Limited, Tangail Branch. The cheque was dishonoured for insufficiency of funds in the accused's account, and the branch manager issued a dishonour slip to the complainant on the same day. On 08.01.2020 the complainant, through his learned Advocate, sent a notice to the accused by registered post with acknowledgement due, demanding him to pay the cheque amount within 30 days from the date of receipt of the notice. The complainant alleged that the accused received the notice but failed to pay Tk. 10,00,000.00 within the stipulated period and that the entire amount remained unpaid on the date of filing. Accordingly, on

25.02.2020 the complainant filed the instant complaint under section 138 of the Negotiable Instruments Act, 1881.

Upon examination of the complainant under section 200 of the Code of Criminal Procedure, the learned Senior Judicial Magistrate, Cognizance Court, Sadar, Tangail, took cognizance of the offence under section 138 of the Negotiable Instruments Act, 1881 against the accused and issued summons upon him. On 18.10.2020 the accused appeared before the learned Magistrate and was enlarged on bail.

Subsequently, the case record was transferred to the learned Sessions Judge, Tangail for trial and disposal. On 22.10.2020 the learned Sessions Judge, Tangail took cognizance of the offence under section 138 of the Negotiable Instruments Act, 1881 against the accused. Thereafter, the case record was transferred to the learned Joint Sessions Judge, 1st Court, Tangail. Then on 24.11.2020 charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881. The

charge was read over and explained to him, to which he pleaded not guilty and claimed to be tried.

In support of its case, the prosecution examined the complainant as P.W.1. The prosecution witness was cross-examined by the defence. The accused was examined under section 342 of the Code of Criminal Procedure. On the other hand, the defence neither examined any witness nor produced any documents in support of its case.

The case for the defence, as it emerges from the cross-examination of the prosecution witness and the suggestions put to that witness on behalf of the accused, is that the complainant found a cheque that the accused had lost and used it to institute this false case against the accused.

Upon conclusion of the trial, the learned Joint Sessions Judge, 1st Court, Tangail, by judgment and order dated 23.08.2021 convicted the accused under section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer simple imprisonment for 8 (eight) months and to pay a fine of Tk. 10,50,000.00 (Ten Lac and

Fifty Thousand), out of which the complainant would get Tk. 10,00,000.00 (Ten Lac) and the remaining amount to be deposited into the Government Treasury.

Being aggrieved by the said judgment and order, the accused preferred Criminal Appeal No. 27 of 2022 before the learned Sessions Judge, Tangail. The appeal was transferred to the learned Additional Sessions Judge, 2nd Court, Tangail for disposal. Thereafter, on 07.05.2023 the appeal was dismissed on merit.

Being further aggrieved by and dissatisfied with the aforesaid judgment and order, the convict-petitioner moved this revisional application and obtained the Rule.

Mr. Md. Mokhlesur Rahman, the learned Advocate for the convict-petitioner has made his submissions on the point of law and facts involved in the present case.

Mr. Md. Al Kayum, the learned Advocate appearing for the complainant-opposite party No. 1, has submitted that the convict-petitioner borrowed Tk. 10,00,000.00 (Ten Lac) from the complainant to increase the capital of his clinic business. He has further submitted that the

complainant, having complied with all the statutory requirements, instituted the case and adduced both oral and documentary evidence in support of the charge. The Trial Court, upon proper appreciation of the evidence, convicted the petitioner, while the Appellate Court rightly dismissed the appeal. Therefore, he has submitted that the impugned judgments and orders call for no interference by this Court.

Heard the learned Advocate for both the sides, perused the revisional application, the evidence and materials on record, and the judgments and orders passed by the Courts below.

The deposition and cross-examination of P.W.1 are set out below:

P.W.1, Md. Abdul Rahim, in his examination-in-chief, deposed that he was the complainant in the case. He identified the accused, Dr. Md. Nazrul Islam, who was present in the dock. He stated that on 05.01.2020 the accused issued a cheque for Tk. 10,00,000.00 (ten lac) in discharge of the amount due to him. The cheque was

dishonoured on the same day for insufficiency of funds. On 08.01.2020 he sent a legal notice to the accused demanding payment. Although the accused received the notice, he failed to pay the cheque amount. Thus, he filed the present case. He proved the petition of complaint and his signature thereon as Exhibits 1 and 1/1 respectively. He also produced the original cheque, the dishonour slip, the legal notice and the postal receipt, which were marked collectively as Exhibit 2 series.

In cross-examination, P.W.1 stated that he was illiterate. He stated that the accused, whose house was close to his own, had borrowed the sum mentioned in the cheque for the purposes of his clinic. He admitted that there was no written agreement evidencing the loan. He stated that he maintained an account with Janata Bank, Hamidpur Branch, and that the money he had advanced to the accused came from remittances sent by his son from abroad and from the sale of paddy. He further stated that the accused resided in Dhaka and had given him a cheque drawn on Islami Bank. P.W.1 stated that he did not know

whether the accused had lodged a general diary entry at Kafrul Police Station on 29.10.2019 reporting the loss of the cheque in question, or whether the accused had thereafter closed his bank account on that basis. He could not say whether the writing on the cheque was in the hand of the accused. He denied the defence suggestion that the accused had never delivered the cheque to him. He also denied the suggestion that he had found the cheque after the accused had lost it and had used it to institute a false case.

It appears from the record that Md. Abdur Rahim, the complainant, was examined as P.W.1 and that he categorically supported the prosecution case in his examination-in-chief. He proved the petition of complaint and his signature, which were marked as exhibit Nos. 1 and 1/1 respectively. He further proved the dishonoured cheque and its slip, which were marked as exhibit Nos. 2 and 2/1 respectively. He also proved the legal notice, postal receipt, which were marked as exhibit Nos. 2/2 and 2/3 respectively. The defence cross-examined the

complainant (P.W. 1) but elicited no statement inconsistent with either the allegations in the complaint or the evidence given by the complainant in examination-in-chief.

The evidence of the prosecution witnesses read with the documentary evidence duly exhibited during trial, lends sufficient support to the prosecution case. No material has been brought on his record by the defence to discredit his testimony or to controvert the documentary evidence relied upon by the complainant. Therefore, the prosecution evidence has remained substantially intact.

As regards the statutory notice, it has been submitted on behalf of the complainant-opposite party that the same was duly served upon the convict-petitioner by registered post with acknowledgement due in compliance with section 138(1)(b) read with section 138(1A)(b) of the Negotiable Instruments Act, 1881. On perusal of the record, this Court find no material to suggest that the accused raised any objection regarding service of the said notice. Therefore, I am satisfied that the statutory

requirement as to service of notice was duly complied with.

I have carefully examined the provisions of section 138 of the Negotiable Instruments Act, 1881 and the materials available on record. It appears that the complainant complied with the statutory requirements before instituting the case. I find no material illegality or irregularity either in the institution of the case or in the conduct of the trial.

It further appears that the Trial Court, upon consideration of the evidence and materials on record, found the petitioner guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and imposed the sentence as stated above. Thereafter, Appellate Court dismissed the appeal on merit.

On a careful consideration of the judgments and orders passed by the Courts below, It appears that the findings recorded by the Trial Court are supported by the evidence on record. No material contradiction or inconsistency in the prosecution evidence has been

brought to our notice. I also find no error of law, illegality, irregularity or perversity in the impugned judgment and order of conviction and sentence of imprisonment warranting interference by this Court in its revisional jurisdiction.

In view of the facts and circumstances of the case and the foregoing discussion, I am of the view that the Trial Court as well as the Appellate Court committed no illegality or material irregularity in recording the conviction and imposing the sentence of imprisonment upon the petitioner. Accordingly, I find no reason to interfere with the judgment and order of conviction and sentence of imprisonment passed by the Trial Court and affirmed by the Appellate Court.

Upon perusal of the impugned judgments and orders, it appears that the Trial Court imposed a fine of Tk. 10,50,000.00 (Ten Lac and Fifty Thousand), whereas the amount of the dishonoured cheque was Tk. 10,00,000.00 (Ten Lac). Thus, the fine imposed by the Trial Court exceeded the cheque amount by Tk. 50,000.00 (Taka Fifty

Thousand), without assigning any cogent or sufficient reason for imposing such additional fine. The Appellate Court also affirmed the said sentence of fine without addressing the justification for the excess amount.

It is true that the Trial Court is legally empowered under section 138 of the Negotiable Instruments Act, 1881 to impose a fine exceeding the amount of the dishonoured cheque. However, the exercise of such discretionary power ought to be guided by sound judicial reasoning and the facts and circumstances of the case. In the instant case, neither the Trial Court nor the Appellate Court has assigned any cogent or satisfactory reason justifying the imposition of a fine exceeding the cheque amount.

In the considered view of this Court, although the imposition of a fine exceeding the cheque amount is permissible under the law, the additional fine of Tk. 50,000.00 (Fifty Thousand), in the absence of any recorded justification, does not appear to be warranted in the facts and circumstances of the present case. Therefore, this Court is of the view that reducing the fine to an

amount equivalent to the cheque amount would meet the ends of justice.

Accordingly, the excess portion of the fine, amounting to Tk. 50,000.00 (Taka Fifty Thousand), is liable to be set aside, while the conviction and sentence of imprisonment shall remain undisturbed.

In view of the foregoing discussion, the impugned judgments and orders are modified only to the extent that the sentence of fine imposed upon the petitioner shall stand reduced from Tk. 10,50,000.00 (Ten Lac and Fifty Thousand) to Tk. 10,00,000.00 (Ten Lac), being equivalent to the amount of the dishonoured cheque.

In the result, the Rule is discharged subject to the aforesaid modification of the sentence of fine.

Accordingly, the conviction and sentence of imprisonment, as affirmed by the Appellate Court, shall remain unchanged.

The complainant will get the fine amount.

The Trial Court is directed to pay the amount deposited by the convict-petitioner before filing the appeal

to the complainant-opposite party and issue the process against the convict-petitioner to secure his arrest for execution of sentence of imprisonment.

The Trial Court shall take appropriate steps for realization of the remaining amount of fine as per the provisions of section 386 of the Code of Criminal Procedure, 1898.

Let the records be sent down.

Communicate the order.

(Md. Khasruzzaman, J:)