

**Present**

**Mr. Justice Sheikh Abdul Awal**

**Criminal Appeal No. 1985 of 2018**

Md. Mirajul Islam

.....Convict-appellant.

-Versus-

The State and another

.....Respondents.

No one appears

.....For the convict-appellant.

Ms. Shahida Khatoon, D.A.G. with  
Ms. Sabina Perven, A.A.G with,  
Ms. Koheenoor Akter, A.A.G.

..... For the respondent No.1.

Mr. Md. Abdus Samad, Advocate

.....for the respondent No.2.

**Judgment on 01.08.2024.**

**Sheikh Abdul Awal, J:**

This Appeal at the instance of convict appellant, Md. Mirajul Islam is directed against the impugned judgment and order of conviction and sentence dated 30.10.2017 passed by the learned Additional Sessions Judge, Magura in Sessions case No. 110 of 2016 arising out of C.R. Case No. 704 of 2015 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple

imprisonment for a period of 1 (one) year and to pay a fine of Tk. 1,20,000/- (one Lac and twenty thousand) only.

The gist of the case is that one, Md. Akteruzzaman as complainant filed C.R. Case No. 704 of 2015 in the Court of the learned Senior Judicial Magistrate 1<sup>st</sup> Court, Magura against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 stating, inter-alia, that the accused appellant as relative took Tk. 1,20,000/- (one Lac and twenty thousand) as loan for his business from the complainant-respondent No.2 on 13.07.2015 in presence of witnesses on condition that he will return that money within 01(one) month and thereafter, the accused in order to pay the loan amount on 13.08.2015 issued a cheque being No. IBH 1795096 amounting to Tk. 1,20,000/- of Islami Bank, Magura Branch in favour of the complainant and thereafter, the complainant presented the said cheque in bank for encashment but the said cheque was dishonoured on 16.11.2015 for insufficient of fund and thereafter, finding no other way the complainant sent a legal notice through his Advocate to the accused appellant on 19.11.2015 asking him to pay the cheque's amount within 30 days but the accused-appellant did not pay any heed to it and hence, the case.

On receipt of the petition of complaint, the learned Senior Judicial Magistrate 1<sup>st</sup> Court, Magura examined the complainant under Section 200 of the Code of Criminal Procedure on 24.12.2015 and took cognizance under section

138 of the Negotiable Instrument Act, 1881 and also issued summon against the accused appellant fixing next date on 02.02.2016.

In usual course the case record was sent to the Court of the learned Sessions Judge, Magura, wherein the case was registered as Sessions Case No. No.110 of 2016. Ultimately the case was transmitted to the Court of the learned Additional Sessions Judge, Magura for disposal before whom the accused appellant was put on trial to answer a charge under Section 138 of the Negotiable Instruments Act, 1881 to which the accused appellant pleaded not guilty and claimed to be tried stating that he has been falsely implicated in this case.

At the trial the complainant himself was examined as PW-1 and also exhibited some documents to prove its case, while the defence examined none.

During trial the accused appellant was absconding and the trial was held in absentia against the accused appellant.

On conclusion of trial, the learned Additional Sessions Judge, Magura by the impugned judgment and order dated 30.10.2017 found the accused appellant guilty under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer simple imprisonment for a period of 1 (one) year and to pay a fine of Tk. 1,20,000/- (one Lac and twenty thousand) only.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 30.10.2017, the convict-appellant preferred this criminal appeal.

No one found present to press the appeal on repeated calls in spite of fact that this criminal appeal has been appearing in the list for hearing with the name of the learned Advocate for a number of days.

In view of the fact that this petty old criminal appeal arising out of 1 (one) year sentence under the Negotiable Instruments Act, 1881 has been dragging before this Court for more than 6 years, I am inclined to dispose of it on the basis of the materials on record.

On perusal of record, it is found that the complainant-after exhausting all the legal formalities filed C.R. Case No. 704 of 2015 under section 138 of the Negotiable Instruments Act against the convict appellant and during the trial the complainant himself was examined as PW-1 and exhibited some documents to prove its case. It further appears that PW-1 in his evidence stated the case in details.

To constitute an offence under Section 138 of the NI Act, the following elements need to be fulfilled:

1. A cheque should have been issued by the payer for the discharge of a debt or other liability.

2. The cheque should have been presented or deposited by the payee within a period of six months from the date of

drawing of the cheque or within the period of validity of the cheque, whichever is earlier.

3. The payee should have issued a notice in writing to the payer within 30 days of receipt of information regarding the return of the cheque as unpaid from the bank.

4. The payer/drawer of the cheque should have paid the cheque amount within 30 days of receipt of the said notice from the payee.

5. If the payer having failed to pay in time the cheque amount, the payee should have filed a complaint within one month.

On an overall consideration of the facts, circumstances and the materials on record, it can be easily suggested that all the above quoted key elements are exist in the present case.

On an analyses of impugned judgment and order of conviction and sentence dated 30.10.2017 passed by the learned Additional Sessions Judge, Magura in Sessions Case No. 110 of 2016, I find no flaw in the reasonings of the trial Court or any ground to assail the same inasmuch as all the key elements of Section 138 of Negotiable Instruments Act are exist in the case.

The learned Judge of the trial Court below appears to have considered all the material aspects of the case and justly convicted the accused appellant under Section 138 of

the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer simple imprisonment for a period of 1 (one) year and to pay a fine of Tk. 1,20,000/- (one Lac and twenty thousand) only. No interference, is therefore called for.

In the result, the appeal is dismissed. The impugned judgment and order of conviction and sentence dated 30.10.2017 passed by the learned Additional Sessions Judge, Magura in Sessions case No. 110 of 2016 arising out of C.R. Case No. 704 of 2015 is hereby affirmed.

Since the appeal is dismissed the convict appellant is directed to surrender his bail bond within 3 (three) months from today to suffer his sentence, failing which the Trial Court shall take necessary steps to secure arrest against him.

The complainant, Md. Akteruzzaman is permitted to withdraw half of the cheque's amount as deposited in the Trial Court concerned by the convict-appellant for the purpose of preferring this Criminal Appeal.

Send down the lower Court records at once.