

**Present**

**Mr. Justice Sheikh Abdul Awal**

**Criminal Appeal No. 1507 of 2014**

Md. Azizul Hoque

.....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

No one appears

..... For the respondent No.2

**Judgment on 15.07.2024.**

**Sheikh Abdul Awal, J:**

This criminal appeal at the instance of convict appellant, Md. Azizul Hoque is directed against the impugned judgment and order of conviction and Sentence dated 02.02.2014 passed by the learned Sessions Judge, Sirajgonj in Sessions Case No. 338 of 2012 arising out of C.R. Case No. 27 of 2012 (Sadar) convicting the accused appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer rigorous

imprisonment for a period of 01 (one) year and to pay a fine of Tk. 21,00,000/-(Twenty one Lac) in default to suffer simple imprisonment for 3 (three) months more.

The gist of the case is that one, Md. Anower Hossen as complainant filed a petition of complaint being C.R. Case No. 27 of 2012 (Sadar) in the Court of the learned Chief Judicial Magistrate, Cognizance Court No.1, Sirajgonj against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 stating, inter-alia, that out of previous good relationship with the complainant the convict appellant took loan amounting to Tk. 7,00,000/- (seven lac) on 18.02.2011 from the complainant for business purpose with a condition to refund the said amount within 6 months and thereafter, on 26.10.2011 the accused to pay the loan amount issued a cheque being No. S.B. <sup>10</sup>/<sub>0</sub> No. 7245915 amounting to Tk. 7,00,000/-(seven Lac) of Pubali Bank Ltd. Sirajgonj in favour of the complainant respondent No.2 and thereafter, the complainant presented the said cheque before bank on 16.11.2011 for encashment but the said cheque was dishonoured for insufficient of fund and thereafter, the complainant sent a legal notice through his Advocate to the accused appellant on 11.12.2011 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 Chief Judicial Magistrate, Sirajgonj examined the

complainant under Section 200 of the Code of Criminal Procedure on 29.01.2012 and took cognizance against the accused-appellant under section 138 of the Negotiable Instrument Act, 1881 and issued summon against him fixing next date on 23.02.2012.

In usual course the case record was sent to the Court of the learned Sessions Judge, Sirajgonj for trial wherein the case was registered as Sessions Case No. 338 of 2012. Ultimately 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 prayed to be tried.

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.

On conclusion of trial, the learned Sessions Judge, Sirajgonj by the impugned judgment and order dated 02.02.2014 found the accused appellant guilty under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer rigorous imprisonment for a period of 01 (one) year and to pay a fine of Tk. 21,00,000/-(Taka Twenty one Lac) in default to suffer simple imprisonment for 3 (three) months more.

Aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 02.02.2014, the convict-appellant preferred this criminal appeal.

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

In view of the fact that this petty old criminal appeal arising out of 01 (one) year sentence under the Negotiable Instruments Act, 1881 has been dragging before this Court for more than 10 years, I am inclined to dispose of it on merit as per evidence and materials on record.

On perusal of record, it is found that the complainant after exhausting all the legal formalities filed C.R. Case No. 27 of 2012 (Sadar) under section 138 of the Negotiable Instruments Act, 1881 against the convict appellant and during trial the complainant himself was examined as PW-1 and exhibited some documents to prove its case.

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 is 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. Besides, it appears from the record that a single bench of this Court at the time of admission of appeal by order dated 07.04.2014 granted bail to the convict-appellant for a period of 06(six) months, which was lastly extended on 22.02.2016 for a period of 01(one) year and thereafter, no one took any steps to extend the order of bail, as a result of which, the said bail was expired long before on 22.02.2017. Therefore, in the attending facts and circumstances of the case, I find no difficulty whatever in holding that the convict-appellant is a fugitive from law and justice.

In the case of Anti-Corruption Commission Vs. Dr. HBM Iqbal Alamgir, reported in 15 BLC (AD) 44, it has been held that the Court would not act in aid of an accused person, who is a fugitive from law and justice.

On an analyses of impugned judgment and order of conviction and sentence dated 02.02.2014, passed by the learned Sessions Judge, Sirajgonj, 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 Sessions Judge, Sirajgonj appears to have considered all the material aspects of the case and justly found the accused appellant guilty under Section 138 of the Negotiable Instrument Act, 1881 and sentenced him thereunder to suffer rigorous imprisonment for a period of 01 (one) year and to pay a fine of Tk. 21,00,000/- (Twenty one Lac) only.

On the above, 2 (two) counts, this appeal must fail.

In the result, the appeal is dismissed. The impugned judgment and order of conviction and Sentence dated 02.02.2014 passed by the learned Sessions Judge, Sirajgonj in Sessions Case No. 338 of 2012 arising out of C.R. Case No. 27 of 2012 (Sadar) against the accused appellant is hereby affirmed.

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

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

Send down the lower Court records at once.