

**Present**

**Mr. Justice Sheikh Abdul Awal**

**Criminal Appeal No. 6804 of 2014**

Md. Saiful Islam

.....Convict-appellant.

-Versus-

The State

.....Respondent.

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.

**Judgment on 04.07.2024.**

**Sheikh Abdul Awal, J:**

This criminal appeal at the instance of convict appellant, Md. Saiful Islam is directed against the impugned judgment and order of conviction and sentence dated 11.05.2014 passed by the learned Sessions Judge, Sirajgonj in Sessions Case No. 280 of 2014 arising out of C.R. Case No.247 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 1(one) year and to pay a fine of Tk. 18,00,000/-(eighteen Lac) in default to suffer simple imprisonment for a period of 03 (three) months more.

The gist of the case is that one, Md. Aktar Hossen, as complainant filed a petition of complaint being C.R. Case No. No.247 of 2012 (Sadar) before the learned Judicial Magistrate, Cognizance Court No.1, Sirajgonj against the convict-appellant, Md. Saiful Islam under section 138 of the Negotiable Instruments Act,1881 stating, inter-alia, that to pay the loan amount the accused appellant issued a cheque being No. CTLG 0423584 amounting to Tk. 6,00,000/-(six Lac) of Rupali Bank in favour of the complainant on 03.07.2012 and the complainant presented the said cheque for encashment in bank on 15.07.2012 but the said cheque was dishonoured due to insufficient of fund and thereafter, the complainant sent a legal notice through his Advocate to the accused appellant on 16.07.2012 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, Cognizance Court No.1, Sirajgonj examined the complainant under Section 200 of the Code of Criminal Procedure and by order dated 26.08.2012 took cognizance against the accused-appellant under section 138 of the Negotiable Instrument Act, 1881 and also issued summon against the accused fixing next date on 13.11.2012.

In usual course the case record was sent to the Court of learned Sessions Judge, Sirajgonj for trial, wherein the case

was registered as Sessions Case No. 280 of 2014. The trial was held in absentia against the accused appellant as the accused appellant was absconding.

At the trial, the complainant examined in all 1 witness to prove the case, while the defence examined none.

On conclusion of trial, the learned Sessions Judge, Sirajgonj by his judgment and order dated 11.05.2014 found the accused appellant guilty under Section 138 of the Negotiable Instrument Act, 1881 and sentenced him thereunder to suffer rigorous imprisonment for 1(one) year and to pay a fine of Tk. 18,00,000/-(eighteen Lac) in default to suffer simple imprisonment for a period of 03 (three) months.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 11.05.2014, the convict-appellant preferred this criminal appeal.

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

In view of the fact that this petty old criminal appeal arising out of Negotiable Instruments Act relating 1(one) year has been dragging over a period of 10 years, I am inclined to dispose of it on merit.

On scrutiny of the record, it appears that Md. Aktar Hossen, as complainant filed a petition of complaint being C.R. Case No. No.247 of 2012 (Sadar) before the learned Judicial Magistrate, Cognizance Court No.1, Sirajgonj against the convict-appellant, Md. Saiful Islam under section 138 of the Negotiable Instruments Act,1881 stating, inter-alia, that to pay the loan amount the accused appellant issued a cheque being No. CTLG 0423584 amounting to Tk. 6,00,000/-(six Lac) of Rupali Bank in favour of the complainant on 03.07.2012 and the complainant presented the said cheque for encashment in bank on 15.07.2012 but the said cheque was dishonoured due to insufficient of fund and thereafter, the complainant sent a legal notice through his Advocate to the accused appellant on 16.07.2012 asking him to pay the cheque's amount within 30 days but the accused appellant did not pay any heed to it. It further appears that on receipt of the petition of complaint, the learned Senior Judicial Magistrate, Cognizance Court No.1, Sirajgonj examined the complainant under Section 200 of the Code of the Criminal Procedure and also took cognizance against the accused appellant by his order dated 26.08.2012. It further appears that at the time of trial the complainant party examined in all 1 witness. PW-1, Md. Akter Hossain as complainant stated in his deposition that accused appellant issued a cheque of Tk.6,00,000/-(six Lac) which has been dishonoured for insufficient of fund. Thereafter, the complainant sent a legal notice through his

learned Advocate to the accused appellant. No one cross-examined this as the trial was held in absentia against the accused appellant.

On perusal of record, it is found that the complainant-after exhausting all the legal formalities filed C.R. Case No. No.247 of 2012 (Sadar) under section 138 of the Negotiable Instruments Act,1881 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 deposition 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 11.05.2014 passed by the learned Session Judge, Sirajgonj in Session Case No. 280 of 2014, I find no flaw in the reasonings of the trial Court or any ground to assail the same. No interference is therefore called for.

In the result, the appeal is dismissed. The impugned judgment and order of conviction and Sentence dated 11.05.2014 passed by the learned Session Judge, Sirajgonj in Sessions Case No. 280 of 2014 arising out of C.R. Case No.247 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 1(one) year and to pay a fine of Tk. 18,00,000/-(eighteen Lac) in default to suffer simple imprisonment for a period of 03 (three) months more is hereby affirmed.

Since the appeal is dismissed the convict appellant, Md. Saiful Islam 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 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.