

Present

Mr. Justice Sheikh Abdul Awal

Criminal Appeal No. 5464 of 2015

Mst. Sahanara Begum (Bulu)

.....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

Heard and Judgment on 24.04.2024.

Sheikh Abdul Awal, J:

This criminal appeal at the instance of convict appellant, Mst. Sahanara Begum (Bulu) is directed against the impugned judgment and order of conviction and Sentence dated 20.03.2014 passed by the learned Metropolitan Sessions Judge, Rajshahi in Metropolitan Sessions case No. 1128 of 2013 arising out of C.R. Case No. 630 of 2011 convicting the accused appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple imprisonment for a period of 06 (six) months and to pay a fine of Tk1,00,000/- (one Lac) only.

The gist of the case is that one, Md. A. Rab as complainant filed a petition of complaint being C.R. Case No. 630 of 2011 in the Court of the learned Chief Metropolitan Magistrate, Rajshahi against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 stating, inter-alia, that to pay the loan amount on 05.12.2010 the convict-appellant issued a cheque being No. SB/A 7549260 amounting to Tk. 1,00,000/-(one Lac) of Dutch Bangla Bank Ltd. in favour of the complainant and thereafter, the complainant presented the said cheque for encashment in bank but the said cheque was dishonoured for insufficient of fund and thereafter, a legal notice was sent through Advocate to the accused appellant on 03.05.2011 asking him to pay the cheque's amount within 30 days but did not pay any heed to it and hence, the case.

On receipt of the petition of complaint, the learned Metropolitan Magistrate, 1st Court, Rajshahi examined the complainant under Section 200 of the Code of Criminal Procedure and the learned Magistrate after being satisfied took cognizance against the accused-appellant under section 138 of the Negotiable Instrument Act, 1881 and also issued summon against her and thereafter the accused appellant appeared before the Metropolitan Magistrate, 1st Court and obtained bail.

In this background the case record was sent to the Court of the learned Sessions Judge, Rajshahi wherein it

was registered as Sessions Case No. 1128 of 2013 and thereafter 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 she has been falsely implicated in this case.

At the trial the complainant side examined 2 witnesses and also exhibited some documents to prove his case while the defence examined none.

On conclusion of trial, the learned Metropolitan Sessions Judge, Rajshai by the impugned judgment and order dated 20.03.2014 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 06 (six) months and to pay a fine of Tk1,00,000/-(one Lac) only.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 20.03.2014, 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 the appellant.

In view of the fact that this petty old criminal appeal arising out of 6 (six) months sentence under the Negotiable

Instruments Act, 1881 has been dragging before this Court for more than 8 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. 630 of 2011 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 06.09.2015 granted bail to the convict-appellant for a period of 6 (six) months which was lastly extended on 29.02.2016 for a period of 01(one) year and thereafter, no one took any step to extend the order of bail as a result of which, the said bail was expired long before on 29.02.2017. 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 20.03.2014 passed by the learned Metropolitan Sessions Judge, Rajshahi in Sessions Case No. 1128 of 2013, 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 Metropolitan Sessions Judge, Rajshahi appears to have considered all the material aspects of the case and justly convicted the accused appellant under Section 138 of the Negotiable Instrument Act, 1881 and sentenced her thereunder thereunder to suffer simple imprisonment for a period of 06 (six) months and to pay a fine of Tk1,00,000/-/(one Lac).

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 20.03.2014 passed by the learned Metropolitan Sessions Judge, Rajshahi in Metropolitan Sessions case No. 1128 of 2013 arising out of C.R. Case No. 630 of 2011 against the accused appellant is hereby affirmed.

Since the appeal is dismissed the convict appellant, Mst. Sahanara Begum (Bulu) is directed to surrender her bail bond within 6 (six) months from today to suffer her sentence, failing which the Trial Court shall take necessary steps to secure arrest against her.

The complainant 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.