

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Appeal No.10001 of 2016

Md. Unus Ali (Khairul)

.....convict-Appellant-petitioner

-Versus-

The State and another

..... opposite-parties

Mr. Md. Saiyedul Islam, Advocate

.....For the convict-Appellant-petitioner

Mrs. Aleya Khandker, A.A.G and

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. Md. Shafiqul Islam, Advocate

.....For the complainant-respondent No.2

Heard on: 07.08.2023, 08.08.2023 &

Judgment on: 16.08.2023.

Md. Kamrul Hossain Mollah.J:

Supplementary affidavit do form part of the main application.

This appeal has been preferred against the judgment and order of conviction and sentence dated 18.09.2016 passed by the learned Sessions Judge, Thakurgaon in Sessions Case No.143 of 2015 arising out of C.R. Case No.156 of 2015 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 01(one) year and also to pay a fine of Tk.7,20,000/-, (Seven lac twenty thousand) in default to suffer 03 (three) months simple imprisonment more.

The respondent No.2 as complainant filed a C.R. Case No.156 of 2015 before the learned Senior Judicial Magistrate, Cognizance Court-Ka, Thakurgaon.

The prosecution case, in short is that the accused-person had business relation with the complainant-respondent No.2 and due to business transaction and to meet a debt, the accused issued a cheque being No. 0554465 dated 27.11.2014, Sonali Bank Ruhia Branch to pay dues of Tk. 2,40,000/- in favour of the complainant but the said cheque was dishonored from the bank due to insufficient of funds on 02.03.2015 but still the accused did not pay the said money as such the case was filed on 27.04.2015.

The learned trial Court examined the complainant-respondent No.2 under section 200 of the Code of Criminal Procedure and took cognizance against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 and issued summons against him.

On 25.06.2015, the convict-appellant voluntarily surrendered before the learned concerned Court with a prayer for bail and after hearing, the convict-appellant was enlarged on bail of the instant case and the instant case was transferred to the learned Sessions Judge, Thakurgaon for trial. The charge was framed on 12.01.2016 by the learned trial Court under section 138 of the Negotiable Instruments Act, 1881 against the convict-appellant where he pleaded not guilty and claimed to be tried.

The prosecution examined 3 (three) witnesses to prove the case, on the other hand, the appellant examined none.

After completion of trial, the learned Sessions Judge, Thakurgaon convicted the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 01 (one) year with a fine of Tk.7,20,000/- in default to suffer 03(three) months more vide his judgment and order dated 18.09.2016. Out of the total fine amount, the complainant-respondent No.2 will get Tk. 2,40,000/- and remaining Tk. 4,80,000 will be received by the Government of Bangladesh.

Thereafter, the convict-appellant deposited an amount of Tk.1,20,000/- i.e. 50% of the disputed cheque amount on 03.10.2016 and also surrendered before the learned Court with a prayer for bail and the learned Sessions Judge, Thakurgaon by his order dated 03.10.2016 granted bail to the appellant for filing appeal before this Court.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 18.09.2016 the convict-appellant preferred this Appeal before this Court.

Mr. Md. Saiyedul Islam, the learned Advocate for the convict-appellant by filing a supplementary affidavit submits that the convict-appellant has preferred an appeal under section 410 of the Code of Criminal Procedure before this Court against the impugned judgment and order of conviction and sentence dated 18.09.2016 passed by the learned Sessions Judge, Thakurgaon in Sessions Case No.143 of 2015 arising out of C.R. Case No.156 of 2015 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 01 (one) year with a fine of Tk.7,20,000/- (seven lacs twenty

thousand) in default to suffer 03 (three) months more and out of total fine amount, the complainant-respondent No.2 will get Tk. 2,40,000/- and remaining Tk. 4,80,000/- will be deposited at the government treasury. Before filing the appeal, the convict-appellant deposited an amount of Tk. 1,20,000/- i.e. 50% of the cheque amount on 03.10.2016 by chalan and during pendency of the appeal, the convict-appellant on 13.02.2021 has paid in cash Tk.1,20,000/-(one lac twenty thousand) to the complainant-respondent No.2 which is the rest amount of the disputed cheque.

The learned Advocate lastly submits that during pendency of the appeal, the convict-appellant and complainant-respondent No.2 mutually discussed to settle the dispute out of Court. The complainant-respondent No.2 will have no objection if the instant Appeal is allowed with modification in favour of the convict-appellant.

On the other hand, Mr. Md. Shafiqul Islam, the learned Advocate appearing on behalf of the complainant-respondent No.2 by supporting the submission of the learned Advocate for the convict-appellant submits that during pendency of the appeal the convict-appellant and complainant-respondent No.2 mutually discussed to settle the dispute out of Court. The complainant-respondent No.2 will have no objection if the instant Appeal is allowed with modification in favour of the convict-appellant.

I heard the submissions of the learned Advocates of both the parties and perused the materials on record.

It appears from the submissions of the learned Advocates of both the parties and annexure-D annexed with the

supplementary-affidavit that during pendency of the appeal the convict-appellant and complainant-respondent No.2 mutually discussed to settle the dispute out of Court and the convict-appellant on 13.02.2021 has paid in cash Tk.1,20,000/- to the complainant-respondent No.2 which is the rest amount of the disputed cheque. The complainant-respondent No.2 will have no objection if the instant Appeal is allowed with modification in favour of the convict-appellant.

Accordingly, I find cogent and legal ground to interfere with the impugned judgment and order of conviction and sentence dated 18.09.2016. The appeal, therefore, has merit.

In the result, the Criminal Appeal No.10001 of 2016 is allowed with modification.

The judgment and order of conviction and sentence dated 18.09.2016 passed by the learned Sessions Judge, Thakurgaon in Sessions Case No.143 of 2015 is modified in part where the trial Court fined Tk.7,20,000/-. The convict-appellant deposited Tk.1,20,000/- at the time of filing appeal and paid in cash Tk.1,20,000/- to the complainant-respondent No.2 during pendency of the appeal on 13.02.2021 and total Tk.2,40,000/- has already been paid, which is the claim of complainant-respondent No.2 and now the fine of rest amount Tk.4,80,000/- be remitted and the conviction of the convict-appellant is hereby set-aside and the convict-appellant will be acquitted.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.1,20,000/- (one lac twenty thousand) to the complainant-respondent No.2 (if he did not take the said amount) and remaining fine of Tk.4,80,000/- is hereby remitted.

The order of bail granted earlier by this Court is hereby recalled and vacated.

Send down the lower Court records and communicate a copy of the judgment and order to the concerned Court below at once.

Md. Mustafizur Rahman
Bench Officer

