

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

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Criminal Appeal No.10971 of 2016

Amirul

.....convict-Appellant

-Versus-

The State and another

..... -respondents

None appears for both the parties.

Mrs. Aleya Khandker, A.A.G and

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Heard on and judgment on:10.08.2023

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred against the judgment and order dated 14.08.2016 passed by the learned Additional Sessions Judge, Magura in Sessions Case No.407 of 2015 arising out of C.R. No.443 of 2015 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 03 (three) months and with a fine of tk.60,000/- (sixty thousand) only.

The prosecution case, in short is that, the convict-appellant issued a cheque in favour of the complainant of Tk.60,000 /- (sixty thousand) on 23.06.2015. But on the same

date the said cheque was dishonoured by the concerned Bank due to insufficient fund. Thereafter, on 02.07.2015, the complainant served a legal notice to the convict appellant to pay the cheque amount within 30 days, the accused received the same on 08.07.2015 but the appellant did not pay the same and, as such, the accused committed offence under section 138 of the Negotiable Instrument Act, 1881. Hence the case.

The learned Senior Judicial Magistrate, 1st Court, Magura examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance of the offence against the accused-convict-appellant under section 138 of the Negotiable Instruments Act, 1881 and issued summon against the convict-appellant on 26.08.2015.

On 13.10.2015, the convict appellant appeared before the concerned Court with an application for bail which was allowed by the trial Court accordingly.

Subsequently, the instant case was transferred to the learned Sessions Court, Magura for trial and it was renumbered as Sessions Case No. 407 of 2015 and the case was sent to the

Court of Additional Sessions Judge, Magura for concluding trial.

Thereafter, the learned Additional Sessions Judge, Magura framed charge against the convict-appellant under section 138 of the Negotiable Instrument Act, 1881 vide his order dated 09.02.2016 and it was read over to the convict-appellant but he pleaded not guilty and claimed to be tried.

The prosecution has examined only 01(one) witness i.e. P.W.1 in the trial Court to prove the case and defence examined none. It was not possible to examine the convict appellant under section 342 of Code of Criminal Procedure as he was absconding.

After considering all the evidence on record and deposition of the witness, the learned Sessions Judge, Magura convicted the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer simple imprisonment for 03(three) months with a fine of Tk.60,000/- (sixty thousand) only vide his judgment and order dated 14.08.2016.

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

None appeared to press or oppose the instant appeal although it has appeared in the daily cause list with the names of the learned Advocates. However, considering the long pendency of the of the same, it has been taken up for disposal on merit.

Now, let us discuss the evidence of prosecution witness.

P.W.1 Md. Zihad Ali, complainant of the case stated in his chief that the convict-appellant issued a cheque of amounting Tk.60,000/- on 23.06.2015 from his account. On 23.06.2015, he deposited the said cheque before the concerned bank for encashment but the cheque was dishonored due to insufficient funds on the same date. Thereafter, he sent legal notice to the convict-appellant on 02.07.2015 and the convict-appellant received it on 08.07.2015 though the convict appellant did not pay the cheque amount. Hence he filed the case. He proved the complaint petition as Exhibit-1 and his signatures therein as Exhibits-1/1. He identified the alleged

cheque as Exhibit-2, dishonour slip, Legal Notice and Acknowledgment Slip as Exhibit- 3 series.

In his cross he stated that he was acquainted with the accused. He gave amounting Tk.60,000/- on 04.03.2015 before the witnesses. Subsequently, the accused without paying the money, issued a cheque in favour of him on 23.06.2015 and on the same date, he deposited the cheque before the concerned bank for encashment but the same was dishonoured for insufficient of funds. He filed the case on 15.08.2015. He sent the legal notice to the accused on 02.07.2015.

Considering the lower Court records, evidence and above facts and circumstances, it appears the content described in the petition of complaint (Exhibit-1) has been expressed by the complainant very coherently in his statement before the trial Court. His cross-examination and the statement were consistent with the complaint and there was no inconsistency on the fundamentals. The complainant's Exhibit-2 is the alleged cheque dated 23.06.2015. On perusal of the said Exhibit-2 shows that it is a cheque of Islami Bank Bangladesh Limited and there were the account number printed on the cheque. The

said cheque bears the signature of the accused. It is a cheque of Tk. 60,000/-(sixty thousand) in which date 23.06.2015 is written. The cheque has no rubbing and is a clean cheque. The complainant's Exhibits-3 is the dishonor slip dated 23.06.2015. The said dishonor slip states that it has been dishonored due to insufficient funds. The complainant's Exhibits-3/ 1 and 3/2 were perused. The legal notice marked as Exhibit-3/1 served to the convict-appellant on 02.07.2017 in registry envelope and the acknowledgement slip marked as Exhibit-3/2 and those were also been stated in the complaint petition.

In the light of the above discussion, it is clear before me that the accused-convict-appellant issued a cheque amounting Tk.60,000/- (sixty thousand) and for encashment of the said cheque the complainant presented it to his concerned bank for encashment within the prescribed time limit (within six months) prescribed in the Act. But due to "Insufficient Funds", the said cheque has been dishonored. Thereafter, the complainant has filed his complaint by duly fulfilling all the conditions of Section 138/141 of the Negotiable Instruments Act, 1881. The learned cognizance Court duly reviewed the petition of

complaint and the documents on record and accepted the sworn statement of the complainant and took cognizance the offence under Section 138 of the Negotiable Instruments Act, 1881 against the accused.

Therefore, the learned Additional Sessions Judge, Magura passed the judgment and order of conviction and sentence dated 14.08.2016 rightly in Sessions Case No.407 of 2015 corresponding to C.R. No.443 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 03(three) months and also to pay a fine of Tk.60,000/- (sixty thousand) only and which is maintainable in the eye of law.

Accordingly, I do not find any cogent and legal ground to interfere with the impugned judgment and order of conviction and sentence. The appeal, therefore, has no merit.

In the result, the Criminal Appeal No.10971 is hereby dismissed. The judgment and order of conviction and sentence dated 14.08.2016 passed by the learned Additional Sessions

Judge, Magura in Sessions Case No.407 of 2015 corresponding to C.R. No.443 of 2015 is hereby upheld and confirmed.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.30,000/- of the fine amount to the complainant-respondent No.2 (if he did not take the said amount).

The convict-appellant is hereby directed to surrender before the concerned Court below within 15(fifteen) days from the date of the receipt of the judgment and order, failing which the concerned Court below will take necessary steps to secure his arrest.

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