

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

**Present:**

Mr. Justice Md. Kamrul Hosssain Mollah

**Criminal Appeal No.12770 of 2017**

Md. Shawkat Imran

.....convict-Appellant

-Versus-

The State and another

..... opposite-parties

No one appears

.....For the convict-Appellant

, A.A.G

.....For the State

Mr. Abdul Mannan Bhuiyan, Advocate

.....For the respondent-opposite party No.2

**Heard on: 09.01.2024 &**

**Judgment on: 11.01.2024.**

**Md. Kamrul Hossain Mollah.J:**

This appeal has been preferred against the judgment and order of conviction and sentence dated 16.10.2017 passed by the learned Additional Sessions Judge, 1<sup>st</sup> Court, Gazipur in Sessions Case No. 1308 of 2015 corresponding to C.R. Case No. 1206 of 2015 convicting the appellant under section 138 of the Negotiable Instrument Act 1881 and sentenced him to suffer imprisonment for 01(one) year with a fine of Tk.23,91,000/- (twenty three lakh and ninety one thousands).

The respondent No.2, as complainant filed a petition of complaint under section 138 of the Negotiable Instrument Act, 1881 before the learned Chief Judicial Magistrate, Gazipur.

The prosecution case, in short, is that the convict-appellant being proprietor of Style Taylors and Fabrics used to purchase rod and cement from the wholesale shop of the respondent No.2. In this way appellants outstanding payment became 11,95,500 (taka eleven lakh ninety five thousand and five hundred). While the respondent No.2 requested the appellant seeking repayment of the said loan amount, the appellant has issued a cheque being No. 1536364 amounting Tk. 10,00,000/- (ten lakh) and another cheque being No. 1536365 of amounting Tk. 1,95,500(one lakh ninety five thousands) both dated 19.03.2015, from appellants savings Account No. 0000000000300, account name: Style Fabrics and Taylors of Uttara bank Ltd., BKSP Branch. The complainant then deposited the said cheques for encashment in the Southeast Bank Ltd., BKSP branch on 06.07.2015 which was then returned by the bank unpaid due to insufficient fund. Thereafter, the complainant issued 02 separate legal notices on 17.07.2015, but the convict-appellant did not respond of those notices. Afterwards, the complainant filed a petition of complaint

against the instant appellant under section 138 of the Negotiable Instrument Act, being C.R. Case No. 1206 of 2015 dated 24.08.2015.

The learned Chief Judicial Magistrate, Sherpur recorded the statement of complainant under section 200 of the Code of Criminal Procedure and took cognizance against the accused-convict-appellant under section 138 of the Negotiable Instruments Act, 1881 and issued a summon upon the convict-appellant. Thereafter, the convict-appellant voluntarily surrendered before the learned trial Court along with a prayer for bail and he was enlarged on bail.

Subsequently, the instant case was transferred to the learned Sessions Judge, Gazipur for trial and it was renumbered as Sessions Case No.1308 of 2015 and the learned Sessions Judge transferred the case to the Additional Sessions Judge Court, 1<sup>st</sup> Court, Gazipur who after hearing framed charge against the convict-appellant under section 138 of the Negotiable Instrument Act, 1881 and the charge was read over to the convict-appellant whom he pleaded not guilty and claimed to be tried.

The prosecution has examined only 01(one) witness in the trial Court to prove the case and defence examined none and the convict appellant had also been examined under section 342 of Code of Criminal Procedure in which he once again pleaded not guilty thereto and claimed to be tried.

After considering all the evidence on record and deposition of the witness, the learned Additional Sessions Judge, Gazipur passed the judgment and order of conviction and sentence on 16.10.2017, convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer imprisonment for 01(one) year with a fine of Tk. 23,91,000/- (twenty three lakh and ninety one thousands).

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

No one appears on behalf of the petitioner.

Mr. Mr. Abdul Mannan Bhuiyan, the learned Advocate appearing on behalf of the complainant-respondent No.1 submits that the convict-appellant being proprietor of Style Taylors and Fabrics used to purchase rod and cement from the wholesale

shop of the respondent No.2. In this way appellants outstanding payment became 11,95,500 (taka eleven lakh ninety five thousand and five hundred). While the respondent No.2 requested the appellant seeking repayment of the said loan amount, the appellant has issued a cheque being No. 1536364 amounting Tk. 10,00,000/- (ten lakh) and another cheque being No. 1536365 of amounting Tk. 1,95,500(one lakh ninety five thousands) both dated 19.03.2015, from appellants savings Account No. 000000000300, account name: Style Fabrics and Taylors of Uttara bank Ltd., BKSP Branch. The complainant then deposited the said cheques for encashment in the Southeast Bank Ltd., BKSP branch on 06.07.2015 which was then returned by the bank unpaid due to insufficient fund. Thereafter, the complainant issued 02 separate legal notices on 17.07.2015, but the convict-appellant did not respond of those notices. Therefore, the prosecution rightly proved the charge brought against the convict-petitioner complying with all formalities as required under Section 138 of the Negotiable Instruments Act, 1881 and as such the trial Court found the accused-petitioner guilty and thereby sentenced him which warrants no interference by this Court. He lastly prays for dismissing the Appeal.

In order to appreciate the submission of the learned Advocate for the respondent-opposite party No.2, this Court is to weigh the relevant evidence and materials on record and scan the attending evidence of the case to unearth the actual facts of the case to arrive at a proper and correct decision.

Now, let us discuss the evidence of prosecution witnesses.

P.W.1 Majedul Islam Rassel, complainant of the case deposed that the accused purchased rod and cement from the wholesale shop of him and for payment he issued two cheques of amounting Tk. 11,95,500. He then deposited the said cheques for encashment in the concerned bank on 06.07.2015 which was then returned by the bank unpaid due to insufficient fund. Thereafter, the complainant issued 02 separate legal notices on 17.07.2015, but the convict-appellant did not respond of those notices. He proved the suit cheques as Exhibit -1 and 1/1, dishonor Slips as Exhibits-1/2 and 1/3, Legal Notices as Exhibits-1/4 and 1/5.

In cross he stated that he had a business of selling Rod and Cement and the accused used to buy Rod and Cement from him. There were transaction of money between him with the accused.

He denied the defence-suggestion that the accused gave him amounting of Tk. 10,000,00/-as a guarantee against the transaction or that he filed the case against the accused using the cheque which was kept to him as a guarantee or that he did not send the legal notice to the accused.

Considering the lower Court records, evidence and above facts and circumstances, it appears from the complainant's complaint that the content described in it has been expressed by the complainant very coherently in his statement before the trial Court and PW.1 also supported the prosecution case. His cross-examination and the statements are consistent with the complaint and there was no inconsistency on the fundamentals. The complainant's Exhibits-1 & Exhibits 1/1 are the alleged cheques dated 19.03.2015. On perusal of the said Exhibit-1 & 1/1 shows that these are cheques of Uttara Bank Ltd. and there were the account number and Shawkat Imran is printed on the cheques. The said cheques bears the signature of the accused. These are cheques of Total Tk. 11,95,500/-/- (eleven lacs ninety five thousand and five hundred) in which date 19.03.2015 is written in both the cheques. The cheques have no rubbing and are clean cheques. The complainant's Exhibits-1/2 and 1/3 is the dishonor

slips date 06.07.2015. The said dishonor slips stated that those have been dishonored due to insufficient funds. The complainant's Exhibits-1/4 and 1/5 were perused. The original copies of the Legal notices marked as Exhibitd-1/4 and 1/5 which were issued to the convict-appellant on 16.07.2015 in registry envelope with AD. The name and address of the accused are correctly written in the envelope 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 two cheques of amounting Tk.11,95,500 and for encashment of the said cheques the complainant presented those to his concerned bank within the prescribed time limit (within six months) of the Act. But due to insufficient funds, the said cheques have 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 plaint application 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, 1<sup>st</sup> Court, Gazipur passed the judgment and order of conviction and sentence dated 16.10.2017 in Sessions Case No.1308 of 2015 corresponding to C.R. No.1206 of 2015 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 01(one) year and also to pay a fine of Tk.23,91,900/- (Twenty three lakh and ninety one thousands) rightly 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. Even though it is found that given sentence one year is very harsh for the accused petitioner.

In the result, the Criminal Appeal No.12770 of 2017 is hereby dismissed with modification sentencing portion only. The judgment and order of conviction and sentence dated 27.07.2017 passed by the learned Sessions Judge is modified in part where the trial Court sentenced the accused to one year imprisonment is reduced to 06(six) months.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.5,97,750/-(five lacs ninety seven thousand and seven hundred fifty) of the fine amount to the respondent-opposite party No.2 (if he did not take the said amount).

The convict-appellant is hereby directed to surrender before the concerned Court below (if he is on bail) 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 vacated.

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

*Akhil ABO*

