

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 2229 of 2018

Md. Mizanur Rahman
.....Convict-appellant.

-Versus-

Syed Abul Khair and another.
.....Respondents.

Mr. Md. Yamin Newaj Khan, Advocate
.....For the appellant.

Mr. Ankush Kumar Saha, Advocate.
... For the Respondent No.1.

Ms. Shahida Khatoon, D.A.G with
Ms. Sabina Perven, A.A.G with
Ms. Kohenoor Akter, A.A.G
... For the Sate.

Heard on 29.02.2024, 05.03.2024 and
Judgment on 06.03.2024

Sheikh Abdul Awal, J:

This Appeal at the instance of convict appellant, Md. Mizanur Rahman is directed against the judgment and order of conviction and sentence dated 25.10.2017 passed by the learned Additional Metropolitan Sessions Judge, 8th Court, Dhaka in Metro Sessions Case No. 15543 of 2016 arising out of C.R. Case No. 440 of 2015 convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him

thereunder to suffer imprisonment for a period of 1 (one) year and to pay a fine of Tk. 8,50,000/- (eight Lakhs fifty thousand).

Mr. Md. Yamin Newaj Khan, the learned Advocate appearing for the convict-appellant and Mr. Ankush Kumar Saha, the learned Advocate appearing for the complainant-Respondent No.1 after placing an application dated 05.03.2024 jointly submitted that during the pendency of the appeal, the parties have amicably settled the matter by making a deed of compromise in which the appellant has paid entire cheque's amount to the complainant-Respondent No.1 and as per deed of compromise the complainant-Respondent No.1 should have withdrawn the money amounting to Taka 4,25,000/- (Four lakhs twenty five thousand) deposited by the convict-appellant at the time of preferring this appeal.

The learned Advocates for both the parties further jointly submitted that since both the parties have already made compromise over the dispute, the appeal may kindly be allowed upon recording compromise, offence under Section 138 of the Act may be compounded and the conviction of the appellant is liable to be set-aside.

Having heard the learned Advocates for both the parties and perused the compromise petition filed under

the joint signature of the learned Advocates for both the parties together with the deed of compromise (Annexure-A).

Having regard to the submission made by the learned Advocates for both the parties, I am of the view that there is no reason not to accept the compromise entered into between the parties. The Negotiable Instruments Act, 1881 is silent about compromise of offences under the Act, but the Act does not make any provision therein prohibiting such compromise. Since N.I. Act proceeding arises out of monetary transaction and the proceeding is a quasi civil and quasi criminal in nature, maximum sentence under the law is one year, I am of the view that the dispute between the parties under Negotiable Instruments Act proceeding has been resolved out of Court by the parties on compromise and the same should be allowed by the Court at any stage of the proceeding even at the appellate or revisional stage.

In the Supreme Court of India, it has been consistently decided that the offence under Section 138 of the Negotiable Instruments Act being compoundable.

For the reasons stated above, I allow the prayer made on behalf of the contesting parties with the direction that compromise done by the parties is hereby

accepted and dispose of the appeal on the basis of the said compromise.

Accordingly, the appeal is allowed by holding that since the matter has been compromised between the parties and the amount in terms of the said compromise has been paid, the appellant is entitled to acquittal.

The order of conviction and sentence passed by the trial Court below is set-aside and the appellant is acquitted of the charge under Section 138 of the Act. Convict appellant, Md. Mizanur Rahman is discharged from his bail bond and the trial Court is directed to allow the complainant-Respondent No.1 to withdraw half of the cheque's amount deposited in the Trial Court by the convict-appellant for the purpose of preferring this Criminal Appeal.

The appeal stands disposed of in the above terms.

Send down the lower Court records at once.