

Present:

Mr. Justice Md. Salim

CRIMINAL APPEAL NO.2830 OF 2018

Md. Jewel Rana

.....Appellant.

-Versus-

Md. Rafiqu Ullah Nehal

.....Respondent

No one appears

---- For both parties.

Mr. Monzurul Alam Sujan, DAG

Mr. Towhidul Islam, AAG

Mr. Syed Akhtarul Islam, AAG

..... For the State.

Heard on 14.05.2026 and 20.05.2026.

Judgment on 20.05.2026.

This appeal, at the instance of the complainant-appellant, Golam Mohammad Ali, is directed against the judgment and order dated 14.01.2018, passed by the learned Joint Metropolitan Sessions Judge, 5th Court, Dhaka, in Metro Sessions Case No.1705 of 2016 arising out of C.R. No.146 of 2012 acquitting the respondent No.2 from the charge under section 138 of the Negotiable Instrument Act,1881 should not be set aside and ort pass such other or orders as to this court seem fit and proper.

The appellant herein, as complainant, filed a complaint before the Metropolitan Magistrate, Dhaka, against the respondent No.2 for committing an offense punishable under Section 138 of the Negotiable Instruments Act, 1881, as the accused respondent No.2 issued three cheques amounting to Tk. 10,00,000/- each cheque in a total of Tk. 30,00,000/- in favor of the complainant-appellant. The complainant deposited the said cheques with the concerned bank for encashment; however, all three cheques were dishonored on 26.12.2011 for insufficient funds on account of the accused respondent No.2. The complainant then issued a notice on 19.01.2012 through registered post with AD to the respondent No.2 requesting him to pay the cheque amounts. But the respondent No. 2 did not pay the same within the time specified in the legal notice. On the above allegation, the learned Metropolitan Magistrate, Dhaka, after examining the complainant under Section 200 of the Code of Criminal Procedure, took cognizance of the case against the respondent No. 2 under Section 138 of the Negotiable Instruments Act, 1881. Thereafter, the case was registered as C.R. Case No.146 of 2012.

Being ready, the case was transferred to the Metropolitan Sessions Judge, Dhaka, where it was registered as Metro Sessions Case No. 1705 of 2016. Subsequently, the case record was transferred to the 5th Court of the Joint Metropolitan Sessions Judge, Dhaka, for trial.

The learned Joint Metropolitan Sessions Judge then framed the charge against the respondent No.2 under Section 138 of the Negotiable Instruments Act, 1881, which could not be read over and explained to him, as he was absent from the court.

In order to bring home the charge, the prosecution examined 1(one) witness while the defense examined none.

After the closure of the evidence, a date was fixed for the examination of the respondent No. 2 under Section 342 of the Code of Criminal Procedure, but it was not possible, as he remained absent from the court.

Subsequently, the learned Joint Metropolitan Sessions Judge, 5th Court, Dhaka, by the judgment and

order dated 14.01.2018, acquitted the respondent No. 2 from the charge against him.

In this backdrop, the complainant, as appellant, has preferred the instant appeal under Section 417 of the Code of Criminal Procedure.

Mr. Md. Akmal Hossain, the learned Deputy Advocate appearing on behalf of the appellant, submits that the order of acquittal of the accused respondent No. 2 from the charge was not in keeping with law under section 247 of the Code of Criminal Procedure, as well as the facts. He then submits that the trial court has failed to appreciate that the legal notice was duly served by registered post with acknowledgment due, but the complainant failed to bring the same before the court due to its lost.

On the contrary, no one appears for the respondent No. 2.

Be that as it may, we have considered the submission so contemplated in the petition, perused the impugned judgment and other materials on record. It appears from record that the disputed cheques exhibits-

3, 3/1, and 3/2 that all the cheques were issued by the accused respondent No.2. On the contrary, from the averments of the petition of complaint it appears that all the cheques were dishonoured on 26.12.2011 for the insufficient of funds on the account of the respondent No.2. Thereafter, the complainant-appellant served legal notice upon the address of the respondent No.2 through registered post with acknowledgement due but could not produced any postal receipts and acknowledgment due to prove that the legal notice was duly served upon the accused respondent No. 2.

Considering the above facts and circumstances, the learned judge of the trial court below dismissed the case with the finding that the prosecution has failed to comply with the provisions of section 138(1) and (b) of 1A of the Negotiable Instrument Act.

Notably, if the legal notice is found not to have been served, the trial is vitiated. In order to substantiate the question of mode of service of notices in a case under section 138 of the Negotiable Instruments Act, we may quote Sub-section (1A) of section 138 of the Act, which provides 3 (three) modes of service, which run as under:-

"138. Dishonour of cheque for insufficiency, etc. of funds in the account-(1)....."

[(1A) The notice required to be served under clause (b) of sub-section (1) shall be served in the following manner-

(a) by delivering it to the person on whom it is to be served; or

(b) by sending it by registered post with acknowledgment due to that person at his usual or last known place of abode or business in Bangladesh; or

(c) by publication in a daily Bangla national newspaper having wide circulation....."

It manifests that service of notice upon the drawer of the cheque shall be deemed to have been duly served if: (a) it has been delivered to the person on whom it is to be served; or (b) that the notice has been sent to that person by registered post with acknowledgement due at his usual or last known place of abode or business in the country; or (c) by publication in a daily bangla national newspaper having wide circulation.

Service of notice under clause (b) of sub-section (1) of section 138 of the Act means any of the 3(three) modes

as provided under clause (a),(b), and (c) of sub-section (1A) of section 138 of the Act. The legislature, while prescribing the above three (3) modes of service of notice, has used the word "or," and thus makes each clause disjunctive. The duty of the payee is discharged once he serves a notice either under clause (a), (b), or (c) of sub-section (1A) of section 138 of the Act.

In the instant case we have already notice that the complainant-appellant has claimed that he has served the legal notice upon the accused-respondent No. 2 by registered post with acknowledgment due, but he has failed to furnish any postal receipt or acknowledgment due or other prove showing that the notice was duly served upon the accused-respondent No. 2. Therefore, the instant case is barred under subsection 1A of Section 138 of the Negotiable Instruments Act.

Under the above facts and circumstances, it appears that the trial Court below committed no error of law in passing the impugned judgment and order, which has resulted in no error in the decision occasioning failure of justice. Moreover, the impugned judgment and

order in their entirety are well founded in the facts and circumstances of the case.

In the result, the appeal is dismissed without any order as to costs.

Send down the lower court records at once along with a copy of the judgment.

(Md. Salim,J:)