

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 4924 of 2018

GM Kamal
.....Convict-appellant.

-Versus-
The State and others
.....Respondents.

Mr. A.H.M. Khalilullah (Sajib),
Advocate
.....For the appellant.

Mr. Mr. Baharul Alam, Advocate.
.... For the Respondent Nos. 2(a)-2(e)

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 29.04.2024, 15.05.2024 and
Judgment on 09.06.2024

Sheikh Abdul Awal, J:

This Appeal at the instance of convict appellant, G.M. Kamal is directed against the judgment and order of conviction and sentence dated 03.07.2014 passed by the learned Special Judge, 3rd Court, Dhaka in Special Sessions Case No. 54 of 2011 arising out of C.R. Case No. 2427 of 2010 convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and

sentencing him thereunder to suffer imprisonment for a period of 6 (six) months and to pay a fine of Tk. 11,00,000/- (eleven Lakhs).

Mr. A.H.M. Khalilullah (Sajib), the learned Advocate appearing for the convict-appellant and Mr. Baharul Alam, the learned Advocate appearing for the complainant-Respondent Nos. 2(a)-2(e) after placing an application dated 02.06.2024 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 Nos. 2(a)-2(e) and as per deed of compromise the complainant-Respondent Nos. 2(a)-2(e) should have withdrawn the money amounting to Taka 5,00,000/- (Five lakhs) as deposited by the convict-appellant at the time of preferring this appeal.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-I).

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, GM Kamal is discharged from his bail bond and the trial Court is directed to allow the complainant-Respondent Nos. 2(a)-2(e) 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.