

**IN THE SUPREME COURT OF  
BANGLADESH**

**HIGH COURT DIVISION**

**(CRIMINAL APPELLATE JURISDICTION)**

Present:

**Mr. Justice Md. Shohrwardi**

**Criminal Appeal No.8733 of 2018**

Md. Abdul Quddus Mondal  
.....appellant

-Vs-

The State and another  
.....respondents

Ms. Shamsun Nahar Begum, Advocate  
....For the convict appellant.

Mr. Md. Azizur Rahman, Advocate  
.....For the respondent No.2

Mr. S.M. Golam Mostofa Tara, DAG with  
Mr. A. Monnan, AAG  
..... for the State

**Heard on 24.05.2023, 09.07.2023**

**Judgment on: 08.01.2024**

This appeal under section 410 of the Code of Criminal Procedure, 1898 is directed against the impugned judgment and order dated 22.02.2018 passed by Additional Sessions Judge, Court No. 2, Rangpur in Session Case No. 163 of 2017 arising out of C.R. Case No. 27 of 2016 (Mithapukur) convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him thereunder to suffer rigorous imprisonment for 1(one) year and to pay a fine of Tk. 4,90,000.

The prosecution case, in short, is that the accused Md. Abdul Quddus Mondal is a relative of the complainant Md. Moshfequr Rahman and the accused took loan of Tk. 4,90,000 from the complainant. After that, the accused issued cheque No. 5202057 dated 25.11.2015 drawn on his Saving Account No. 14101/32 maintained with the Sonali Bank Limited, Pirgonj Branch, Rangpur for payment of Tk. 4,90,000. The payee presented the said cheque on 22.12.2015 for encashment which was dishonoured on the same date with the remark “insufficient funds”. Thereafter, the complainant issued a legal notice on 17.01.2016 through registered post with AD upon the accused. The accused received the legal notice on 20.01.2016 but he did not pay the cheque amount. Consequently, the complainant filed the case on 10.03.2016.

After filing the complaint petition, the complainant was examined under section 200 of the Code of Criminal Procedure, 1898 and the learned Magistrate was pleased to take cognizance of the offence against the accused under section 138 of the Negotiable Instruments Act, 1881. Thereafter, the case record was transmitted to the Sessions Judge, Rangpur and the case was registered as Session Case No. 163 of 2017 and the Sessions Judge, Rangpur sent the case to the Additional Sessions Judge, Court No. 2, Rangpur for trial.

During the trial, the charge was framed on 01.01.2018 against the accused under section 138 of the Negotiable Instruments Act, 1881. At the time of the framing charge, the accused was absconding. The prosecution examined one PW to prove the charge against the accused. The trial Court after concluding the trial by impugned judgment and order convicted the accused and sentenced him as stated above against which he filed the appeal.

P.W. 1 Md. Moshfequr Rahman is the complainant. He stated that accused Md. Abdul Quddus Mandal took loan of Tk. 4,90,000 in March/April of 2015. He issued a cheque on 25.11.2015 drawn on Sonali Bank Limited, Pirgonj Branch for payment of the loan amount. He presented the cheque on 22.12.2015 for encashment but the cheque was returned with the remark "insufficient funds". He issued a legal notice on 17.01.2016 through the learned Advocate upon the accused. The accused received the legal notice on 20.01.2016. He proved the complaint petition as exhibit-1 and his signatures as exhibits-1/1 and 1/2. He proved the cheque dated 25.11.2015 as exhibit-2, the dishonour slip dated 22.11.2015 as exhibit-3, the legal notice as exhibit-4, the postal receipt registered with AD as exhibit-5 and the acknowledgement receipt as exhibit-6. The defence did not cross-examine P.W.1.

The learned Advocate Most. Shamsun Nahar Begum appearing on behalf of the appellant submits that both the complainant and the accused settled the dispute out of court and he paid Tk. 4,35,000 out of the cheque amount Tk. 4,90,000 and the accused is ready to pay the remaining amount within 1(one) month.

The learned Advocate Mr. Azizur Rahman (Dulu) appearing on behalf of respondent No. 2 submits that the accused issued cheque Nos. 5202057 dated 25.11.2015 drawn on his Saving Account No. 14101/32 maintained with the Sonali Bank Limited, Pirgonj Branch, Rangpur for payment of Tk.

4,90,000. Thereafter, the payee presented the said cheque on 22.12.2015 to the bank for encashment which was dishonoured on the same date with the remark “insufficient funds” and after complying with all the legal procedures provided in section 138 of the Negotiable Instruments Act, 1881 filed the case and P.W. 1 proved the charge against the accused beyond all reasonable doubt. He prayed for the dismissal of the appeal.

I have considered the submission of the learned Advocate Ms. Shamsun Nahar Begum who appeared on behalf of the appellant and the learned Advocate Mr. Azizur Rahman (Dulu) who appeared on behalf of respondent No. 2, perused the evidence, the impugned judgment and order passed by the trial court and the records.

On perusal of the records, it appears that the accused took a loan of Tk. 4,90,000 from the complainant. After that, the accused issued cheque No. 5202057 dated 25.11.2015 drawn on his Saving Account No. 14101/32 maintained with the Sonali Bank Limited, Pirgonj Branch, Rangpur for payment of Tk. 4,90,000. The payee presented the said cheque on 22.12.2015 for encashment which was dishonoured on the same date with the remark “insufficient funds”. Thereafter, the complainant issued a legal notice on 17.01.2016 through registered post with AD upon the accused. The accused received the legal notice on 20.01.2016 but he did not pay the cheque amount. After complying with all the legal procedures, the complainant filed the case on 10.03.2016 under section 138 of the Negotiable Instruments Act, 1881. During the trial, the defence did not cross-examine P.W. 1. Therefore, the evidence of P.W. 1 as regards the issuance of the cheque by the accused remains uncontroverted.

There is a presumption under section 118(a) of the Negotiable Instruments Act, 1881 that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. The presumption under Section 118 (a) of the said Act is rebuttable. The accused neither adduced evidence nor cross-examined P.W. 1 to rebut the presumption under Section 118(a) of the said Act. Therefore, I am of the view that the accused issued the cheque in favour of the payee complainant for consideration. After the service of notice in writing, the accused failed to pay the cheque amount. Thereby the accused

committed an offence under Section 138 of the Negotiable Instruments Act, 1881.

Considering the facts and circumstances of the case, I am of the view that ends of justice would be best served, if the sentence passed by the trial court is modified as under:

The accused Md. Abdul Quddus Mondal is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and he is sentenced to suffer simple imprisonment for 1 (one) month and to pay a fine of Tk. 4,90,000.

In the result, the appeal is disposed of with modification of the sentence.

Send down the lower Court's record at once.