

Present

Mr. Justice Sheikh Abdul Awal

Criminal Appeal No. 449 of 2019

Md. Hasan Sheikh

.....Convict-appellant.

-Versus-

The State and another

.....Respondent.

No one appears

.....For the convict-appellant.

Ms. Shahida Khatoon, D.A.G with

Ms. Sabina Perven, A.A.G with,

Ms. Koheenoor Akter, A.A.G.

..... For the respondent

Mr. Uttom Kumar Mestree, Advocate

..... For the respondent No.2.

Judgment on 05.06.2024.

Sheikh Abdul Awal, J:

This criminal appeal at the instance of convict appellant, Md. Hasan Sheikh is directed against the impugned judgment and order of conviction and Sentence dated 28.10.2018 passed by the learned Sessions Judge, Bagerhat in Sessions Case No. 367 of 2017 arising out of C.R. Case No. 129 of 2017(Fakirhat) convicting the accused appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple

imprisonment for a period of 06 (six) months and to pay a fine of Tk. 3,00,000/-(Three Lac) only.

The gist of the case is that one, Md. Sirajul Islam as complainant filed a petition of complaint being C.R. Case No. 129 of 2017(Fakirhat) in the Court of the learned Judicial Magistrate, Cognizance Court, Bagerhat against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 stating, inter-alia, that the complainant respondent No. 2 out of previous good relationship paid Tk. 2,00,000/- (two Lac) as loan to accused appellant and thereafter, the accused in order to pay the loan amount on 13.06.2017 issued a cheque being No. 0827527 amounting to Tk. 2,00,000/-(two Lac) of Bangladesh Krishi Bank, Nowapara Branch, Bagerhat in favour of the complainant and thereafter, the complainant presented the said cheque in bank on 13.06.2017 for encashment but the said cheque was dishonoured for insufficient of fund and thereafter, the complainant sent a legal notice through his Advocate to the accused appellant on 03.07.2017 asking him to pay the cheque's amount within 30 days but the accused-appellant did not pay any heed to it and hence, the case.

On receipt of the petition of complaint, the learned Judicial Magistrate, 4th Court, Bagerhat examined the complainant under Section 200 of the Code of Criminal Procedure on 29.08.2017 and after being satisfied took

cognizance against the accused-appellant under section 138 of the Negotiable Instrument Act, 1881 and also issued summon against the accused appellant fixing next date on 27.09.2017 and thereafter, the accused appellant voluntarily surrendered before the Court concerned and obtained bail.

In usual course the case record was sent to the Court of the learned Sessions Judge, Bagerhat, wherein the case was registered as Sessions Case No. 367 of 2017 before whom the accused appellant was put on trial to answer a charge under Section 138 of the Negotiable Instruments Act, 1881 to which the accused appellant pleaded not guilty and claimed to be tried stating that he has been falsely implicated in this case.

At the trial the complainant examined 1 witness and also exhibited some documents to prove his case and the defence also examined 1 witness.

On conclusion of trial, the learned Sessions Judge, Bagerhat by the impugned judgment and order dated 28.10.2018 found the accused appellant guilty under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer simple imprisonment for a period of 06 (six) months and to pay a fine of Tk. 3,00,000/- (Three Lac) only.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 28.10.2018, the convict-appellant preferred this criminal appeal.

No one found present to press the appeal on repeated calls in spite of fact that this criminal appeal has been appearing in the list for hearing with the name of the learned Advocate for the appellant.

In view of the fact that this petty old criminal appeal arising out of 6 (six) months sentence under the Negotiable Instruments Act, 1881 has been dragging before this Court for more than 5 years, I am inclined to dispose of it on the basis of the materials on record.

On perusal of record, it is found that the complainant after exhausting all the legal formalities filed C.R. Case No. 129 of 2017(Fakirhat) under section 138 of the Negotiable Instruments Act, 1881 against the convict appellant and during trial the complainant himself was examined as PW-1 and exhibited some documents to prove its case.

To constitute an offence under Section 138 of the NI Act, the following elements need to be fulfilled:

1. A cheque should have been issued by the payer for the discharge of a debt or other liability.

2. The cheque should have been presented or deposited by the payee within a period of six months from the date of drawing of the cheque or within the period of validity of the cheque, whichever is earlier.

3. The payee should have issued a notice in writing to the payer within 30 days of receipt of information regarding the return of the cheque as unpaid from the bank.

4. The payer/ drawer of the cheque should have paid the cheque amount within 30 days of receipt of the said notice from the payee.

5. If the payer is failed to pay in time the cheque amount, the payee should have filed a complaint within one month.

On an overall consideration of the facts, circumstances and the materials on record, it can be easily suggested that all the above quoted key elements are exist in the present case. Besides, it appears from the record that a single bench of this Court at the time of admission of appeal by order dated 23.01.2019 granted bail to the convict-appellant for a period of 6 (six) months which was lastly extended on 11.02.2020 for a period of 01(one) year and thereafter, no one took any steps to extend the order of bail as a result of which, the said bail was expired long before on 11.02.2021. Therefore, in the attending facts and circumstances of the case, I find no difficulty whatever in holding that the convict-appellant is a fugitive from law and justice.

In the case of Anti-Corruption Commission Vs. Dr. HBM Iqbal Alamgir, reported in 15 BLC(AD) 44, it has been held that the Court would not act in aid of an accused person, who is a fugitive from law and justice.

On an analyses of impugned judgment and order of conviction and sentence dated 28.10.2018 passed by the learned Sessions Judge, Bagerhat in Sessions Case No. 367 of 2017, I find no flaw in the reasonings of the trial Court or any ground to assail the same inasmuch as all the key elements of Section 138 of Negotiable Instruments Act are exist in the case.

The learned Sessions Judge, Bagerhat appears to have considered all the material aspects of the case and justly convicted the accused appellant under Section 138 of the Negotiable Instrument Act, 1881 and sentenced him thereunder to suffer simple imprisonment for a period of 06 (six) months and to pay a fine of Tk. 3,00,000/-(Three Lac) only.

On the above, 2 (two) counts, this appeal must fail.

In the result, the appeal is dismissed. The impugned judgment and order of conviction and Sentence dated 28.10.2018 passed by the learned Sessions Judge, Bagerhat in Sessions Case No. 367 of 2017 arising out of C.R. Case No. 129 of 2017(Fakirhat) against the accused appellant is hereby affirmed.

Since the appeal is dismissed the convict appellant, Md. Hasan Sheikh is directed to surrender his bail bond within 3 (three) months from today to suffer his sentence, failing which the Trial Court concerned shall take necessary steps to secure arrest against him.

The complainant-respondent No.2 is permitted to withdraw half of the cheque's amount as deposited in the Trial Court by the convict-appellant for the purpose of preferring this Criminal Appeal.

Send down the lower Court records at once.