

**IN THE SUPREME COURT OF
BANGLADESH
HIGH COURT DIVISION
(CRIMINAL REVISIONAL JURISDICTION)**

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 1722 of 2018

Md. Talukder Hemayet Uddin

.....Convict petitioner

-Vs-

The State and another

....respondents

Mr. Selim Hossain, Advocate

....For the convict petitioner.

Mr. Main Uddin Ahmed Chowdhury,
Advocate

.....For the respondent No.2

Mr. Md. Shahidul Islam, AAG with

Ms. Sharmin Hamid, AAG

..... For the State

Heard on 30.10.2024

Judgment delivered on: 10.11.2024

On an application filed under sections 439 and 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order of conviction and sentence dated 04.04.2018 passed by the Additional Metropolitan Sessions Judge, Court No.8, Dhaka in Criminal Appeal No. 1337 of 2016 affirming the judgment and order dated 07.04.2016 passed by the Joint Metropolitan Sessions Judge, Court No. 1, Dhaka in Metropolitan Sessions Case No. 2141 of 2014 arising out of C.R. Case No. 1662 of 2013 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer imprisonment for 05(five) months and fine

of Tk. 4,32,542 not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The prosecution case, in short, is that the accused Md. Talukder Hemayet Uddin obtained a loan from the complainant Islami Bank Bangladesh Ltd, Local Office, Motijheel, Dhaka. After disbursement of the said loan, the convict petitioner did not pay the loan to the complainant. The complainant issued final notice on 16.04.2013 to the convict petitioner. Thereafter on 30.05.2013, he issued cheque No. 1063423 drawn on his saving Account No. 20501020100980815 for payment of Tk. 4,32,542 in favour of the complainant bank. The bank presented the cheque on 19.06.2013 for encashment which was dishonored on the same date with a remark “insufficient funds”. On 30.06.2013, the complainant bank sent a legal notice through registered post with AD but the convict petitioner did not pay the cheque amount in time. Thereafter, the complainant bank filed the case on 30.07.2013.

After filing the complaint petition, cognizance was taken against the accused and on 18.02.2014 the case was sent to the Metropolitan Sessions Judge, Dhaka who subsequently transferred the case to the Metropolitan Joint Sessions Judge, Court No. 1, Dhaka for trial. On 18.05.2014, charge was framed against the accused under section 138 of the N.I. Act, 1881 which was read over and explained to him and he pleaded not guilty to the charge and claimed to be tried following the law.

The prosecution examined 01(one) witness to prove the charge framed against the accused. After examination of P.W.1, the accused absconded for which he was not examined under section 342 of the Code of Criminal Procedure, 1898. After concluding trial,

the trial court by judgment and order dated 07.04.2016 convicted the petitioner under section 138 of the said Act and sentenced him to suffer imprisonment for 05(five) months and fine of Tk. 4,32,542 against which he filed Criminal Appeal No. 1337 of 2016 before Metropolitan Session Judge, Dhaka which was heard by Additional Metropolitan Sessions Judge, Court No. 8, Dhaka. The appellate court below by impugned judgment and order affirmed the judgment and order passed by the trial court against which he filed the instant appeal.

P.W. 1 Md. Abul Khair is the representative of the complainant Islami Bank Bangladesh Ltd. He proved the power of attorney as exhibit-1. He stated that the accused issued cheque on 30.05.2013 for payment of a loan amounting to Tk. 4,32,542. Thereafter, he presented the cheque for encashment which was dishonoured on 19.06.2013. The notice was sent on 30.06.2013 to the accused but he did not pay the cheque amount. Consequently, he filed the case on 20.08.2013. He proved the cheque as exhibit-2, dishonoured slip as exhibit-3, legal notice and postal receipt as exhibit-4 series, the complaint petition and his signature as exhibit-5 series. The defence did not cross-examine P.W. 1.

The learned Advocate Mr. Salim Hossain appearing on behalf of the convict petitioner submits that the accused issued cheque in favour of the complainant bank for payment of the loan and due to insufficient funds, the cheque was dishonoured and after service of the notice, due to hardship he could not pay the cheque amount. However, he submits that in the meantime the complainant bank and the convict petitioner settled the dispute out of court and paid 50% of the cheque amount Tk. 2,16,271 to the bank and he has no objection if the bank withdrawn 50% of the cheque amount

deposited by the accused in the trial court before filing the appeal. He prayed for acceptance of the compromise between the parties.

The learned Advocate Mr. Main Uddin Ahmed Chowdhury appearing on behalf of the complainant bank submits that the convict petitioner issued the cheque in favour of the complainant bank for payment of the loan amounting to Tk. 4,32,542 and after dishonour of the cheque complying with all the procedures under section 138 of the Negotiable Instruments Act, 1881 the complainant filed the case. Thereby the accused committed offence under section 138 of the said Act. However, he submits that both the complainant and the convict petitioner settled the dispute out of court and the convict petitioner paid Tk. 2,16,271 in cash and the bank is willing to withdraw remaining 50% of the cheque amount deposited by the convict petitioner before filing the appeal. He also prayed for acceptance of the compromise made between the parties.

I have considered the submission of the learned Advocate Mr. Selim Hossain who appeared on behalf of the convict petitioner and the learned Advocate Mr. Main Uddin Ahmed Chowdhury who appeared on behalf of complainant opposite party No. 2, perused the evidence, impugned judgment and order passed by the trial court and the records.

On perusal of the records, it appears that the complainant Islami Bank and the convict petitioner filed an application for compromise stating that 50% of the cheque amount of Tk. 2,16,271 has been paid by the convict petitioner and the complainant bank is willing to receive 50% of the cheque amount deposited by the convict petitioner before filing the appeal and both the complainant bank and convict petitioner filed a joint application on 10.11.2024.

The Negotiable Instruments Act, 1881 is a special law and the offence under section 138 of the said Act is not compoundable. Therefore, the rule cannot be disposed of considering the compromise made between the parties. After filing a case under section 138 of the said Act the court shall dispose of the case only considering the merit of the case. There is no scope to accept the compromise by the court made between the parties.

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) is rebuttable. The accused did not cross-examine P.W.1. The evidence of P.W.1 as regards issuance of the cheque (exhibit-2) by convict petitioner for payment of Tk. 4,32,542 in favour of the complainant bank remains uncontroverted by the defence. Furthermore, the convict petitioner admitted that he issued the cheque in favour of the complainant.

There is no denial of the fact that the convict petitioner issued the cheque. After dishonour of the cheque, he received the notice sent on 30.06.2013 through registered post with AD. It is found that after issuance of the cheque (exhibit-2) the same was dishonoured on 19.06.2013 for “insufficient funds”(exhibit-3) and the notice (exhibit-4) under section 138(b) of the said act was served upon the accused and the convict petitioner did not pay the cheque amount pursuant to notice sent under the clause (b) of section 138 of the said Act and the complaint petition was filed in time. Therefore, I am of

the view that the convict petitioner committed offence under section 138 of the said Act and the courts below on proper assessment and evaluation of the evidence passed the impugned judgment and order of conviction.

Considering the gravity of the offence, I am of the view that the ends of justice would be best served if the sentence passed by the courts below are modified as under;

The convict petitioner Md. Talukder Hemayet Uddin is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and he is sentenced to pay a fine of Tk. 4,80,000.

The complainant is entitled to get the fine amount Tk. 4,32,542 awarded by this court.

The Rule is disposed of with modification of the sentence.

The convict petitioner Md. Talukder Hemayet Uddin is directed to pay Tk. 47,458 in the trial court within 30 days from the date of receipt of a copy of this judgment failing which the trial court is directed to take necessary steps following law.

Since the complainant opposite party No. 2 admitted that he already received Tk. 2,16,271, the complainant bank is only entitled to get 50% of the remaining cheque amount Tk. 2,16,271 deposited by the convict petitioner in the trial court before filing the appeal.

Send down the lower Court's records at once.

