

**Present**

**Mr. Justice Sheikh Abdul Awal**

**Criminal Appeal No. 1981 of 2019**

Sayed Mahbub Morshed

.....Convict-appellant.

-Versus-

The State and another

.....Respondents.

Ms. Salina Akter Chowdhury, Advocate

....For the convict-appellant.

Mr. Md. Shibbir Ahmed, Advocate

.....For the Respondent No. 2.

Ms. Shahida Khatoon, D.A.G with  
Ms. Sabina Perven, A.A.G with,  
Ms. Koheenoor Akter, A.A.G.

..... For the State.

**Heard on 29.07.2024 and**

**Judgment on 04.08.2024**

**Sheikh Abdul Awal, J:**

This Appeal at the instance of convict appellant, Sayed Mahbub Morshed is directed against the judgment and order of conviction and sentence dated 01.03.2018 passed by the learned Additional Metropolitan Sessions Judge, 2<sup>nd</sup> Court, Chattogram in Sessions Case No. 960 of 2015 arising out of C.R. Case No. 170 of 2014 (Panchlaish Zone) convicting the appellant under section

138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple imprisonment for a period of 1 (one) year and to pay a fine of Tk. 17,50,000/- (Seventeen Lakhs fifty thousand).

The gist of the case is that one, Mohammad Jasim Uddin as complainant filed a petition of complaint being C.R Case No. 170 of 2014 before the learned Metropolitan Magistrate, 2<sup>nd</sup> Court, Chattogram against the accused-appellant under section 138 of the Negotiable Instruments Act, 1881 stating, inter-alia, that out of previous good relationship the accused-appellant took loan amounting to Taka 17,50,000/- (Seventeen Lakhs fifty thousand) from the complainant for the purpose of his business and thereafter to pay the said loan money the accused-appellant issued 4 cheques of Tk. 2,00,000/-+4,00,000/-+1,50,000/-+10,00,000/- =17,50,000/- (seventeen lakhs fifteen thousand) bearing cheque Nos. 0282298 dated 24.11.2013, 0403709 dated 21.11.2013, 0403703 dated 21.11.2013 respectively of A/C No. 004-117354-011, HSBC Bank and cheque No. STB 1858768 dated 21.11.2023 of A/C No. 1102101686144001, BRAC Bank Ltd. in favour of complainant and thereafter, the complainant presented the said cheque before the Bank for encashment which was dishonoured for insufficient of fund on 10.02.2014

and thereafter, the complainant published a notice in the daily newspaper namely “Dainik Bhorer Kagoj” through his Advocate on 28.02.2014 asking the accused-appellant to pay the cheques’ amount within 30 days but the accused-appellant did not turn to pay the cheque’s amount and hence, the case.

On receipt of the petition of complaint, the learned Metropolitan Magistrate, 4<sup>th</sup> Court, Chattogram examined the complainant under Section 200 of the Code of Criminal Procedure and took cognizance against the accused-appellant under section 138 of the Negotiable Instruments Act, 1881 and also issued summon against him fixing next date 13.07.2014. Thereafter, the accused-appellant on 05.11.2014 voluntarily surrendered before the Court and obtained bail.

In this background, the case record was sent to the Court of the learned Metropolitan Sessions Judge, Chattogram for trial, wherein the case was registered as Sessions Case No. 960 of 2015 which was subsequently transmitted to the Court of the learned Additional Metropolitan Sessions Judge, 2<sup>nd</sup> Court, Chattogram for disposal, wherein 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 prayed to be tried.

At the trial the complainant himself was examined as PW-1 and the accused appellant also examined as DW-1.

The defence case as it appears from the evidence of DW-1 that the accused issued cheques to the complainant although he paid cheque's amount in cash to the complainant but the complainant did not return back the said cheques saying he lost the cheques in question and subsequently filed the case using those cheques. The allegations as attributed in the petition of complaint are false and concocted, the same does not disclose any offence under section 138 of the Negotiable Instruments Act and the case is liable to be dismissed.

On conclusion of trial, the learned Additional Metropolitan Sessions Judge, 2<sup>nd</sup> Court, Chattogram by his judgment and order dated 01.03.2018 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 01 (one) year and to pay a fine of Tk. 17,50,000/- (Seventeen Lakhs fifty thousand).

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 01.03.2018, the convict-appellant preferred this criminal appeal.

Ms. Salina Akter Chowdhury, the learned Advocate appearing for the convict-appellant on several occasions took adjournment stating that they will pay the entire cheque's amount but finally they did not pay the cheque's amount.

Mr. Md. Shibbir Ahmed, the learned Advocate appearing for the complainant-respondent No.2, on the other hand, supports the impugned judgment and order of conviction and sentence, which was according to him just, correct and proper.

Having heard the learned Advocate for the accused-appellant and the learned Advocate for the complainant-respondent No.2 and having gone through the materials on record, the only question that calls for my consideration in this appeal is whether the trial Court committed any error in finding the accused-appellant guilty of the offence under 138 of the Negotiable Instruments Act, 1881.

On scrutiny of the record, it appears that the appellant to pay outstanding dues issued cheques of Tk.

2,00,000/- + 4,00,000/- + 1,50,000/- + 10,00,000/- = 17,50,000/- (seventeen lakhs fifteen thousand) in favour of complainant-respondent No.2 and thereafter, the complainant presented the cheque before Bank for encashment which was dishonoured for insufficient of fund on 10.02.2014 and thereafter, the complainant published a notice in “Dainik Bhorer Kagoj” through his Advocate on 28.02.2014 asking the accused-appellant to pay the cheque’s amount within 30 days but the accused-appellant did not pay any heed to it. It further appears that at the trial the complainant himself was examined as PW-1, who in his deposition categorically stated the complaint case in details. This witness proved the petition of complaint and his signature thereon as “Ext. Nos. 1, 1/1, 1/2, 1/3, and 1/4”. It further appears that the accused-appellant as DW-1 stated in his deposition that he issued the cheques in question as security of loan money in favour of the complainant and subsequently he paid the loan amount but the complainant did not return those cheques saying that he lost those cheques in question. In fact, the complainant does not deserve any outstanding dues as he paid the entire loan money. This witness in his cross-examination stated that- “অত্র মামলার চেকগুলি আমি দিয়াছি। এই চেকের টাকা আমি পরিশোধ করেছি। বাদী

চেকগুলি খুঁজে পায়না বলে ফেরৎ দেয়নি। এই টাকা ফেরৎ দেওয়ার পরে বাদী হতে আমি আরও টাকা নিয়েছি। ও তৎবিপরীতে আরও চেক দিয়েছি।”

On an analysis of the petition of complaint together with the petition of complaint and evidence of PW-1 and DW-1 it appears that the complainant after exhausting all the legal formalities filed the case. The plea as taken by the accused-appellant that he paid the cheques amount appears to be baseless and the defence could not prove the same in according with law.

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 25.02.2019 granted bail to the convict-appellant for a period of 06(six) months, and on 13.11.2019 the said bail was extended for a period of 1 (one) year and thereafter, no one took any step to extend the order of bail as a result of which, the said bail was expired long before on 13.11.2020. 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 01.03.2018 passed by the learned Additional Metropolitan Sessions Judge, 2<sup>nd</sup> Court, Chattogram in Sessions Case No. 824 of 2015, 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 Judge of the trial Court below appears to have considered all the material aspects of the case and justly 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 1 (one) year and to pay a fine of Tk. 17,50,000/- (Seventeen lakhs fifteen thousand).

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 01.03.2018 passed by the learned Additional Metropolitan Sessions Judge, 2<sup>nd</sup> Court, Chattogram in Sessions Case No. 960 of 2015 arising out of C.R. Case No. 170 of 2014 against the accused appellant is hereby affirmed.

Since the appeal is dismissed the convict appellant is directed to surrender his bail bond within 3 (three) months from today to suffer his sentence, failing which the Trial Court 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.