

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Appeal No. 12347 of 2019

Md. Hasan Khokon

.....convict-Appellant

-Versus-

The State and another

..... Respondents

No one appears

.....For the convict-Appellant

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. M. Mostafa Kamal, Advocate

.....For the complainant-respondent No.2

Heard on 12.10.2023 and

Judgment on: 17.10.2023

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred against the judgment and order of conviction and sentence dated 22.05.2019 passed by the learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka, in Metro Sessions Case No.13638 of 2018 arising out of C.R. Case No.479 of 2017 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 02(two) months and also to pay a fine of Tk.1,70,000/- (one lac seventy thousand only).

The prosecution case, in short is that the convict-appellant issued the disputed cheque No.A-5186188 dated 26.01.2017 on 26.01.2017 with an amount of Tk.1,70,000/- to the complainant for payment of loan money. The complainant deposited the cheque in the concerned Bank for collection of money, but it was dishonoured on 16.05.2017 on the ground of account closed/dormant/blocked. Thereafter, the complainant sent a legal notice on 23.05.2017, but the convict-appellant did not pay the loan money and for that reason the complainant filed the C.R. Case No.479 of 2017 on 17.07.2017 before the Metropolitan Magistrate, Dhaka under section 138 of the Negotiable Instruments Act, 1881 and hence the present Case.

The learned Metropolitan Magistrate, Dhaka examined the complaint under section 200 of the Code of Criminal Procedure and took cognizance the offence under section 138 of the Negotiable Instruments Act, 1881 and issued summons upon the convict-appellant. The convict-appellant voluntarily appeared in the learned lower Court and was granted bail. Thereafter, this case was transferred to the Court of learned Metropolitan Sessions Judge, Dhaka for trial and was renumbered as Metro. Sessions Case No.13638 of 2018 and thereafter, on 24.07.2018 the learned Metropolitan Sessions Judge, Dhaka sent the same to the learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka for speedy trial and disposal. Thereafter, the learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka framed charge on 27.08.2018 against the convict-appellant under section 138 of the

negotiable Instruments Act, 1881 and the charge did not possible to read over the convict-appellant for his absconsion.

At the time of trial the complainant produced 01(one) witness and the defence produced D.W.1 to oppose the case. After closing the witness the convict-petitioner was examined under section 342 of the Code of Criminal Procedure and he claimed himself innocent. The learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka after conclusion of the trial found the convict-appellant guilty under section 138 of the Negotiable Instruments Act, 1881 and convicting the appellant under the said section sentenced to suffer simple imprisonment for 02(two) months and also to pay a fine of Tk.1,70,000/- (one lac and seventy thousand) by his judgment and order of conviction and sentence dated 22.05.2019.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 22.05.2019 passed by the learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka in Metro. Sessions Case No.13638 of 2018 arising out of C.R. Case No.479 of 2017, the convict-appellant preferred this Appeal, before this Hon'ble High Court Division.

No one appears for the convict-appellant to press this Appeal.

On the other hand, Mr. M. Mostafa Kamal, the learned Advocate appearing on behalf of the respondent No.2 submits that the convict-appellant issued the disputed cheque No.A-5186188 on 26.01.2017 with an amount of Tk.1,70,000/- to the

complainant for payment of loan money. The complainant deposited the cheque in the concerned Bank for collection of money, but it was dishonoured on 16.05.2017 on the ground of account closed/dormant/blocked. Thereafter, the complainant sent a legal notice on 23.05.2017, but the convict-appellant did not pay the loan money and for that reason the complainant filed the C.R. Case No.479 of 2017 on 17.07.2017 before the Metropolitan Magistrate, Dhaka under section 138 of the Negotiable Instruments Act, 1881. Thereafter, the learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka after conclusion of the trial found the convict-appellant guilty under section 138 of the Negotiable Instruments Act, 1881 and convicting the appellant under the said section sentenced to suffer simple imprisonment for 02(two) months and also to pay a fine of Tk.1,70,000/- (one lac and seventy thousand) by his judgment and order of conviction and sentence dated 22.05.2019 rightly. Therefore, he prays for dismissing the Appeal.

I heard the submissions of the learned Advocate for the respondent No.2 and perused the materials on record.

Now, let us discuss the evidence of prosecution witness Abdul Mannan.

P.W.1 Abdul Mannan in his deposition supported the complaint-petition and stated that on 26.01.2017 the convict-appellant gave the disputed cheque with an amount of Tk.1,70,000/- to him for payment of loan money. The said cheque was dishonoured on 16.05.2017 on the ground of

account closed. According to him he sent a legal notice on 23.05.2017. The convict-appellant failed to pay the money and thereafter, he filed the case. This witness proved the petition of complaint and his signature on it marked as Exhibit No.1,1/1 respectively. In his cross-examination stated that on 26.01.2017 the convict-appellant gave him the written cheque.

It appears from the record and the deposition of the P.W.1 that the convict-appellant issued the disputed cheque No.A-5186188 on 26.01.2017 with an amount of Tk.1,70,000/- to the complainant for payment of loan money. The complainant deposited the cheque in the concerned Bank for collection of money, but it was dishonoured on 16.05.2017 on the ground of account closed. Thereafter, the complainant sent a legal notice on 23.05.2017, but the convict-appellant did not pay the loan money and for that reason the complainant filed the C.R. Case No.479 of 2017 on 17.07.2017 before the Metropolitan Magistrate, Dhaka under section 138 of the Negotiable Instruments Act, 1881. Thereafter, the case was transferred to the Court of learned Metropolitan Sessions Judge, Dhaka and the same was transferred to the learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka for trial and learned Additional Metropolitan Sessions Judge 7th Court Dhaka after conclusion of the trial found the convict-appellant guilty under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 02(two) months and also to pay a fine of Tk.1,70,000/- (one lac and seventy thousand) by his judgment and order of conviction and sentence dated 22.05.2019 rightly.

Considering the above facts and circumstances and materials on record, it is my view that the prosecution is able enough to establish the case and thus succeeded in proving it beyond all reasonable doubts. Therefore, the learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka passed the judgment and order of conviction and sentence dated 22.05.2019 rightly, which is maintainable in the eye of law and there is no chance to interference with the said judgment and order of conviction and sentence.

Accordingly, the appeal, therefore, has no merit.

In the result, the Criminal Appeal No.12347 of 2019 is dismissed.

The judgment and order of conviction and sentence dated 22.05.2019 passed by the learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka in Metro. Sessions Case No.13638 of 2018 is hereby confirmed and upheld.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.85,000/- (eighty five thousand), which has been deposited by the convict-appellant through Chalan at the time of filing appeal to the complainant-respondent No.2 (if he did not take the said amount).

The order of bail granted earlier by this Court is hereby cancelled and recalled.

The convict-appellant is hereby directed to surrender before the concerned lower Court within in 30(thirty) days from the date of receipt of this judgment and order.

Send down the lower Court records with a copy of the judgment and order to the concerned Court below at once.

Md. Anamu Hoque Parvej
Bench Officer