

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 990 of 2018

Md. Sarowar Alam

...Complainant-petitioner

-Versus-

Rina Begum and another

...Opposite parties

No one appears.

...For the complainant -petitioner

Ms. Abeda Gulrukh, Advocate

...For the opposite party No. 1

Heard on 14.12.2023 and 03.01.2024

Judgment delivered on 04.01.2024

This Rule under Section 439 read with Section 435 of the Code of Criminal Procedure, 1898 was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 25.01.2018 passed by Additional Sessions Judge, Kishoreganj in Criminal Appeal No. 482 of 2017 affirming the judgment and order of acquittal dated 11.09.2017 passed by Joint Sessions Judge, Court No. 2, Kishoreganj in Session Case No. 683 of 2013 arising out of C.R. Case No. 333(1)2012 of Police Station Kishoreganj should 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 Rina Begum had borrowed Tk. 2,50,000 from the complainant for business. The accused issued Cheque No. 5573257 dated 10.6.2012 drawn on Islami Bank Limited, Bhairab Bazaar Branch, Kishoreganj in favour of the complainant for payment of Tk. 2,50,000. The complainant presented said cheque on 19.07.2012 for encashment which was returned with the remark 'insufficient funds'. After that, he served a legal notice on 25.07.2012 upon the accused for payment of the cheque amount but she did not pay the cheque amount in time. Consequently, the complainant filed the case on 24.09.2012.

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 under Section 138 of the Negotiable Instruments Act, 1881 against the accused. Thereafter the charge was framed on 09.01.2014 under Section 138 of the Negotiable Instruments Act, 1881 against the accused which was read over and explained to her and she pleaded not guilty to the charge and claimed to be tried following law. The prosecution examined 4(four) witnesses to prove the charge against the accused. After examination of the prosecution witnesses, the accused was examined under Section 342 of the Code of Criminal Procedure, 1898 and she again pleaded not guilty. The defence also examined 4(four) witnesses.

After concluding the trial, the Joint Sessions Judge, Court No. 2, Kishoreganj by judgment and order dated 11.09.2017 acquitted the accused against which the complainant filed the Criminal Appeal No. 482 of 2017 in the Court of Sessions Judge, Kishoreganj which was heard by the Additional Sessions Judge, Kishoreganj. The appellate Court below by impugned judgment and order dated 25.01.2018 affirmed the judgment and order of acquittal passed by the trial Court against which the complainant obtained the Rule.

P.W. 1 Md. Sarwar Alam stated that the accused issued Cheque No IBE 5573257 dated 10.06.12 drawn on Islami Bank Ltd. Bhairab Bazar Branch, Kishoreganj for payment of Tk. 2,50,000 in his favour and the same was presented on 19.7.2012 for encashment which was returned unpaid for insufficient funds and the complainant issued a legal notice registered with AD on 25.07.12. The accused did not pay the cheque amount in time. He proved the legal notice as exhibit 1 and his signatures as exhibit-1/1 and 1/2, the cheque as exhibit-2, the dishonour slip as exhibit-3, and legal notice as exhibit-4. He denied the suggestion that he received Tk. 2,50,000 from the husband of the accused for transferring land and that he signed the cartridge paper in the presence of the witnesses.

P.W. 2 Babul Mia stated that he was present when the complainant paid money to the accused. The accused declined to cross-examine P.W. 2.

P.W. 3 Mostu Mia was tendered and declined by the defence.

P.W. 4 Monirul Islam stated that the cheque was dishonoured from his Bank due to insufficient funds. He proved the dishonoured slip as exhibit 5. During cross-examination, he stated that the cheque was dishonoured on 19.07.2012.

D.W. 1 Md. Zillur Rahman stated that the complainant had undertaken to sell 08 decimals of land in favour of the husband of the accused Rina Begum for which her husband paid Tk. 1,50,000 in cash to the complainant on 23.01.12. On the following day, the complainant signed the cartridge paper after receiving Tk. 1,00,000 in cash. The complainant had undertaken to execute a sale deed in favour of the accused on different occasions. The mutation in the name of the complainant was cancelled for which the accused claimed money to him. He proved the written cartage paper as exhibit ka and his signature as exhibit ka/1. He proved the draft handwriting of the complainant as exhibit-kha. During cross-examination, he stated that the accused signed the dispute cheque which was handed over to the complainant and he (Alam) signed the submitted documents as the security for transferring 8 decimals of land. The complainant himself wrote the undertaking (exhibit ka).

D.W. 2 Kazi Tofazzal Hossain stated that the complainant received Tk. 1,50,000 and the disputed cheque from the accused for selling the property. During cross-examination, he stated that he was present at the time of transactions between the parties.

D.W. 3 Shamim Ahmed stated that he was present at the time of receiving cash and the disputed cheque from the accused on 23.01.2012. The complainant executed a written undertaking on a cartridge paper admitting the fact of receiving money and transfer of the land and he also signed. The complainant did not execute any sale deed in favour of the accused and subsequently refused to pay the money. During cross-

examination, he stated that he was present at the time of receiving money from the accused and the complainant signed the cartridge paper as security.

D.W. 4 Shamiul Ali Mithu stated that the complainant fixed Tk. 9,00,000 as the value of the land, out of which the complainant received Tk. 3,50,000 from the accused and he refused to execute any sale deed in favour of the accused.

No one appears on behalf of the complainant-petitioner.

Learned Advocate Ms. Abeda Gulrukh appearing on behalf of the accused-opposite party No. 1 submits that the complainant had given a proposal to sell 8 decimals of land of Mouza Nandina Aliabad to the husband of the accused and undertaken to register the deed and received Tk. 1,50,000 in cash and the accused issued the disputed cheque for payment of 2,50,000 in favour of the complainant on condition that the complainant shall execute a deed of agreement for sale within the next 6 months and after payment of the entire amount shall register the deed but the complainant failed to mutate the said property in his name and no transfer deed was executed by the complainant. She further submits that since the property was not mutated in the name of the complainant and the same was not transferred in favour of the husband of the accused, the consideration of the cheque failed. By cross-examining the prosecution witnesses and adducing evidence, the complainant rebutted the presumption under Section 118(a) of the Negotiable Instruments Act, 1881. She also submits that both the Courts below on proper assessment and evaluation of the evidence adduced by both the parties arrived at a concurrent finding of fact that the complainant-petitioner executed the exhibits Ka, Kha and Ga and received Tk. 2,50,000 in cash but he failed to mutate the land in his name and did not transfer the land in favour of the husband of the accused. She prayed for discharging the Rule.

I have considered the submission of the learned Advocate Ms. Abeda Gulrukh who appeared on behalf of the opposite party No. 1, perused evidence, the impugned judgments and orders passed by the Courts below and the records.

On perusal of the records, it appears that the accused Rina Begum issued Cheque No. 5573257 drawn on Islami Bank Limited, Bhairab Bazaar Branch, Kishoreganj in favour of complainant Md. Sarowar Alam for payment of Tk. 2,50,000. The complainant presented the cheque on 19.07.2012 which was dishonoured on the same date with a remark 'insufficient funds'. After that, the complainant served a legal notice on 25.07.2012 through registered post with AD. P.W. 1 proved the complaint petition as exhibit 1 and his signatures on the complaint petition as exhibits 1/1 and 1/2, the disputed cheque as exhibit 2, the dishonoured slip as exhibit 3, legal notice as exhibit 4 and the postal receipt as exhibit 5. D.W. 1 proved the undertaking dated 24.01.2012 as exhibit Ka, his signature as exhibit Ka/1 and the undertaking dated 23.01.2012 as exhibit Kha. He also proved the undertaking dated 15.04.2012 as exhibit Ga.

On perusal of the impugned judgments and orders passed by the Courts below, it transpires that both the Courts below arrived at a concurrent finding of facts that the complainant-petitioner had given the proposal to sell 8 decimals of land of ROR Plot No. 220 of Mouza Nandina Aliabad in favour of the husband of the accused and executed the exhibits Ka, Kha and Ga to transfer the said land in favour of the husband of the accused and received Tk. 2,50,000 in cash and also received the disputed cheque (exhibit 2) for payment of the cheque amount within 6 months upon execution of the sale deed.

On perusal of the agreement dated 24.01.2012 (exhibit Ka), it reveals that the complainant received Tk. 1,50,000 in cash on 23.01.2012 and on 24.01.2012 he also received the disputed Cheque No. IBE 5573257 (exhibit 2) drawn on Account No. 1209 maintained with Islami Bank Limited, Bhairab Bazaar Branch, Kishoreganj for payment of Tk. 2,50,000 and on the same date, he also received Tk. 1,00,000 in cash. Till 24.01.2012, the complainant received total Tk. 2,50,000 in cash. On perusal of the disputed cheque (exhibit 2) and the undertaking dated 24.01.2012 (exhibit Ka), it reveals that the complainant received the cheque on 24.01.2012 without putting any date on the cheque and

subsequently, a date i.e 10.6.2012 was written on the cheque by the complainant. The disputed cheque was issued by the accused to satisfy the sale proceeds of the 8 decimals of land in favour of the husband of the accused but the complainant failed to mutate 8 decimals of land of ROR Plot No. 220 of Mouza Nandina Aliabad in his name and did not transfer the said land in favour of the husband of the accused. Therefore, the consideration for the cheque failed and the payee-complainant was not entitled to present the cheque for encashment.

At this stage, it is relevant here to refer to a decision passed by this Court in Criminal Appeal No. 1144 of 2021 in the case of A.H. Ershadul Haque, Advocate -Versus- The State and another wherein this Court held that

“In Section 4 of the Evidence Act, 1872 three classes of presumption have been mentioned namely (i) may presume (refutable), (ii) shall presume (also refutable) and conclusive presumption (irrefutable). To refute the statutory presumption under Section 118(a) of the Negotiable Instruments Act, 1881 an accused is not required to prove his defence case beyond all reasonable doubt as required by the complainant in a criminal case. An accused may either adduce direct evidence to show that the cheque is not supported by consideration as required under Section 43 of the said Act or by cross-examining the witness/witnesses he is entitled to show that the cheque was issued without consideration. The accused may also rely on circumstantial evidence or Section 114 of the Evidence Act, 1872.”

There is a presumption under Section 118(a) of the Negotiable Instruments Act, 1881 that the accused issued the cheque in favour of the complainant for consideration but the presumption under Section 118(a) of the Negotiable Instruments Act, 1881 is rebuttable. The defence by cross-

examining the prosecution witnesses and adducing evidence rebutted the presumption under Section 138 of the Negotiable Instruments Act, 1881 that the disputed cheque (exhibit-1) creates no obligation for payment of the cheque amount. Both the Courts below arrived at a concurrent finding of facts that the accused executed the exhibits Ka, Kha and Ga and received Tk. 2,50,000 in cash and the disputed cheque was issued to satisfy the sale proceeds of the said 8 decimals of land. The 8 decimals of the land of ROR Plot No. 220 of Mouza Nandina Aliabad was neither mutated in the name of the complainant nor the said land was transferred in favour of the husband of the accused following the agreement dated 24.01.2012 (exhibit Ka). Therefore, there was no obligation on the part of the accused to pay the cheque amount to the complainant.

During cross-examination, P.W. 1 admitted that he is a clerk of Advocate Soilesh Sardas of Bazitpur Bar Association and knowing fully well, he received the disputed cheque (exhibit 2) for transferring the said 8 decimals of land in favour of the husband of the accused. Despite that, he filed the instant case without transferring the land in favour of the husband of the accused.

Because of the above facts and circumstances of the case, evidence, I am of the view that both the Courts below on proper assessment and evaluation of the evidence adduced by both the parties passed the impugned judgments and orders. I do not find any reason to interfere with the concurrent finding of fact arrived at by both the Courts below.

The facts and circumstances of the case suggest that the complainant filed the case against the accused without cause of action to harass and humiliate the accused. I do not find any merit in the Rule.

In the result, the Rule is discharged with costs of Tk. 20,000.

The complainant is directed to deposit the costs in the trial court within 1(one) month from the date of receipt of the copy of this judgment and order by the trial Court failing which the trial court is directed to do the needful following law.

The trial Court is further directed to allow the accused Rina Begum to withdraw the costs if realized.

Send down the lower Court's records at once.