

**Present:**

**Justice Fatema Najib**

**CRIMINAL APPEAL NO. 13526 OF 2019**

Md. Murad Hossain (Mintu)

.....Convict-appellant

-Versus-

The Deputy Commissioner, Dhaka and another

.....Respondents

Mr. Md. Jalal Uddin, Advocate

..... For the appellant

Mr. Md. Golam Rabbani, Advocate

..... For the respondent No. 2

**Heard on 14.12.2023**

**Judgment on 01.02.2024**

This Criminal Appeal is directed against the judgment and order dated 11.06.2019 passed by the learned Additional Metropolitan Sessions Judge, 5<sup>th</sup> Court, Dhaka in Sessions Case No. 1541 of 2017 arising out of C. R. Case No. 253 of 2016 under section 138 of the Negotiable Instruments Act, 1881 convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer 2(two) months imprisonment and to pay Taka 15,00,000/-, in default complaint shall recovery his money of Taka 15,00,000/- as per section 368 of the Code of Criminal Procedure.

The case of the prosecution in brief are that, the respondent No. 2 as complainant filed a petition of complaint vide C.R. Case No. 253 of 2016 in the Court of learned Chief Metropolitan Magistrate against the convict-appellant alleging inter alia that the convict-appellant took loan of Taka 15,00,000/- and in order to payment the accused issued cheque being Nos. 6930621 and 6930622 and 6930616 respectively dated 31.07.2016, 03.08.2016 and 01.08.2016 respectively of Janata Bank, Dhaka Branch in favour of the complainant. But the said cheques were dishonored on 21.08.2016 due to “insufficient fund”.

Despite persuasion and all out co-operation by the complainant the accused did not pay off the amount mentioned in cheque. Thereafter, the complainant issued a legal notice by registered post on 28.08.2016 upon the convict-appellant to make payment of the cheque amount within 30(thirty) days. The convict-appellant did not make any payment within the stipulated period and accordingly, the complainant filed the instant case under section 138 of the Negotiable Instrument Act, 1881.

Thereafter, the learned Chief Metropolitan Magistrate, Dhaka took cognizance and issued summon against the convict-

appellant. The convict-appellant surrendered before the learned Chief Metropolitan Magistrate, Dhaka and obtained bail. After compliance of all the formalities, the case record was transmitted to the Court of Metropolitan Sessions Judge, Dhaka for trial and the same was re-numbered as Sessions Case No. 1541 of 2017. Learned Metropolitan Sessions Judge, Dhaka framed charge against the convict-appellant under section 138(1) Negotiable Instrument Act, 1881 but same was read over to the accused and the accused claimed himself to be innocent and to be tried.

In order to prove the charge of the case, the prosecution has adduced three P.Ws as many as 1 witness and the documents produced which were marked as Exhibits- 1 and 6. After closing the evidence of prosecution, the accused was examined under section 342 of the Code of Criminal Procedure and the accused claimed himself to be innocent and stated to adduce oral evidence.

The defence version as appeared from the trend of cross examination of the prosecution witness is that the accused has been falsely implicated in the present case. The accused gave the complainant three blank cheques and filed the case with those cheques after filling up the gaps.

Thereafter learned Metropolitan Sessions Judge, Dhaka on consideration of the evidences and materials on record came to the

conclusion that the prosecution had been able to prove the charge leveled against the accused and accordingly, convicted and sentenced him in the manner as noted at the outset.

Being aggrieved, the convict accused as appellant filed the Case being No. 253 of 2016 before Court of Metropolitan Sessions Judge, Dhaka after depositing 50% of cheque amount.

Mr. Md. Jalal Uddin, learned Advocate appearing on behalf of the petitioner. He did not deliver any submission to press the appeal.

Mr. Md. Golam Rabbani, learned advocate appearing on behalf of the respondent No. 2 submits that after all compliance of the formalities, the complaint case has been filed against the accused appellant. He further submits that the trial Court after complying all the formalities concluded the trial and convicted the accused-appellant.

Learned Deputy Attorney General appearing for the state submits that the impugned judgment passed by trial court is legal and no inconformity found with the judgment.

Heard the learned Advocate for the respondent. Perused the evidences oral and documentary and materials on record.

Let me now advert to and scrutinizes the relevant evidences by the propection together with the surrounding facts and circumstances of the case.

Informant Md. Aminul Haque Amin as PW. 1 in his testimony states that the convict-appellant issued a payee cheque on 31.07.2016, 01.08.2016 and 03.08.2016 respectively for an amount of Taka 15,00,000/- and the same were dishonored on 21.08.2016 for insufficient fund. He sent legal notice on 28.08.2016. The accused did not pay off lone money. His complain was marked as exhibit-1 and signature thereon were marked as exhibits- 1/1-1/4, disputed cheque was marked as exhibit- 2, dishonor slip which was marked as exhibit -3 and legal notice, postal receipt acknowledgement receipt were marked as exhibits- 4, 5, 6.

In cross examination he denied the suggestion that he put the dates on blank cheques and for the purpose of ill motive and to harass the accused filed the instant case.

D.W. 1 Md. Murad Hossain in his testimony states that he invested 15 lacs in NGO from which he paid off 10 lacs to the complainant and at the time of giving money he issued three blank cheque in favour of complaint.

In cross examination he states that the complainant filed more cases against him. He replied the legal notice. He did not file any document in support of payment the entire loan.

D.W. 2 Md. Abu Syed in his testimony states that he was one of the director of NGO. At one stage, the complainant invested Taka 32,00,000/- in NGO and in lieu of that the accused gave 7 cheques to the complainant. While working as manager in NGO the accused gave Taka 22,00,000/- lacs to the complainant out of which he gave 10 lacs in cash, the rest was paid on different dates. When the accused wanted back the cheque, the complainant took time showing different excuse and lastly said that he would give back the cheque if the accused would get back the rest of money. But the complainant without getting back the said cheques filed the instant case. He did not file any document in respect of NGO. He did not file any document that the complainant invested Taka 32,00,000/- lacs in NGO. He denied the suggestion that there is relation between the complainant and the accused, the accused took loan from the complainant due to which the accused gave cheque for paying off loan money.

D.W. 3 Rajibul Hoque Rajib in his testimony states that the accused is his brother in law. He is one of the investor like the complainant. The complainant invested Taka 32,00,000/- lacs and in lieu of that the accused gave cheque to the complainant. The accused paid back Taka 22,00,000/- lacs to the complainant but complainant did not have get back the cheque. He did not show any documents in respect of investment in NGO. He did not have any document to pay off loan. He denied the suggestion that the accused took loan from the complainant, the accused did not pay off any money to the complainant in lieu of loan, the accused did not give cheque.

The offence under section 138 of the Act can be completed with the concentration of a number of facts i.e. (i) drawing of the cheque, (ii) Presentation of the cheque. (iii) returning of the cheque unpaid by the drawer bank.(iv) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount and (v) failure of the drawer to make payment within 30 days of receipt of the notice. As per observation of sections 177,178,179 and 180 of the Code of Criminal Procedure has been maintained.

The appeal was filed challenging on one ground i.e. the case was not filed without compliance ingredients as specified in

section 141 of Negotiable Instrument Act, 1881. The accused was director of NGO and the complainant invested Tk. 32,00,000/- in NGO and in lieu of that the accused gave blank cheque to the complainant.

It appears the cheque was issued on 31.07.2016, 03.08.2016 and 01.08.2016 respectively and the same were dishonored on 21.08.2016. Legal notice was sent on 28.08.2016 upon the accused through postal A D. The alleged signature of the accused appears in cheque is not of the accused could not be proved by the accused. It is also alleged that the complainant invested Taka 32,00,000/- in NGO and in lieu of that NGO gave cheque was not proved at all.

Having considered the matter in its entirety, I am of the view that the judgment and conviction of accused is upheld. The accused-petitioner is directed to surrender before trial court to serve the sentence awarded him within 02(two) months from the date of receipt of a copy of judgment.

If the accused will pay off the rest amount within the stipulated period, the trial court is directed to reduce the period of his sentenced of imprisonment from 02(two) months to 7(seven)



days, failing which the sentence and conviction shall remain as before. The complainant of the aforesaid case may withdraw the deposited 50% of cheque amount which was filed at the time of appeal.

In view of the above facts and circumstances this Criminal Appeal is disposed of as per observation mentioned above.

In the result, this Criminal Appeal is disposed of.

Send down the lower Court records along with a copy of this judgment at once.

Wahab (B.O.)