

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

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Criminal Appeal No.13444 of 2019

Md. Helal Uddin

.....convict-Appellant

-Versus-

The State and others

..... opposite-parties

None appears for both the parties.

Mrs. Aleya Khandker, A.A.G and

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Heard on and judgment on:10.08.2023

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred against the judgment and order of conviction and sentence dated 25.06.2018 passed by the learned Sessions Judge, Natore in Sessions Case No.625 of 2016 corresponding to C.R. No.106 of 2016 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 01 (one) year and with a fine of tk. 5,60,000/- (five lacs and sixty thousand) only, in default , to suffer simple imprisonment for a period of 02(two) months. Out of amount of fine Tk. 5,50,000/-

(ten thousand only) is payable to the complainant and the rest amount of the file will be forfeited in favour of the state..

The prosecution case, in short is that, the convict-appellant issued a cheque in favour of the complainant of Tk. 5,50,000/- (five lacs fifty thousand only) bearing account No. 4317 cheque No. SB-10/FG 3386563 dated 24.11.2015, in Janata Bank Ltd, Doyrampur Branch, Natore. The complainant deposited the said cheque in his own account bearing current account No. 1536 of Islami Bank Bangladesh Ltd., Natore Branch. However, on 29.12.2015 the cheque was dishonored due to payment stopped by drawer when the bank of the complainant took initiative to collect money from Janata Bank Ltd. Thereafter, the complainant sent legal notice to the accused through his lawyer on 12.01.2016 which was received by the accused person on 17.01.2016. Even though the accused person did not respond to the legal notice of the complainant and as such the accused committed offence under section 138 of the Negotiable Instrument Act, 1881.

The learned Magistrate, on 22.02.2016, examined the complainant under section 200 of the Code of Criminal

Procedure and took cognizance against the accused-convict-appellant under section 138 of the Negotiable Instruments Act, 1881 and issued summon against the convict-appellant. On 09.05.2016, the convict appellant appeared before the concerned Court with an application for bail which was allowed by the trial Court accordingly.

Subsequently, on 11.07.2016, the instant case was transferred to the learned Sessions Court, Natore for trial and 03.06.2016, the learned trial Court framed charge against the convict-appellant under section 138 of the Negotiable Instrument Act, 1881 and it was read over to the convict-appellant but he pleaded not guilty and prayed for bail and his application for bail was allowed by the learned trial Court.

The prosecution has examined only 01(one) witness i.e. P.W.1 in the trial Court to prove the case and defence examined none and the convict appellant had also been examined under section 342 of Code of Criminal Procedure in which he pleaded again not guilty and he claimed himself innocent.

After considering all the evidence on record and deposition of the witness, the learned Sessions Judge, Natore

passed the judgment and order of conviction and sentence on 25.06.2018, convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer simple imprisonment for 01(one) year with a fine of Tk. 5,60,000/-(five lacs and sixty thousand) only, in default, to suffer simple imprisonment for a period of 02(two) months. Out of amount of the fine, Tk. 5,50,000/-(five lacs fifteen thousand) is payable to the complainant and the rest amount of the fine will be forfeited in favor of the state.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction, the convict-appellant preferred this Appeal before this Court.

None appeared to press or oppose the instant appeal although it has appeared in the daily cause list with the names of the learned Advocates. However, considering the long pendency of the of the same, it has been taken up for disposal on merit

Now, let us discuss the evidence of prosecution witness.

P.W.1 Md. Rahmat Hawlader, complainant of the case stated in his chief that the convict-appellant issued a cheque of

amounting Tk. 5,50,000/- on 24.11.2015 against the loan amount. The cheque was dishonored on 29.12.2015 due to insufficient funds. He sent legal notice to the convict-appellant on 12.01.2016 and the convict-appellant received it on 17.01.2016. He proved the complaint petition as Exhibit-1 and his signatures therein as Exhibits-1/1 series. He identified the alleged cheque as Exhibit-2, dishonour slip as Exhibit-2/1, legal notice as Exhibit-3, registered post receipt with A.D. as Exhibit-5 and 6.

In cross he stated that he did not know whether the accused filed G.D or not. He did not get the reply of the Legal notice. He gave Tk. 5,50,000/- to the accused on 24.11.2015. He denied the defence-suggestions that the accused replied to the legal notice or that the accused signed on his reply to the legal notice on 02.02.2016 or that he filed G.D after losing the cheque or that he did not have any transaction with the accused or that after finding the lost cheque he filed the case against the accused on the advice of Anwarul Haque or that the accused did not give him the cheque.

Considering the lower Court record, evidence and above facts and circumstances, it appears that complainant's complaint is Exhibit-1. The content described in it has been expressed by the complainant very coherently in his statement before the trial Court. His cross-examination and the statement were consistent with the complaint and there was no inconsistency on the fundamentals. The complainant's Exhibit-2 is the alleged cheque dated 24.11.2015. On perusal of the said Exhibit-2 shows that it is a cheque of Janata Bank Limited and there were the account number printed on the cheque. The said cheque bears the signature of the accused. It is a cheque of Tk. 5,50,000/- (five lacs fifty thousand) in which date 24.11.2015 is written. The cheque has no rubbing and is a clean cheque. The complainant's Exhibits-2/1 is the dishonor slip dated 29.12.2015. The said dishonor slip states that it has been dishonored due to payment stop by drawn but the accused petitioner should not explain which was the reason of stop payment. The complainant's Exhibits-3, 4 and 5 were perused. The legal notice marked as Exhibit-3 served to the convict-appellant on 12.01.2016 in registry envelope with AD dated 12.01.2016 which is marked as Exhibit-4. The name and

address of the accused are correctly written in the envelope, the acknowledgement slip marked as Exhibit-5 and those were also been stated in the complaint petition.

In the light of the above discussion, it is clear before me that the accused-convict-appellant issued a cheque amounting Tk.5,50,000/-(five lacs fifty thousand) and for encashment of the said cheque the complainant presented it to his concerned bank for encashment within the prescribed time limit (within six months) prescribed in the Act. But due to “payment stopped by drawer”, the said cheque has been dishonored. Thereafter, the complainant has filed his complaint by duly fulfilling all the conditions of Section 138/141 of the Negotiable Instruments Act, 1881. The learned cognizance Court duly reviewed the plaint application and the documents on record and accepted the sworn statement of the complainant and took cognizance the offence under Section 138 of the Negotiable Instruments Act, 1881 against the accused.

Therefore, the learned Sessions Judge, Natore passed the judgment and order of conviction and sentence dated 25.06.2018 in Sessions Case No.625 of 2016 corresponding to

C.R. No.106 of 2016 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 01(one) year and with a fine of Tk.5,60,000/- (five lacs sixty thousand) only, in default, to suffer simple imprisonment for a period of 02(two) months. Out of amount of the fine, Tk. 5,50,000/-(five lacs fifty thousand) is payable to the complainant and the rest amount of the fine will be forfeited in favour of the state rightly and which is maintainable in the eye of law.

Accordingly, I do not find any cogent and legal ground to interfere with the impugned judgment and order of conviction and sentence. The appeal, therefore, has no merit.

In the result, the Criminal Appeal No.13444 of 2019 is hereby dismissed. The judgment and order of conviction and sentence dated 25.06.2018 passed by the learned Sessions Judge, Natore in Sessions Case No.625 of 2016 corresponding to C.R. No.106 of 2016 is hereby upheld and confirmed.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.2,75,000/- of the fine

amount to the complainant-respondent No.2 (if he did not take the said amount).

The convict-appellant is hereby directed to surrender before the concerned Court below within 15(fifteen) days from the date of the receipt of the judgment and order, failing which the concerned Court below will take necessary steps to secure his arrest.

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

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

Md. Mustafizur Rahman
Bench Officer