

Present:
Mr. Justice Md. Ataur Rahman Khan

Criminal Appeal No. 961 of 2020.

Md. Nur Nobil Bhat

....Convict- Appellant.

-Versus-

The State and another

.....Respondents.

Mr. Md. Khalilur Rahman Bhuiyan, Advocate

..... For the appellant.

Mr. S.M Fazlul Haque, D.A.G

Mrs. Anjuman Ara Begum, AAG

Mr. Miah Sirajul Islam, AAGs

..... For the State.

Mrs. Kazi Samsun Nahar, Advocate

... For the respondent No.2

Heard on: 04.06.2023, 09.07.2023,
16.07.2023, 03.08.2023, 16.08.2023,
10.10.2023.

And

Judgment on: 19.10.2023.

Md. Ataur Rahman Khan, J:

This Criminal Appeal, at the instance of convict appellant, Md. Nur Nobil Bhat, is directed against the Judgment and order of conviction and sentence dated 10.06.2019 passed by the Special Sessions Judge, Noakhali, in Sessions Case No. 297 of 2016 arising out of C.R Case No. 475 of 2015 (Petition Case No. 649 of 2015) convicted the convict appellant under

section 138 of the Negotiable Instrument Act, 1881 and sentenced him to suffer simple imprisonment for a period of 06 (six) months and to pay a fine of Tk. 6,10,000/- (six lac ten thousand) in default to suffer imprisonment for a further period of 01 (one) month more.

The complainant case, in brief, is that, the complainant Bank is a commercial scheduled Bank. The complainant Bank is doing its business transaction through receiving monies from its customers and providing investment towards the borrowers; As per application for loan by the convict appellant for his business capital, the complainant Bank invested Tk. 35,00,000/- (thirty five lac) in the form of Murabaha System in different dates. The convict appellant executed an undertaking in favour of the complainant Bank to repay the invested amount including interest within stipulated period as stated in the undertaking. In this respect, the appellant has executed all charge documents in favour of the complainant Bank, As per terms and conditions of sanction letter, the convict appellant did not repay the invested amount together with interest. As result, the complainant Bank issued several letters and made

various verbal contracts with the convict appellant for repayment of invested amount but failed. In view of repeated reminders, the convict appellant issued a cheque being No. 4641836, account No. 9, on 20.09.2015 of Islami Bank Bangladesh Ltd, Chowmuhani Branch, Noakhali to the respondent No. 2. But as per instruction of the convict appellant, the complainant Bank deposited the said cheque to the Bank for encashment on 01.10.2015 but the said cheque was dishonoured due to insufficient fund. The complainant Bank requested the convict appellant to repay the invested amount within 30 days by issuing a legal notice on 15.10.2015 and the said legal notice has duly been received by the convict appellant on 27.10.2015. But till date the convict appellant did not pay the outstanding dues of the complainant Bank. The convict appellant intentionally and with a mala fide motive has issued the cheque with a view to misappropriating the bank money. In this way, the appellant has committed an offence under section 138 of the Negotiable Instrument Act, by means of cheating. This case is filed by an officer on behalf of the bank being empowered by the bank. The authorized person

will prove this case by deposition of witnesses, papers and document before the Hon'ble Court. Photostat copies of issued cheque, proof of cheque dishonor, legal notice and postal receipts are enclosed herewith this case.

The cognizance court took cognizance and issued summons under section 138 of the Negotiable Instruments Act, 1881 against the convict appellant. The case was transferred to the court of Sessions Judge, Noakhali being Sessions Case No. 297 of 2016 arising out of C.R Case No. 475 of 2015. The trial court framed charged against the convict appellant under section 138 of the Negotiable Instrument Act, 1881.

The complainant examined 01 witness and the defence examined none to prove the case.

The learned Special Sessions Judge, Noakhali after hearing on consideration of the evidence on record rightly convicted the convict appellant as guilty and convicted the convict appellant under section 138 of the Negotiable Instrument Act, 1881 and sentenced him to suffer simple imprisonment for a period of 06 (six) months and to pay a fine

of Tk. 6,10,000/- (six lac ten thousand) in default to suffer simple imprisonment for a further period of 01 (one) month more.

Being aggrieved by and dissatisfied with the Judgment and order of conviction and sentence dated 30.05.2019 passed by the Special Sessions Judge, Noakhali, in Sessions Case No. 297 of 2016 arising out of C.R Case No. 475 of 2015 (Petition Case No. 649 of 2015). The convict appellant preferred criminal Appeal before this court and enlarged on bail and stay realization of fine.

Mr. Md. Khalilur Rahman Bhuiyan, the learned Advocate appearing on behalf of the convict appellant submits that the convict appellant filed a supplementary Memorandum of criminal appeal stated that the convict appellant has already paid outstanding dues of cheque and Islami Bank Bangladesh Limited, Chowmuhani Branch, Noakhali and the Branch Head of Branch issued two certificates on 15.10.2019 and 22.10.2019 and they have received outstanding of loan purpose of Tk. 6,10,000/- (six lac ten thousand). The appellant has no further liability in connection of that loan and the Bank

authority has no objection if the convict appellant was released from the charge of criminal appeal. He further submits that the appeal may be allowed for ends of justice.

Mrs. Kazi Samsun Nahar, the learned Advocate appearing on behalf of the complainant respondent No. 2 submits that convict appellant filed a supplementary Memorandum of criminal appeal stated that the convict appellant has already paid outstanding dues of cheque money and Islami Bank Bangladesh Limited, Chowmuhani Branch, Noakhali and Head of Branch issued two certificates on 15.10.2019 and 22.10.2019 and they have received outstanding of loan purpose of Tk. 6,10,000/- (six lac ten thousand). She also admitted fact stated that the Islami Bank Bangladesh Limited have no objection to release the convict appellant from this case. She further submits that the deposited cheque amount in the trial court may permit to withdraw the Islami Bank Bangladesh Limited in accordance with law.

Mr. S.M Fazlul Haque, the learned Deputy Attorney General along with Mrs. Anjuman Ara Begum and Mr. Miah

Sirajul Ialam, the learned Assistant Attorney General appearing on behalf of the respondent-State adopted the submissions made by the learned Advocate appearing on behalf of the complainant respondent No. 2.

Heard the learned Advocates of both sides, memo of appeal, perused material on records, including the deposition of the witness and other material referred to above. It appears that the Special Sessions Judge, Noakhali, in Sessions Case No. 297 of 2016 arising out of C.R Case No. 475 of 2015 (Petition Case No. 645 of 2015) after hearing rightly convicted the convict appellant under section 138 of the Negotiable Instrument Act, 1881 and sentenced him to suffer simple imprisonment for a period of 06 (six) months and to pay a fine of Tk. 6,10,000/- (six lac ten thousand) in default to suffer simple imprisonment for a further period of 01 (one) month more. It appears that the convict appellant has already paid the cheque amount in favour of the complainant respondent No. 2 as (Islami Bank Bangladesh Limited) and the learned Advocate for the Islami Bank Bangladesh Limited admitted

that the rest 50% cheque amount already paid in favour of the Islami Bank Bangladesh Limited.

On critical analysis of the aforesaid evidence on record, It transpires that the convict appellant obtained loan Tk.6,10,000/- (six lac ten thousand) from the Islami Bank Bangladesh Limited and the convict appellant issued a cheque in favour of Islami Bank Bangladesh Limited, the cheque was dishonoured due to insufficient fund. The Islami Bank Bangladesh Limited filed the case before the court. The Special Sessions Judge, Noakhali after hearing on consideration of the evidence on record rightly convicted the convict appellant under section 138 of the Negotiable Instrument Act, 1881 and sentenced him to suffer simple imprisonment for a period of 06 (six) months and to pay a fine of Tk. 6,10,000/- (six lac ten thousand) in default to suffer simple imprisonment for a further period of 01 (one) month more. It appears from the records that the convict appellant filed this appeal before this court and deposited 50% cheque amount in the court of Special Sessions Judge, Noakhali and after filing this appeal already paid the rest 50% cheque amount in favour of the

complainant Bank and the learned Advocate on behalf of the Islami Bank Bangladesh Limited admitted that the convict appellant has already been paid the rest 50 % cheque amount in favour of the Islami Bank Limited.

So, in all fairness, the complainant has been able to prove the case beyond reasonable doubt and the Sessions Judge, Noakhali after hearing on consideration of the evidence on record rightly convicted and sentenced the convict appellant which is just and sustainable in the eye of law and deserves no interference by this court.

I have gone through the privilege that the impugned judgment and order dated 10.06.2019 and I have reason to believe that the Special Sessions Judge, Noakhali, rightly discuss the evidence of witnesses and also rightly apply its judicial mind.

Considering the above facts and circumstances of the case as well as evidence on record I hold and find that the Special Sessions Judge, Noakhali, after hearing rightly convicted the convict appellant under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer

simple imprisonment for a period of 06 (six) months and to pay a fine of Tk. 6,10,000/- (six lac ten thousand) in default to suffer simple imprisonment for a further period of 01 (one) month more.

In the result, the Criminal Appeal No. 961 of 2020 is hereby dismissed with observation.

The Judgment and order of conviction and sentence dated 10.06.2019 passed by the Special Sessions Judge, Noakhali, in Sessions Case No. 297 of 2016 arising out of C.R Case No. 475 of 2015 (Petition Case No. 649 of 2015) convicted the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentenced him to suffer simple imprisonment for a period of 06 (six) months and to pay a fine of Tk. 6,10,000/- (six lac ten thousand) in default to suffer simple imprisonment for a further period of 01 (one) month more is hereby affirmed and modification of fine and sentence.

Accordingly, the convict appellant Md. Nur Nobi Bhat be acquitted from the charge leveled against him.

The complainant respondent No.2 is directed to withdraw the deposited 50% cheque amount from the concerned court as early as possible.

Send down the L. C. records along with a copy of this Judgment to the Court concerned immediately for information and necessary action.

A.B.O/monir