

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Appeal No.2257 of 2020

Md. Enamul Haque

.....convict-Appellant

-Versus-

The State and another

..... opposite-parties

No one appears

.....For the convict-Appellant

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. Md. Amzad Hossain, Advocate

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

Heard on 08.11.2023 and

Judgment on: 09.11.2023

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred against the judgment and order of conviction and sentence dated 19.11.2019 passed by the learned Additional Sessions Judge, Chapainawabgonj in Sessions Case No.683 of 2017 arising out of C.R. Case No.26 of 2017(Bholahat) convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 04(four) months and also to pay a fine of Tk.4,00,000/- (four lac) only.

At the time of admitting the appeal this Court granted bail to the appellant for a period of 06(six) and stayed the realization of fine till disposal of the appeal.

The prosecution case, in short is that the convict-appellant took loan of Tk.3,20,000/- from the complainant for business purpose and he gave a cheque of Tk.3,20,000/- dated 29.11.2016 to the complainant. Thereafter, the complainant presented the cheque on 10.01.2017 to the Sonali Bank, Bholahat Branch, Chapainawabgonj for encashment, but it was dishonoured for insufficient fund. Then the complainant sent a legal notice on 23.01.2017 to the appellant, requesting him to pay the loan money, but the appellant did not pay the said amount within stipulated time. Thereafter, the complainant finding no other alternative filed a complaint-petition under section 138 of the Negotiable Instruments Act, 1881 against the appellant before the learned Senior Judicial Magistrate, Amoli Adalat Gha Anchal, Chapainawabganj on 22.03.2017.

After examined the complaint under section 200 of the Code of Criminal Procedure the learned Senior Judicial Magistrate took cognizance of the offence under section 138 of the Negotiable Instruments Act, 1881 as C.R. Case No.26 of

2017 (Bholahat) and issued summons upon the convict-appellant. The convict-appellant voluntarily appeared in the learned lower Court and obtained bail. Thereafter, this case was transferred to the Court of learned Sessions Judge, Chapainawabganj for trial and was renumbered as Sessions Case No.683 of 2017 and further, it was transferred to the learned Additional Sessions Judge, Chapainawabganj for disposal. The learned Additional Sessions Judge, Chapainawabganj framed charge against the convict-appellant under section 138 of the negotiable Instruments Act, 1881 on 03.10.2019 and it was not read over the appellant for his absconsion.

At the time of trial the complainant produced 01(one) witness, but the defence produced none.

Due to abscondence of the convict-appellant the learned trial Court could not examined him under section 342 of the Code of Criminal Procedure.

After hearing the parties and considering the evidence on record, the learned Additional Sessions Judge, Chapainawabganj found the convict-appellant guilty under

section 138 of the Negotiable Instruments Act, 1881 and the learned trial Court convicting the appellant under the said section sentenced him to suffer simple imprisonment for 04(four) months and also to pay a fine of Tk.4,00,000/- only by his judgment and order of conviction and sentence dated 19.11.2019.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 19.11.2019 passed by the learned Additional Sessions Judge, Chapainawabganj in Sessions Case No.683 of 2017 arising out of C.R. Case No.26 of 2017(Bholahat) the convict-appellant preferred this Appeal, before this Hon'ble High Court Division.

No one appears on behalf of the appellant when this matter was taken up for hearing and disposal although it appears in the daily cause list several times.

On the other hand, Mr. Md. Amzad Hossain, the learned Advocate appearing on behalf of the respondent No.2 submits that the convict-appellant took loan of Tk.3,20,000/- from the complainant for business purpose and he gave a cheque of Tk.3,20,000/- dated 29.11.2016 to the complainant. Thereafter,

the complainant presented the said cheque on 10.01.2017 to the Sonali Bank, Bholahat Branch, Chapainawabgonj for encashment, but it was dishonoured for insufficient fund. Then the complainant sent a legal notice on 23.01.2017 to the appellant, requesting him to pay the loan money, but the appellant did not pay the said amount within stipulated time. Thereafter, the complainant finding no other alternative filed a complaint-petition under section 138 of the Negotiable Instruments Act, 1881 against the appellant before the learned Senior Judicial Magistrate, Amoli Adalat Gha Anchal, Chapainawabganj on 22.03.2017 as C.R. Case No.26 of 2017 (Bholahat). Thereafter, this case was transferred to the Court of learned Sessions Judge, Chapainawabganj for trial and was renumbered as Sessions Case No.683 of 2017 and further it was transferred to the learned Additional Sessions Judge, Chapainawabganj for disposal. After hearing the parties and considering the evidence on record, the learned Additional Sessions Judge, Chapainawabganj found the convict-appellant guilty under section 138 of the Negotiable Instruments Act, 1881 and the learned trial Court convicting the appellant under the said section sentenced him to suffer simple imprisonment

for 04(four) months and also to pay a fine of Tk.4,00,000/- only by his judgment and order of conviction and sentence dated 19.11.2019 rightly, which is maintainable in the eye of law. Therefore, he prays for dismissing the Appeal.

I heard the submissions of the learned Advocates for the complainant-respondent No.2 and perused the judgment and order of conviction and sentence of the Court below and materials on record.

It appears from the record that the convict-appellant took loan of Tk.3,20,000/- from the complainant for business purpose and he gave a cheque of Tk.3,20,000/- dated 29.11.2016 to the complainant. Thereafter, the complainant presented the said cheque on 10.01.2017 to the Sonali Bank, Bholahat Branch, Chapainawabgonj for encashment, but it was dishonoured for insufficient fund. Then the complainant sent a legal notice on 23.01.2017 to the appellant, requesting him to pay the loan money, but the appellant did not pay the said amount within stipulated time. Thereafter, the complainant finding no other alternative filed a complaint-petition under section 138 of the Negotiable Instruments Act, 1881 against the appellant before the learned Senior Judicial Magistrate, Amoli Adalat Gha Anchal, Chapainawabganj on 22.03.2017 as C.R.

Case No.26 of 2017 (Bholahat) following all legal formalies, which is maintainable in the eye of law.

Now, let us discuss the evidence of prosecution witness Ashit Sarkar.

P.W.1 Ashit Sarkar in his deposition stated that the appellant on 29.11.2016 has given him a cheque bearing No.6915141 for Tk.3,20,000/-, account maintaining with Sonali Bank Limited. Subsequently, on 10.01.2017 the complainant deposited the same for encashment but the cheque was dishonoured for insufficient fund. Then he sent a legal notice upon the appellant on 23.01.2017, but he did not pay the cheque amount. Thereafter, he filed this case. He identified the plaint, dishonoured cheque, postal receipt, legal notice as exhibits-1-2 series.

In the light of the above discussion, it appears that the appellant on 29.11.2016 has given a cheque bearing No.6915141 for Tk.3,20,000/-, to the complainant. Subsequently, on 10.01.2017 the complainant deposited the same for encashment but the cheque was dishonoured for insufficient fund. Then the complainant sent a legal notice upon

the appellant on 23.01.2017, but he did not pay the cheque amount. For this reason, the complainant filed this case following all legal formalities.

Considering the above facts and circumstances and materials on record, it is my view that the prosecution proved his case through proper evidence beyond all reasonable doubt. Therefore, the learned Additional Sessions Judge, Chapainawabganj passed the judgment and order of conviction and sentence dated 19.11.2019 in Sessions Case No.683 of 2017 arising out of C.R. Case No.26 of 2017(Bholahat) 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.2257 of 2020 is dismissed.

The judgment and order of conviction and sentence dated 19.11.2019 passed by the learned Additional Sessions Judge, Chapainawabganj in Sessions Case No.683 of 2017 arising out

of C.R. Case No.26 of 2017(Bholahat) is hereby confirmed and upheld.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.2,00,000/- to the complainant-respondent No.2, 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 withdraw the said amount).

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, failing which the concerned lower Court will take necessary step to secure him arrest.

The order of bail granted earlier by this Court is hereby cancelled and recalled and the order of stay of realization of fine is hereby vacated.

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

Md. Anamul Hoque Parvej
Bench Officer

