

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

Present:

Mr. Justice Md. Kamrul Hossain Mollah
Criminal Appeal No.4069 of 2020

Md. Emdad Hossain
.....Convict-Appellant

-Versus-

The state and another
..... Respondents

No one appears
.....For the convict-Appellant

Mrs. Umme Masumun Nesa, A.A.G
.....For the State

Mr. Minhazul Hoque Chowdhury, Advocate
...For the Complainant-Respondent No.2.

Heard on 20.08.2023 & Judgment on: 21.08.2023

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred against the judgment and order of conviction and sentence dated 18.11.2014 passed by the learned Additional Metropolitan Sessions Judge, 5th Court, Dhaka in Metro: Sessions Case No. 9658 of 2013 arising out of C.R. Case No. 1007 of 2012 convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer simple imprisonment for 04 (four) months and also to pay a fine of Tk. 3,73,675/- (three lac seventy three thousand six hundred seventy five).

The order of ad-interim bail granted by this Court to the convict appellant at the time of admission of this appeal for a period of 06(six) months.

The prosecution case, in short is that in course of business convict-appellant has availed loan facility from the complainant bank. In discharge of his loan liability with complainant bank the convict-appellant has issued a Cheque being No. CBL154381 dated 02.10.2012 for an amount of Tk. 3,53,675/- only drawn on the current Account being No. 1507200584645001 to the complainant. The complainant presented the aforesaid cheque for collection through BRAC Bank Limited, Mirpur Branch, Dhaka and the same has been dishonoured due to insufficient of fund vide Memo dated 05.11.2012 . Thereafter complainant sent a legal notice with Registered A/D to the appellant on 11.11.2012 and requesting the cheque amount returned within 30 days of receiving of such notice but the appellant failed to repay the cheque amount within the stipulated period. For this reason, the complainant filed a complaint-petition against the appellant under section 138 of the Negotiable Instruments Act, 1881 before the learned Chief Metropolitan Magistrate, Dhaka on 12.12.2012.

The learned Chief Metropolitan Magistrate, Dhaka took cognizance and issued summon against the convict- appellant under section 138 of the Negotiable Instrument Act, 1881 against the convict-appellant as C.R. Case No.1007 of 2012. Thereafter, the convict-appellant surrendered before the concerned Metropolitan Magistrate, Dhaka and obtained bail.

Subsequently, the instant case was transferred to the learned Additional Metropolitan Sessions, 5th Court, Dhaka for trial and disposal and it was renumbered as Metro: Sessions Case No.9658 of 2013. Thereafter, the learned trial Court on 13.04.2014 framed charge against the convict-appellant under section 138 of the Negotiable Instrument Act, 1881 and the charge was not read over and explained to him for his absconsion.

The prosecution has examined only 01(one) witness in the trial Court to prove the case and defence examined none and the convict appellant had also not been examined under section 342 of Code of Criminal Procedure as he was absconding.

After hearing and considering all the evidence on record and deposition of the witness the learned Additional

Metropolitan Sessions Judge, 5th Court, Dhaka convicted the accused-appellant under Section 138 of the Negotiable Instrument Act, 1881 (Amended- 2006) and sentenced him to suffer simple imprisonment for a period of 04 (four) months and also to pay a fine of Tk. 3,73,675/- (three lac seventy three thousand six hundred seventy five) by his judgment and order dated 18.11.2014.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 18.11.2014 passed by the learned Additional Metropolitan Sessions Judge, 5th Court, Dhaka in Metro: Sessions Case No.9658 of 2013, the convict-appellant preferred this Appeal before this Court.

No one appears on behalf of the convict-appellant in support of this appeal.

Mr. Minhazul Hoque Chowdhury, the learned Advocate appearing on behalf of the complainant-respondent No.2 submits that the convict-appellant has issued a Cheque being No.CBL154381 dated 02.10.2012 for an amount of Tk. 3,53,675/- only drawn on the current Account being No.

1507200584645001 to the complainant. The complainant presented the aforesaid cheque for collection through BRAC Bank Limited, Mirpur Branch, Dhaka and the same has been dishonoured due to insufficient of fund vide Memo dated 05.11.2012 . Thereafter complainant sent a legal notice with Registered A/D to the appellant on 11.11.2012 requesting the cheque amount returned within 30 days of receiving of such notice, but the appellant failed to repay the cheque amount within the stipulated period. For this reason, the complainant filed a complaint-petition against the appellant under section 138 of the Negotiable Instruments Act, 1881 before the learned Chief Metropolitan Magistrate, Dhaka on 12.12.2012 as C.R. Case No.1007 of 2012. Subsequently, the instant case was transferred to the learned Additional Metropolitan Sessions, 5th Court, Dhaka for trial and disposal and it was renumbered as Metro: Sessions Case No.9658 of 2013. After hearing and considering all the evidence on record and deposition of the witness the learned Additional Metropolitan Sessions Judge, 5th Court, Dhaka convicted the accused-appellant under Section 138 of the Negotiable Instrument Act, 1881 (Amended- 2006) and sentenced him to suffer simple imprisonment for a period

of 04 (four) months and also to pay a fine of Tk. 3,73,675/- (three lac seventy three thousand six hundred seventy five) by his judgment and order dated 18.11.2014 rightly. Therefore, he prays for dismissing the Appeal.

I have perused the petition of Appeal, the impugned judgment and order of the Learned Trial Court, the submissions of the Learned Advocate for the opposite party No. 2, the papers and documents as available on record. It appears from the record that the convict-appellant has issued a Cheque being No.CBL154381 dated 02.10.2012 for an amount of Tk. 3,53,675/- only drawn on the current Account being No.1507200584645001 to the complainant. The complainant presented the aforesaid cheque for collection through BRAC Bank Limited, Mirpur Branch, Dhaka and the same has been dishonoured due to insufficient of fund vide Memo dated 05.11.2012 . Thereafter complainant sent a legal notice with Registered A/D to the appellant on 11.11.2012 and requesting the cheque amount returned within 30 days of receiving of such notice but the appellant failed to repay the cheque amount within the stipulated period. For this reason, the complainant filed a complaint-petition against the appellant under section

138 of the Negotiable Instruments Act, 1881 before the learned Chief Metropolitan Magistrate, Dhaka on 12.12.2012 as C.R. Case No.1007 of 2012 following all legal formalities.

Now, let us examine the deposition of the P.W.1, Md. Kabir Uddin.

In his deposition he stated that the convict-appellant to pay the loan amount gave a cheque on 02.10.2012, which was dishonoured on 05.11.2012 for insufficient of fund. Thereafter, on 11.11.2012 he sent a legal notice to the appellant, but the appellant did not pay the loan amount. Thereafter, he filed the instant case. He identified the complaint-petition as exhibit-1, therein his signature as exhibit-1/1, cheque as exhibit-2, dishonoured slip as exhibit-2/1, legal notice as exhibit-3, AD card and postal receipt as exhibit-3/1, 3/2.

Further it appears from the deposition of the PW 1 that the complainant filed the said case against the convict appellant after following all legal formalities.

Considering the above facts and circumstances and materials on record, I think that the judgment and order of conviction and sentence dated 18.11.2014 passed by the

learned Additional Metropolitan Sessions Judge, 5th Court, Dhaka in Metro: Sessions Case No.9658 of 2013 arising out of C.R. Case No.1007 of 2012 convicting the convict-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.3,73,675-, (three lac seventy three thousand six hundred seventy five) rightly, 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 dated 18.11.2014. The appeal, therefore, has no merit.

In the result, the Criminal Appeal No.4069 of 2020 is dismissed. The judgment and order of conviction and sentence dated 18.11.2014 passed by the learned Additional Metropolitan Sessions Judge, 5th Court, Dhaka in Metro: Sessions Case No.9658 of 2013 arising out of C.R. No.1007 of 2012 is hereby upheld and confirmed.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.1,86,837.5 of the fine

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 (if he is on bail) 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 arrest him.

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

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