

Present

Mr. Justice Sheikh Abdul Awal

Criminal Appeal No. 4410 of 2020

Mst. Mumtaz Begum

.....Convict-appellant.

-Versus-

The State and another

.....Respondents.

None appears

.....For the convict-appellant.

None appears

.....For the Respondent No. 2.

Ms. Shahida Khatoon, D.A.G with
Ms. Sabina Perven, A.A.G with,
Ms. Koheenoor Akter, A.A.G.

..... For the State.

Heard on 23.05.2024

Judgment on 27.05.2024

Sheikh Abdul Awal, J:

This Appeal at the instance of convict appellant, Mst. Mumtaz Begum is directed against the judgment and order of conviction and sentence dated 09.02.2020 passed by the learned Additional Sessions Judge, Natore in Sessions Case No. 1036 of 2018 arising out of C.R. Case No. 145 of 2018 (Lal) convicting the appellant under section 138 of the Negotiable Instruments Act,

1881 and sentencing her thereunder to suffer simple imprisonment for a period of 3 (three) months 1 (one) day and to pay a fine of Tk. 2,00,000/- (Two lakhs).

The gist of the case is that one, Md. Aminul Islam as complainant filed a petition of complaint being C.R Case No. 145 of 2018 (Lal) in the Court of the learned Judicial Magistrate, Lalpur Court, Natore against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 stating, inter-alia, that in order to pay the outstanding dues of business transaction the convict-appellant on 28.03.2018 issued a cheque of Tk 2,00,000/- (Two lakhs) of Agrani Bank Ltd., Barangangdia Branch, Kushtia in favour of complainant respondent No.2 and thereafter, on 08.04.2018 the complainant respondent No. 2 presented the said cheque before the bank for encashment which was returned unpaid for insufficient of fund and thereafter, the complainant sent a legal notice through his Advocate to the accused appellant on 18.04.2018 asking her to pay the cheque's amount within 30 days but the accused-appellant did not pay any heed to it and hence, the case.

On receipt of the petition of complaint, the learned Senior Judicial Magistrate, cognizance Court, Lalpur, Natore examined the complainant under Section 200 of the Code of Criminal Procedure and took cognizance

against the accused-appellant under section 138 of the Negotiable Instruments Act, 1881 and also issued summon against the accused-appellant fixing next date on 29.07.2018.

Thereafter, in usual course the case record was sent to the Court of the learned Sessions Judge, Natore wherein the case was registered as Sessions Case No. 1036 of 2018 which was subsequently transmitted to the Court of the learned Additional learned Sessions Judge, Natore for trial in which the accused-appellant was put on trial to answer a charge under section 138 of the Negotiable Instruments Act, 1881.

At the trial the complainant himself was examined as PW-1 and also exhibited some documents to prove its case, while the defence examined none. No one cross-examined the witnesses as the appellant was absconding.

On conclusion of trial, the learned Additional Sessions Judge, Rangpur by the impugned judgment and order dated 09.02.2020 convicted the accused appellant under Section 138 of the Negotiable Instrument Act, 1881 and sentenced her thereunder to suffer rigorous imprisonment for a period of 3 (three) months 1 (one) day and to pay a fine of Tk. 2,00,000/- (Two lakhs).

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 09.02.2020 the convict-appellant preferred this criminal appeal.

No one found present to press the appeal on repeated calls despite of fact that this criminal appeal has been appearing in the list for hearing with the name of the learned Advocate for the convict appellant since long.

In view of the fact that this is a petty old case arising out of Negotiable Instruments Act, 1881, I am inclined to dispose of it on merit on the basis of the evidence and materials on record.

On scrutiny of the record, it appears that the complainant filed the petition of complaint being C.R Case No. 145 of 2018 (Lal) in the Court of the learned Senior Judicial Magistrate, Rangpur against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 and during trial the complainant himself was examined as PW-1 who in his deposition stated that the accused in order to repayment of the loan issued a cheque of Tk 2,00,000/- (Two lakhs) of Agrani Bank Ltd., Baragangdia Branch, Kushtia in favour of him and thereafter, on 08.04.2018 the complainant

respondent No. 2 presented the said cheque before the bank for encashment which was dishonoured and thereafter, he sent a legal notice through his Advocate to the accused on 18.04.2018 asking her to pay the cheque's amount within 30 days which was received by the accused on 22.04.2018 but she did not come forward pay the cheque's amount. This witness exhibited the cheque as "Ext.-1", dishonoured slip as "Ext.-2", legal notice as "Ext.-3", postal receipt and acknowledgment as "Ext.4&4/1", petition of complaint and his signature thereon as "Ext. Nos. 5, 5/1 and 5/2".

On perusal of record, it is found that the complainant-respondent No. 2 after exhausting all the legal formalities filed C.R. case No. 145 of 2018 (Lal) under section 138 of the Negotiable Instruments Act against the convict appellant.

To constitute an offence under Section 138 of the NI Act, the following elements need to be fulfilled:

1. A cheque should have been issued by the payer for the discharge of a debt or other liability.

2. The cheque should have been presented or deposited by the payee within a period of six months from the date of drawing of the cheque or within the period of validity of the cheque, whichever is earlier.

3. The payee should have issued a notice in writing to the payer within 30 days of receipt of information regarding the return of the cheque as unpaid from the bank.

4. The payer/drawer of the cheque should have paid the cheque amount within 30 days of receipt of the said notice from the payee.

5. If the payer is failed to pay in time the cheque amount, the payee should have filed a complaint within one month.

On an overall consideration of the facts, circumstances and the materials on record, it can be easily suggested that all the above quoted key elements are exist in the present case.

On an analyses of impugned judgment and order of conviction and sentence dated 09.02.2020 passed by the learned Additional Sessions Judge, Rangpur in Sessions Case No. 1036 of 2018, I find no flaw in the reasonings of the trial Court or any ground to assail the same inasmuch as all the key elements of Section 138 of Negotiable Instruments Act are exist in the case.

The learned Judge of the trial Court below appears to have considered all the material aspects of the case and justly convicted the accused appellant under Section

138 of the Negotiable Instruments Act, 1881 and sentenced her thereunder to suffer simple imprisonment for a period of 3 (three) months 1 (one) day and to pay a fine of Tk. 2,00,000/- (Two lakhs). No interference is, therefore, called for.

In the result the appeal is dismissed. The impugned judgment and order of conviction and sentence dated 09.02.2020 passed by the learned Additional Sessions Judge, Rangpur in Sessions Case No. 1036 of 2018 arising out of C.R. Case No. 145 of 2018 (Lal) is affirmed.

Since the appeal is dismissed the convict appellant is directed to surrender her bail bond within 3 (three) months from today to suffer her sentence, failing which the Trial Court shall take necessary steps to secure arrest against her.

The complainant-respondent No.2 is permitted to withdraw half of the cheque's amount as deposited in the Trial Court by the convict-appellant for the purpose of preferring this Criminal Appeal.

Send down the lower Court records at once.