

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Appeal No.4699 of 2020

Md. Shorifullah Al Mobarak

.... 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. Md. Faruk Hossain, Advocate

.... For the 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 30.06.2019 passed by the learned Court of Additional Sessions Judge, Chapainawabganj in Sessions Case No.1118 of 2017 arising out of Gomastapur C.R. Case No.258 of 2017 convicting the appellant under Section 138 of the Negotiable Instruments Act,

1881 and sentenced him to suffer imprisonment for a period of 01(one) year and to pay a fine of Tk.16,00,000/- only.

At the time of admitting the appeal this Court granted ad-interim bail to the appellant for a period of 01(one) year and stayed the realization of fine.

The prosecution case, in brief, is that the convict-appellant issued a cheque being No.IBH9431510 dated 28.06.2017 against the account No.2050264010085700 Islami Bank Bangladesh Limited, Rahanpur Branch, Gomostapur, Chapainawabgonj of Tk.15,23,387/-, infavour of the complainant. The said cheque was deposited to the concerned bank for encashment, but it was dishonoured for insufficient fund on 29.06.2017. Thereafter, on 06.07.2017 the complainant-respondent No.2 sent a legal notice to the convict-appellant to pay the due amount, however, the convict-appellant did not pay the said amount within 30 days and as such the complainant-respondent No.2 filed a complaint-petition against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 before the learned Senior Judicial Magistrate, Cognizance Court, Gha Anchol, Chapainawabganj on 10.08.20187 and hence the case.

After receiving the petition of complaint the learned Magistrate examined the complainant under section 200 of the Code of Criminal Procedure and thereafter the learned Magistrate took cognizance against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 as C.R. Case No.258 of 2017 and issued summons against the convict-appellant. Thereafter, the appellant surrendered before the Senior Judicial Magistrate, Cognizance Court “Gha” Anchol, Chapainawabganj and obtained bail.

Thereafter, on 31.10.2017 this case was transferred to the Court of learned Sessions Judge, Chapainawabganj for trial and disposal and it was renumbered as Sessions Case No.1138 of 2017. Thereafter, on 12.11.2017 the learned Sessions Judge, Chapainawabganj transferred the same to the learned Joint Sessions Judge, 2nd Court, Chapainawabganj for disposal. Further, it was transferred to the learned Additional Sessions Judge, Chapainawabganj for trial.

On 18.04.2019 the learned Additional Sessions Judge, Chapainawabganj framed charge against the convict-appellant under section 138 of the negotiable Instruments Act, 1881,

which was not read over and explained the appellant for his absconsion.

The prosecution produced one witness before the Court to prove his case and the defence examined none.

After examination of the witness the concerned Court Could not examined the appellant under section 342 of the Code of Criminal Procedure for his absconsion.

The learned Additional Sessions Judge, Chapainawabganj after conclusion of the trial upon considering of the materials on record convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer imprisonment for a period of 01(one) year and also to pay a fine of Tk.16,00,000/- by his judgment and order of conviction and sentence dated 30.06.2019.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 30.06.2019 passed by the learned Additional Sessions Judge, Chapainawabganj in Sessions Case No.1118 of 2017 arising out of Gomastapur C.R. Case No.258 of 2017, the convict-

appellant preferred this Appeal, before this Hon'ble High Court Division.

No one appears for the convict-appellant to press this Appeal, when this matter was taken up for hearing although it appears in the daily cause list several times for hearing.

Mr. Md. Faruk Hossain, the learned Advocate appearing on behalf of the complainant-respondent No.2 submits that the convict-appellant issued a cheque being No.IBH9431510 dated 28.06.2017 against the account No.2050264010085700 Islami Bank Bangladesh Limited, Rahanpur Branch, Gomostapur, Chapainawabgonj of Tk.15,23,387/-, infavour of the complainant. The said cheque was deposited to the concerned bank for encashment, but it was dishonoured for insufficient of fund on 29.06.2017. Thereafter, 06.07.2017 the complainant-respondent No.2 sent a legal notice to the convict-appellant to pay the due amount, however, the convict-appellant did not pay the said amount within 30 days and as such the complainant-respondent No.2 filed a complaint-petition against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 before the learned Senior Judicial Magistrate, Cognizance Court, Gha Anchol, Chapainawabganj on 10.08.2017 as C.R.

Case No.258 of 2017. Thereafter, on 31.10.2017 this case was transferred to the Court of learned Sessions Judge, Chapainawabganj for trial and disposal and it was renumbered as Sessions Case No.1118 of 2017. Thereafter, on 12.11.2017 the learned Sessions Judge, Chapainawabganj transferred the same to the learned Joint Sessions Judge, 2nd Court, Chapainawabganj for disposal. Further, it was transferred to the learned Additional Sessions Judge, Chapainawabganj for trial. The learned Additional Sessions Judge, Chapainawabganj after conclusion of the trial upon considering of the materials on record convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer imprisonment for a period of 01(one) year and also to pay a fine of Tk.16,00,000/- by his judgment and order of conviction and sentence dated 30.06.2019 rightly, which is maintainable in the eye of law. Accordingly, he prays for discharging the Rule.

I heard the submissions of the learned Advocate for the respondent No.2 and perused the judgment and order of the Court below and the materials on record.

It appears from the record that P.W.1 in his deposition supported the complaint-petition and P.W.1 was not cross-examined as the accused was absconding. The convict-appellant

has not been able to adduce any proof that the amount of cheque has been paid to the complainant. The appellant complained that the impugned cheque is a security cheque. There is no legal bar to sue with security cheque. Therefore, it appears that the appellant issued the impugned cheque to the complainant in payment of the loan amount.

Now, let us discuss the evidence of prosecution witness Harun Rashid as P.W.1.

P.W.1 Harun Rashid in his deposition supporting the complaint-petition stated that on 28.06.2017 the convict-appellant gave a cheque No.IBH9431510 to the complainant. He submitted the said cheque to the concerned bank, but the said cheque was dishonored on 29.06.2017 for insufficient fund. Thereafter, he sent a legal notice to the convict-appellant to pay the due amount through Registry Post on 06.07.2017, however, the convict-appellant did not pay the said amount. The complainant filed the case on 10.08.201 in time. He identified the complaint-petition and his signature as exhibit-1 series, main cheque, dishonor slip, legal notice and postal receipt as exhibit-2 series.

Considering the above facts and circumstances and materials on record, it appears that on 28.06.2017 the convict-

appellant gave a cheque No.IBH9431510 to the complainant. He submitted the said cheque to the concerned bank, but the said cheque was dishonored on 29.06.2017 for insufficient fund. Thereafter, he sent a legal notice to the convict-appellant to pay the due amount through Registry Post on 06.07.2017, however, the convict-appellant did not pay the said amount. For this reason, the complainant filed the case on 10.08.2017 in time following all legal formalities. Therefore, it is my view that the learned Additional Sessions Judge, Chapainawabganj passed the judgment and order of conviction and sentence dated 30.06.2019 rightly, which is maintainable in the eye of law and there is no chance to interference with the said judgment and order.

Accordingly, the appeal, therefore, has no merit.

In the result, the Criminal Appeal No.4699 of 2020 is dismissed.

The judgment and order of conviction and sentence dated 30.06.2019 passed by the learned Additional Sessions Judge, Chapainawabganj in Sessions Case No.1118 of 2017 arising out of C.R. Case No.258 of 2017 is hereby confirmed and upheld.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.7,61,693.5/-, 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 order of bail granted earlier by this Court is hereby cancelled and recalled and the order of stay of the realization of fine is hereby vacated.

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.

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