

Present:

Mr. Justice Md. Salim

Criminal Appeal No. 5119 of 2020

Md. Shamsul Islam

..... Convict-Appellant.

-Versus-

The State and another

..... Respondents.

Mr. Mohammad Hanif Bin Kashem, Advocate

..... For the Appellant.

Mr. Md. Mustaque Ahmed with

Ms. Sayeda Rafika Khatun, Advocate

..... For the respondent No.2

Mr. Monzurul Alam Sujan, DAG with

Mr. Towhidul Islam, AAG

Mr. Syed Akhtarul Islam, AAG

..... For the State

Heard on 22.02.2026 and 23.04.2026

Judgment on 23.04.2026

This appeal is directed against the Judgment and order dated 27.08.2020 passed by the learned Additional Metropolitan Sessions Judge, Sylhet, in Sessions Case No.877 of 2018 arising out of C.R No.20 of 2018, acquitting the accused respondent No. 2 of the charge initiated by the appellant under section 138(1) of the Negotiable Instruments Act, 1881.

The prosecution case in brief is that this appellant, as complainant filed a petition of complaint against the respondent No.2 before the Chief Metropolitan Magistrate, Sylhet alleging inter alia that, towards the settlements of debt, owed the respondent No.2 issued two cheques on 19.10.2017 and on 23.10.2017 amounting to Tk.3,00,000/- and Tk.14,00,000/- respectively in a total Tk.17,00,000/- in favour of the appellant. In order to encash the said cheques, the appellant presented them on 05.11.2017 to the concerned Bank, but on that very date, the cheques were dishonored with the drawer's endorsement of 'stopped payment'. Finding no other alternative, the appellant then issued a legal notice on 28.11.2017, by registered post with acknowledgment due, requesting repayment of the amount. As the respondent No.2 failed to comply with the request made in the legal notice, the appellant was constrained to file the petition. In view of the said petition of complaint, the learned Metropolitan Magistrate, Sylhet, then examined the complainant under section 200 of the Code of Criminal Procedure, and took cognizance of the said case. Since the case is triable by the learned Metropolitan Sessions Judge, the learned Metropolitan Magistrate,

Sylhet, then transferred the case to the learned Metropolitan Sessions Judge, Sylhet.

The learned Metropolitan Sessions Judge, Sylhet, upon taking cognizance of the offense, transferred the case to the learned Additional Metropolitan Sessions Judge, Sylhet, for trial. In the meantime, the accused respondent surrendered before the court below and obtained bail.

Subsequently, the learned Additional Metropolitan Sessions Judge, Sylhet, framed the charge against the accused respondent No.2 under section 138 of the Negotiable Instruments Act, 1881, which was read over and explained to him; he pleaded innocent and claimed to be tried.

During the trial, the prosecution, that is, the complainant-appellant, examined as PW-1 and also produced several documents. On the contrary, the defense examined four witnesses.

After the conclusion of the taking of evidence, the accused-respondent No.2 was examined under section 342 of the Code of Criminal Procedure, when he again pleaded innocent.

However, after the conclusion of the trial, the learned Additional Metropolitan Sessions Judge, Sylhet, vide Judgment and order dated 27.08.2020, acquitted the respondent No. 2 of the charge under section 138 of the Negotiable Instruments Act, 1881.

Being aggrieved by and dissatisfied with the above Judgment and order of acquittal, the complainant, as appellant, preferred the instant appeal before this court.

Mr. Mohammad Hanif Bin Kashem, the learned counsel appearing on behalf of the complainant-appellant upon taking us to the impugned Judgment, the petition of appeal and grounds taken thereof as well as other documents so have been appended with the record at the very outset submits that, under the provision of section 138(1) of the Negotiable Instruments Act, 1881 and its amendment made in the year 2000, there has been no scope to consider any liability made among the parties in any business or any other commercial transaction while adjudicating a proceeding initiated under section 138 (1) of the Negotiable Instruments Act but the learned Additional Metropolitan Sessions judge, Sylhet only on considering the Bank statement provided

by the accused respondent No.2 which have been issued by the Bank concern before issued of the alleged cheque. Therefore, the impugned Judgment cannot be sustained in law.

On the contrary, Mr. Md. Mustaque Ahmed, the learned advocate appearing on behalf of the accused respondent No.2, submits that the respondent No.2 admittedly took a loan from this appellant and which has been paid to the appellant through Bank channel and consider the same the trial court below very judiciously held that the complainant appellant failed to prove his case by produce the materials evidence in respect of the alleged cheque therefore this appeal is liable to be dismissed.

We have anxiously considered the submission advanced by the learned counsel for both parties, perused the impugned Judgment, evidence, and other materials on record.

To prove the charge, the complainant himself was examined as P.W-1; in his examination-in-chief, he narrated the entire story of the complaint. On the contrary, the defense examined four witnesses, all of whom stated that the alleged loan amount had been paid

to the complainant-appellant before the cheque was issued.

On going through the petition of complaint as well as the deposition so made by the PW-1 and DW.1-4, we find that, supporting the assertion so made in the petition of complaint, the complainant, as PW-1, has made his testimony and was cross-examined by the defense, but nothing could deviate from what he stated in his examination-in-chief. Moreover, we find that the documents, namely, the disputed cheque, returned memo, the legal notice, and the acknowledgment due receipt, have also been exhibited by the complainant without any objection by the accused respondent No.2, which also proves that those very documents have rightly been taken into evidence.

Be that as it may, if the cheque is found to have been issued by the drawer and it was dishonored in that event, there has been no scope for the drawer of the cheque to exonerate himself in committing the offense punishable under section 138(1) of the Negotiable Instruments Act.

On going through the impugned Judgment passed by the trial court, we also find that the trial court in its

entire Judgment only looked into the alleged technical shortcomings of the prosecution and gave emphasis on the Bank statement through which the accused respondent No.2 paid such an amount to the complainant appellant before issuance of the alleged cheques. However, the trial court below in his Judgment observed that the complainant appellant failed to prove his claim by adducing and producing in the evidence save and except the cheque but that very observation cannot be sustained in law because if the legal requirement provided in various clauses of section 138(1) of the Negotiable Instruments Act is found to have fully complied with in that event there has been no scope to look into the alleged liabilities made among the parties and these very grounds have clearly been taken by the appellant which we find to have legal substance.

In view of the above discussion and observation, we find no substance in the impugned Judgment and order, which is liable to be interfered with.

In view of the above facts and circumstances, the accused respondent No.2 is found guilty of committing an offense under section 138(1) of the Negotiable Instruments Act and is sentenced to a fine of

Tk.17,00,000/- to be paid in favor of the complainant appellant.

Resultantly, the appeal is allowed.

The accused respondent No.2 is found guilty of committing offence under section 138(1) of the Negotiable Instruments Act and is sentenced to fine of Tk.17,00,000/- to be paid in favour of appellant within 04 (four) months from the date of receipt of this Judgment by the trial court failing which the trial court below is directed to take necessary steps in realizing the same under the provision of section 386 of the Code of Criminal Procedure.

Communicate the Judgment and send down the lower court records.

.....
(MD. SALIM, J).

Rakib(ABO)