

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 5874 of 2020

Md. Mostofa Kamal

...Appellant

-Versus-

Koitoba Corporation and another

...Respondents

No one appears.

...For the appellant

Mr. Alal Uddin, Advocate with

Mr. Jalal Uddin Ahmed, Advocate with

Ms. Rabeya Sultana, Advocate

...For the complainant-respondent No. 1

Heard on 04.12.2024

**Judgment delivered on 15.12.2024**

This appeal under Section 410 of the Code of Criminal Procedure, 1898 is directed against the judgment and order dated 21.03.2018 passed by Additional Metropolitan Sessions Judge, Court No. 4, Dhaka in Metropolitan Sessions Case No. 14584 of 2017 convicting the appellant under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 1(one) year and fine of Tk. 10,00,000(ten lakh).

The prosecution case, in short, is that the complainant Hossain Ahmed is the Proprietor of Koitoba Corporation and the accused Md. Mostofa Kamal is the Proprietor of A.B.C Poultry and Fish Feed. The accused issued Cheque No. 8170492 on 17.05.2015 for payment of Tk. 6,00,000(six lakh) and Cheque No. 8170493 on 17.06.2015 for payment of Tk. 4,00,000(four lakh), total Tk. 10,00,000(ten lakh) drawn on Account No. 0981020003893 maintained with A.B.C Poultry and Fish Feeds with the Al-Arafah Islami Bank Limited, Sonargaon Janapath Road Branch. The complainant presented the said cheques on 13.08.2015 for encashment but the said cheques were dishonoured with the remark 'insufficient funds'. The complainant informed the matter to the

accused verbally and the accused requested him to present the said cheques again. After that, the complainant presented the said cheques on 10.09.2015 and 20.09.2015 but on those dates the cheques were dishonoured with the remark 'insufficient funds'. He sent a legal notice on 04.10.2015 to the accused for payment of the amount of the cheques, total Tk. 10,00,000(ten lakh), and the accused received the notice on 06.10.2015. Despite the service of notice upon the accused, he did not pay the cheque amount. Consequently, the complainant filed the case on 30.11.2015 under Section 138 of the Negotiable Instruments Act, 1881.

After filing the complaint petition, the complainant was examined under Section 200 of the Code of Criminal Procedure, 1898 and the learned Magistrate was pleased to take cognizance of the offence against the accused under Section 138 of the Negotiable Instruments Act, 1881. The case was sent to the Metropolitan Sessions Judge, Dhaka who subsequently sent the case to the Additional Metropolitan Sessions Judge, Court No. 4, Dhaka for trial and disposal of the case.

During trial charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881. At the time of the framing charge, the accused was absconding. The prosecution examined 1(one) P.W. to prove the charge against the accused. The defence did not cross-examine P.W. 1. After concluding the trial, the trial Court by impugned judgment and order convicted the accused as stated above against which he filed the instant appeal.

P.W. 1 Hossain Ahmed is the complainant. He stated that the accused Md. Mostofa Kamal issued two cheques on 17.05.2015 and 17.06.2015 for payments of Tk. 6 lakh and 4 lakh respectively. Lastly, the cheques were dishonoured on 20.09.2015. On 04.10.2015 he sent a legal notice but the accused did not pay the cheque amount. He proved the complaint petition as Exhibit 1 and his signature on the complaint petition as Exhibit 1/1, two cheques as

Exhibit 2, dishonour slips as Exhibit 3 series, legal notice as Exhibit 4, postal receipt as Exhibit 5 series and AD as Exhibit 6 series.

No one appears on behalf of the appellant.

Learned Advocate Mr. Alal Uddin appearing on behalf of the complainant-respondent No. 1 submits that the accused issued two cheques on 17.05.2015 and 17.06.2015 drawn on his account maintained with Al-Arafah Islami Bank Limited for payment of Tk. 6,00,000 and Tk. 4,00,000 total Tk. 10,00,000. The cheques were lastly presented on 20.09.2015 within six months from the date of issuance of the cheques and the said cheques were dishonoured on 20.09.2015, the complainant sent a legal notice on 04.10.2015 which was received by the accused on 06.10.2015 but he did not pay the amount of the cheques and the complainant filed the case on 30.11.2015 complying with all the procedures under Section 138 of the Negotiable Instruments Act, 1881. During the trial, the prosecution proved the charge against the accused under Section 138 of the Negotiable Instruments Act, 1881 and the trial Court on correct assessment and evaluation of the evidence passed the impugned judgment and order. He prayed for the dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Alal Uddin who appeared on behalf of complainant-respondent No. 1, perused the evidence, impugned judgment and order passed by the trial Court and the records.

On perusal of the evidence, it appears that the accused Md. Mostofa Kamal as Proprietor of A.B.C Poultry and Fish Feed issued Cheque No. 8170492 dated 17.05.2015 for payment of Tk. 6,00,000(six lakh) and Cheque No. 8170493 dated 17.06.2015 for payment of Tk. 4,00,000(four lakh), total Tk. 10,00,000(ten lakh) drawn on Account No. 0981020003893 maintained in the name of A.B.C Poultry and Fish Feeds in favour of Koitoba Corporation (exhibits 2 and 2/1). The said cheques were presented on 20.09.2015

but those cheques were dishonoured with the remark 'insufficient funds' and the Bank issued the dishonour slips which were proved as exhibits 3 and 3/1 respectively. The complainant sent the legal notices on 04.10.2015 for payment of the said cheques amount total Tk. 10,00,000 which was proved as Exhibit 4. The said legal notice was sent through registered post with AD and the postal receipts were proved as exhibits 5 and 5/1. The ADs were proved as exhibits 6 and 6/1. The accused received the said notice on 06.10.2015. Despite the service of notice upon the accused on 06.10.2015, he did not pay the cheque amount and the complainant filed the case on 30.11.2015 complying with the procedures under Section 138 of the Negotiable Instruments Act, 1881.

There is a presumption under Section 118(a) of the Negotiable Instruments Act, 1881 that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. The presumption under Section 118(a) of the said Act is rebuttable. The accused neither adduced evidence nor cross-examined P.W. 1 to rebut the presumption under Section 118(a) of the said Act. Therefore, I am of the view that the accused issued the cheques in favour of the payee-complainant for consideration. The cheques were dishonoured and after service of notice in writing under Section 138(1)(b) of the said Act the accused did not pay the cheque amount. The complainant filed the case following all procedures of Section 138 of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the accused beyond all reasonable doubt and the trial Court on proper assessment and evaluation of the evidence legally passed the impugned judgment and order of conviction.

Considering the gravity of the offence and the facts and circumstances of the case, I am of the view that the ends of justice

would be best served if the sentence passed by the trial Court is modified as under;

The accused Md. Mostofa Kamal is found guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and he is sentenced to suffer imprisonment for 4(four) months and fine of Tk. 10,00,000(ten lakh).

The accused Md. Mostofa Kamal is directed to surrender forthwith in the trial Court. He is further directed to deposit the remaining fine amount within 1(one) month from the date. The complainant-respondent No. 1 Koitoba Corporation is entitled to get the fine amount Tk. 10,00,000(ten lakh).

With the above findings and observation, the appeal is disposed of with modification of the sentence.

Send down the lower Court's records at once.