

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 7124 of 2020

Md. Jalal Ahmmed

...Appellant

-Versus-

The State and another

...Respondents

No one appears.

...For the appellant

Mr. Md. Badruddoja Babu, Advocate

...For the complainant-respondent No. 2

Heard on 05.02.2025 and 06.02.2025

**Judgment delivered on 09.02.2025**

This appeal under Section 410 of the Code of Criminal Procedure, 1898 is directed against the judgment and order dated 11.02.2018 passed by Session Judge, Natore in Session Case No. 569 of 2017 convicting the appellant under Section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer rigorous imprisonment for 06(six) months and fine of Tk. 57,750(fifty seven thousand seven hundred and fifty), in default, to suffer imprisonment for 01(one) month more.

The prosecution case, in short, is that the wife of the accused Md. Jalal Ahmmed was a Member of the National Development Program, Ahmmedpur Branch, Baraigram, Natore. She took a loan of Tk. 50,000 on 05.05.2016. In the loan agreement, it has been stipulated that she would pay the loan in 12 instalments along with the service charge, total Tk. 57,700(fifty seven thousand seven hundred). She did not pay Tk. 52,750(fifty-two thousand seven hundred and fifty) for which the accused Md. Jalal Ahmmed issued Cheque No. 0957917 on 31.10.2016 drawn on his Account No. 3315 maintained with Rajshahi Agriculture Development Bank, Ahmmedpur Branch, Natore. The complainant presented the cheque on 14.11.2016 through Sonali Bank Limited, Ahmmedpur Branch,

Natore but the said cheque was dishonoured. The complainant sent a legal notice on 30.11.2016 through registered post with AD. The accused received the notice on 15.12.2016 but he did not pay the cheque amount. Thereafter, the complainant filed the case on 16.01.2017.

During the trial, the charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881 which was read over and explained to the accused present in Court and he pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 1(one) witness to prove the charge against the accused. During the trial, the accused was absconding. After concluding the trial, the Session Judge, Natore by impugned judgment and order convicted and sentenced the accused as stated above against which he filed the instant appeal.

P.W. 1 Md. Masud R Rahman stated that the accused Jalal Ahmmed issued a cheque on 30.10.2016 for payment of Tk. 52,750, which was dishonoured on 14.11.2016. He sent legal notice on 30.11.2016. The accused received the notice on 15.12.2016. He proved the complaint petition as exhibit 1 and his signature on the complaint petition as exhibit 1/1, disputed cheque as exhibit 2, dishonour slip as exhibit 3, legal notice as exhibit 4, postal receipt as exhibit 5 and A.D. as exhibit 6. The defence did not cross-examine P.W. 1.

No one appears on behalf of the appellant.

Learned Advocate Mr. Md. Badruddoja Babu appearing on behalf of the complainant-respondent No. 2, National Development Program, submits that the accused issued a cheque for payment of the loan amounting to Tk. 52,750 taken by his wife from National Development Program, Baraigram, Natore, drawn on his Account No. 3315 maintained with Rajshahi Agriculture Development Bank but the said cheque was dishonoured on 14.11.2016 and the complainant sent legal notice on 30.11.2016 which was received by

the accused on 15.12.2016 but he did not pay the cheque amount. Consequently, the complainant filed the case on 16.01.2017 complying with all the procedures under Section 138 of the Negotiable Instruments Act, 1881 and the prosecution proved the charge against the accused beyond all reasonable doubt. Therefore, he prayed for the dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Md. Badruddoja Babu who appeared on behalf of complainant-respondent No. 2, National Development Program, 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. Jalal Ahmmed issued Cheque No. 0957917 on 31.10.2016 in favour of National Development Program, Ahmmedpur Branch, Baraigram, Natore for payment of Tk. 52,750 drawn on his Account No. 3315 maintained with Rajshahi Agricultural Development Bank Limited (exhibit 2). The said cheque was dishonoured on 14.11.2016 with the remark 'insufficient balance' and the bank issued the dishonour slip (exhibit 3). The complainant sent legal notice on 30.11.2016 (exhibit 4) through registered post (exhibit 5) with A.D. (exhibit 6). P.W. 1 stated that the accused received the said cheque on 15.12.2016 but he did not pay the cheque amount.

From the evidence discussed hereinabove, it appears that the complainant filed the case on 16.01.2017 following all the procedures under Sections 138 and 141(b) of the Negotiable Instruments Act, 1881 and during trial, the prosecution proved the charge against the accused beyond all reasonable doubt.

On perusal of the impugned judgment passed by the trial Court, it appears that the trial Court awarded the sentence of rigorous imprisonment and fine of Tk. 57,750, in default, to suffer imprisonment for 01(one) month. On a bare reading of Section 138 of the Negotiable Instruments Act, 1881, it reveals that the trial

Court is not empowered under Section 138 of the Negotiable Instruments Act, 1881 to award any sentence of rigorous imprisonment and default sentence. Therefore, the trial Court committed an illegality in awarding the rigorous imprisonment and default sentence.

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. Jalal Ahmmed is found guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and he is sentenced to pay a fine of Tk. 52,750(fifty two thousand seven hundred and fifty).

In the result, the appeal is disposed of with modification of the sentence.

Send down the lower Court's records at once.