

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Appeal No.7659 of 2020

M A Mohaiman Khan (Hanif)

.....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. Syed Mizanur Rahman, Advocate

.....For the complainant-respondent No.2

Heard and Judgment on: 30.08.2023

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred against the judgment and order of conviction and sentence dated 25.03.2012 passed by the learned Metropolitan Additional Sessions Judge, 3rd Court, Dhaka in Metropolitan Sessions Case No.8349 of 2010 arising out of C.R. Case No.3543 of 2007 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer imprisonment for a period of 06(six) months and also to pay a fine of Tk.5,00,000/- (five lac) 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 short is that the convict-appellant was previously known to the complainant-respondent No.2 and took loan Tk.15,00,000/- from the respondent No.2 and issued 03(three) cheques in favour of the respondent No.2 including one cheque being No.Ch/Kha 0553427 dated 11.03.2007 drawn on Mercantile Bank Limited, Sylhet Branch and the said cheque was presented before the bank for encashment and the same was dishonoured due to “Account does not exist” vide Memo dated 12.07.2007. Thereafter, the respondent No.2 served notice dated 09.08.2007 upon the appellant through his lawyer requesting him to pay Tk.5,00,000/- within 30 days from the date of receipt of this notice. The convict-appellant received the notice on 20.08.2007, but did not pay the cheque amount. For this reason, the respondent No.2 filed a complaint-petition against the appellant under section 138 of the Negotiable Instruments Act, 1881 before the Court of Metropolitan Magistrate, Dhaka and hence the case.

The learned Metropolitan Magistrate, Dhaka examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance the offence under section 138 of the Negotiable Instruments Act, 1881 as C.R. Case No.3543 of 2007 and issued summons upon the convict-appellant. The convict-appellant voluntarily surrendered before the learned lower Court and obtained bail on 24.05.2010. Thereafter, this case was transferred to the Court of learned Metropolitan Sessions Judge, Dhaka for trial and disposal and it was registered as Metropolitan Sessions Case No.8350 of 2010.

Thereafter, the same was transferred to the learned Additional Metropolitan Sessions Judge, 3rd Court, Dhaka for disposal. Thereafter, the learned Additional Metropolitan Sessions Judge, 3rd Court, Dhaka framed charge on 10.01.2011 against the convict-appellant under section 138 of the negotiable Instruments Act, 1881, which was read over to him who pleaded not guilty and claimed to be tried.

At the time of trial the complainant produced 01(one) witness and the defence did not produce any witness to oppose the case. After closing the witnesses the convict-appellant was not examined under section 342 of the Code of Criminal Procedure for his absconsion. The learned Additional Metropolitan Sessions Judge, 3rd Court, Dhaka after conclusion of the trial found guilty of the convict appellant under section 138 of the Negotiable Instruments Act, 1881 and convicting the appellant under the said section sentenced him to suffer simple imprisonment for 06(six) months and also to pay a fine of Tk.5,00,000/- (five lac) by his judgment and order of conviction and sentence dated 25.03.2012.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 25.03.2012 passed by the learned Additional Metropolitan Sessions Judge, 3rd Court, Dhaka in Metropolitan Sessions Case No.8349 of 2010 arising out of C.R. Case No.3543 of 2007, the convict-appellant preferred this Appeal, before this Hon'ble High Court Division.

No one appears for the convict-appellant to press this Appeal.

On the other hand, Mr. M. Mostafa Kamal, the learned Advocate appearing on behalf of the respondent No.2 submits that the appellant took loan Tk.15,00,000/- from the respondent No.2 and issued 03(three) cheques in favour of the respondent No.2 including one cheque being No.Ch/Kha 0553427 dated 11.03.2007 drawn on Mercantile Bank Limited, Sylhet Branch and the said cheque was presented before the bank for encashment and the same was dishonoured due to “Account does not exist” vide Memo dated 12.07.2007. Thereafter, the respondent No.2 served notice dated 09.08.2007 upon the appellant through his lawyer requesting him to pay Tk.5,00,000/- within 30 days from the date of receipt of this notice. The convict-appellant received the notice on 20.08.2007, but did not pay the cheque amount. For this reason, the respondent No.2 filed a complaint-petition against the appellant under section 138 of the Negotiable Instruments Act, 1881 before the Court of Metropolitan Magistrate, Dhaka. Thereafter, this case was transferred to the Court of learned Metropolitan Sessions Judge, Dhaka for trial and disposal and it was registered as Metropolitan Sessions Case No.8350 of 2010. Again, the same was transferred to the learned Additional Metropolitan Sessions Judge, 3rd Court, Dhaka for disposal. The learned Additional Metropolitan Sessions Judge, 3rd Court, Dhaka after conclusion of the trial and after hearing the parties found guilty of the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 and convicting the appellant

under the said section and sentenced him to suffer simple imprisonment for 06(six) months and also to pay a fine of Tk.5,00,000/- (five lac) by his judgment and order of conviction and sentence dated 25.03.2012 rightly. Therefore, he prays for dismissing the Appeal.

I have perused the Appeal, the impugned judgment and order of conviction and sentence of the Court's below, the submissions of the learned Advocate for the respondent No.2, the papers and documents as available on the record.

Now, let us discuss the evidence of prosecution witness K.P. Sarker.

In support of the prosecution story P.W.1 K.P Sarker in his examination in chief stated that the appellant gave the disputed cheque to the respondent No.2 with an amount of Tk.5,00,000/- for payment of loan money on 18.03.2007. He deposited the cheque for encashment, but it was dishonoured for insufficient of fund in the account of the appellant. According to him he sent a legal notice on 09.08.2007 to the appellant, but did not pay the loan amount and thereafter, he filed the case.

After perusing the deposition of P.W.1, I have perused the disputed cheque and other documents connected with the case. It appears that the appellant issued the disputed cheque on 18.03.2007 and it was dishonoured on 12.07.2007 for insufficient of fund. Further, it appears that the complainant sent legal notice within stipulated time and thereafter, he filed

the case. Therefore, considering the facts and circumstances, this Court is of the view of that the prosecution is able to establish the case and thus, succeeded in proving it beyond all reasonable doubts. The appellant has committed an offence under section 138 of the Negotiable Instruments Act,1881.

So, the learned Additional Metropolitan Sessions Judge, 3rd Court, Dhaka passed the judgment and order of conviction and sentence dated 25.03.2012 in Metropolitan Sessions Case No.8349 of 2010 rightly, which is maintainable in the eye of law and there is no chance to interference with the said judgment and order of conviction and sentence.

Accordingly, the appeal, therefore, has no merit.

In the result, the Criminal Appeal No.7659 of 2020 is dismissed.

The judgment and order of conviction and sentence dated 25.03.2012 passed by the learned Additional Metropolitan Sessions Judge, 3rd Court, Dhaka in Metropolitan Sessions Case No.8349 of 2010 is hereby confirmed and upheld.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.2,50,000/-, 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 take the said amount).

The order of bail granted earlier by this Court is hereby cancelled and recalled.

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, failing which the concerned lower Court is hereby directed to take necessary steps to secure arrest him.

Send down the lower Court records with a copy of the judgment and order to the concerned Court below at once.

Md. Anamu Hoque Parvej
Bench Officer