

Present:

Mr. Justice Raziuddin Ahmed

Criminal Appeal No.8493 of 2020

Md. Jakir

----- Convict-Appellant

-Vs-

The State and another

----- Complainant-Respondents

No one appears

----For the Appellant

Mr. Ashikur Rahman, Advocate with

Mr. Maksudur Rahman, Advocate

----For the Opposite Party No.2

Heard on 29.04.2026, 18.05.2026 and

Judgment on 21.05.2026

This appeal, preferred under section 410 of the Code of Criminal Procedure, 1898, is directed against the judgment and order of conviction and sentence dated 11.10.2020 passed by the learned Additional Metropolitan Sessions Judge, 1st Court, Dhaka, in Metro Sessions Case No. 2013 of 2019, arising out of C.R. Case No. 3238 of 2018, whereby the convict-appellant was found guilty under section 138 of the Negotiable Instruments Act, 1881 and was sentenced to suffer simple imprisonment for 4(four) months and to pay a fine of Tk.6,50,000/-(six lakh fifty thousand).

The prosecution case, in short, is that the convict-appellant took a loan of Tk.44,00,000/-(forty four lakh) from the complainant-respondent

No.2. In order to repay part of the said liability, the convict-appellant issued a cheque dated 10.08.2018 drawn on BRAC Bank Limited, bearing No. STB 3075068, for an amount of Tk.6,50,000/-(six lakh fifty thousand). The complainant-respondent No.2 presented the said cheque through Dutch-Bangla Bank Limited, Dhaka, for encashment, but the cheque was dishonoured on 18.10.2018 with the remark “payment stopped by drawer”. Thereafter, the complainant-respondent No.2, through his Advocate, issued a statutory legal notice dated 31.10.2018 demanding payment of the cheque amount. The said notice was received by the convict-appellant on 04.11.2018. Despite receipt of the notice, the convict-appellant failed to pay the cheque amount within the statutory period. Hence, the complainant filed the case.

The complainant filed C.R. Case No. 3238 of 2018 on 27.12.2018 before the learned Magistrate Court. The learned Magistrate took cognizance of the offence and transmitted the case to the Court of learned Metropolitan Sessions Judge, Dhaka, where it was renumbered as Metro Sessions Case No. 2013 of 2019. Thereafter, the case was transferred to the Court of learned Additional Metropolitan Sessions Judge, 1st Court, Dhaka, for trial.

The learned trial Judge framed charge against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881. The charge was read over and explained to him, to which he pleaded not guilty and claimed to be tried.

During trial, the prosecution examined one witness, namely Md. Abdul Wadud, P.W.1, the complainant. The defence also examined one witness, namely Md. Zakir, D.W.1, the convict-appellant himself.

Upon consideration of the evidence and materials on record, the learned Additional Metropolitan Sessions Judge, 1st Court, Dhaka, by judgment and order dated 11.10.2020, found the convict-appellant guilty under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 4(four) months and to pay a fine of Tk.6,50,000/-(six lakh fifty thousand).

Being aggrieved by and dissatisfied with the said judgment and order of conviction and sentence dated 11.10.2020, the convict-appellant preferred this appeal before this Court, which was admitted on 08.12.2020.

At the time of hearing of the appeal, no one appears for the convict-appellant.

Mr. Ashiqur Rahman, learned Advocate appearing with Mr. Md. Maksudur Rahman, learned Advocate for the complainant-respondent No.2, submits that the complainant duly complied with all the legal requirements under section 138 of the Negotiable Instruments Act, 1881. He submits that the cheque was presented within its validity period, the cheque was dishonoured, legal notice was duly served within time, and the case was filed within the statutory period after the convict-appellant failed to make payment. He further submits that the convict-appellant admitted his signature on the cheque and failed to prove that the cheque had been obtained by force or that there was no legally enforceable liability. He

finally submits that the learned trial Court, upon proper appreciation of the evidence on record, rightly convicted and sentenced the convict-appellant, and therefore the conviction calls for no interference.

Heard the learned Advocates for the complainant-respondent No.2, perused the memo of appeal, the impugned judgment and order, the evidence on record and the materials available in the lower Court records.

It appears from the deposition of P.W.1 that the convict-appellant took a loan from the complainant and, in order to repay part of the said loan, issued the cheque dated 10.08.2018 from his account maintained with BRAC Bank Limited for an amount of Tk.6,50,000/-. P.W.1 further stated that the cheque was presented for encashment and was dishonoured on 18.10.2018 with the remark “payment stopped by drawer”. Thereafter, the complainant served legal notice upon the convict-appellant on 31.10.2018 demanding payment of the cheque amount. The notice was received by the convict-appellant on 04.11.2018. As the convict-appellant failed to make payment within the statutory period, the complaint was filed on 27.12.2018.

In cross-examination, P.W.1 stated that the appellant had taken loan from him. He also stated that he had no approval from Bangladesh Bank and no licence for business. He further stated that there was no written agreement with the appellant and that he did not receive any money from the appellant.

D.W.1, Md. Zakir, the convict-appellant, stated in his deposition that he had known the complainant since 2014. According to him, the

complainant sent him to Malaysia for purchasing electronic goods and sent 2,00,000 Ringgit to him at his hotel in Malaysia. The appellant purchased electronic goods, but those goods were not sent from Malaysia. When he informed the complainant about the matter, the complainant asked him to return to Bangladesh. After his return, an agreement was executed between them. As per the terms of the agreement, the appellant agreed to pay Tk.39,00,000/- to the complainant within 6(six) months, failing which he would transfer one of his flats to the complainant. The appellant further stated that before expiry of the said period, he was called to the RAB-10 office and was given 5(five) days' time to return the money. Thereafter, he managed to pay Tk.30,00,000/- to the complainant. Subsequently, the Investigating Officer of Jatrabari Police Station allegedly called him and forced him to issue 4(four) cheques, including the present cheque for Tk.6,50,000/-.

In cross-examination, however, D.W.1 admitted that he did not submit any document showing that money had been sent to Malaysia. He also admitted that he did not submit any document in support of his alleged business transaction with the complainant. He further admitted that there was no witness to the alleged agreement and that the second page of the agreement did not contain signatures of the parties. He also admitted that he did not take any legal action against the persons who allegedly obtained the cheques from him by force.

On careful scrutiny of the evidence, it appears that the convict-appellant has not denied that the cheque was drawn from his account. He

has also not denied his signature on the cheque. His principal defence is that the cheque was obtained from him under threat and pressure by the Investigating Officer of Jatrabari Police Station. But no reliable evidence, document, complaint, general diary, or legal proceeding has been produced by the defence to substantiate such allegation. On the contrary, the appellant himself admitted that he did not take any legal action against the persons who allegedly compelled him to issue the cheques. Therefore, the defence plea of coercion remains unproved.

It further appears that the cheque was issued on 10.08.2018 and was presented for encashment on 18.10.2018, i.e. within its validity period. The cheque was dishonoured with the remark "payment stopped by drawer". Thereafter, legal notice was issued on 31.10.2018 and the same was received by the convict-appellant on 04.11.2018. The appellant failed to pay the cheque amount within 30(thirty) days from receipt of the notice. Thus, the cause of action arose after expiry of the said statutory period. The complaint having been filed on 27.12.2018 was filed within the period prescribed by law.

The dishonour slip, legal notice, postal receipt and acknowledgement due receipt, marked as exhibits, clearly prove presentation of the cheque, dishonour thereof, service of statutory notice and failure of payment by the convict-appellant. The materials on record, therefore, establish that the statutory requirements of section 138 of the Negotiable Instruments Act, 1881 were duly complied with.

The defence has not been able to rebut the prosecution case. Mere assertion that the cheque was issued under pressure, without any supporting evidence, is not sufficient to dislodge the complainant's case, particularly when issuance of the cheque and signature thereon are not denied.

In view of the above facts and circumstances, I find that the learned trial Court correctly held that the complainant proved the case under section 138 of the Negotiable Instruments Act, 1881. I do not find any illegality, misreading or non-reading of evidence in the finding of conviction recorded by the learned trial Court. Therefore, the conviction of the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 calls for no interference.

The next question is with regard to sentence.

It appears from the record that at the time of filing the appeal, the convict-appellant deposited Tk.3,25,000/-(three lakh twenty-five thousand), being 50% of the cheque amount/fine, before the Court below on 12.10.2020. Thus, a substantial portion of the cheque amount has already been deposited.

In a case under section 138 of the Negotiable Instruments Act, 1881, the principal object of the law is to ensure payment of the cheque amount, maintain the credibility of commercial transactions and protect the payee or holder in due course from dishonest conduct of the drawer. Having regard to the facts and circumstances of the present case, particularly the deposit of Tk.3,25,000/- by the convict-appellant, I am of

the view that the substantive sentence of simple imprisonment for 4(four) months is somewhat harsh and the ends of justice would be sufficiently met if the conviction is maintained and the sentence is modified in the manner stated below.

Accordingly, the conviction of the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 is maintained.

However, the sentence is modified as follows:

The sentence of simple imprisonment for 4(four) months is set aside.

The amount of Tk.3,25,000/-(three lakh twenty-five thousand), already deposited by the convict-appellant before the Court below at the time of filing the appeal, shall be treated as part payment of the cheque amount. The Court concerned is directed to disburse the said amount to the complainant-respondent No.2 in accordance with law.

The convict-appellant is further directed to pay the remaining amount of Tk.3,25,000/-(three lakh twenty-five thousand) to the complainant-respondent No.2 within 3(three) months from the date of receipt of a copy of this judgment and order.

In default of payment of the remaining amount within the aforesaid period, the convict-appellant shall suffer simple imprisonment for 4(four) months.

In the result, the appeal is disposed of with modification of sentence and with the directions made above.

The convict-appellant is discharged from his bail bond, subject to payment of the remaining amount within the time specified above.

Send down the lower Court records at once.

Communicate this judgment and order to the Court concerned immediately.

Imam Sarwar/B.O