

Present

Madam Justice Kashefa Hussain

**Criminal Appeal No. 8953 of 2020**

Sree Dulal Roy

..... complainant-Appellant

-Versus-

The State and another

----- Respondents

Mr. Ashok Kumar Banik, Advocate

.... for the Appellant

Mr. Md. Mahbub Rashid, Advocate

.... for the respondent No. 2

Mr. Md. Mohiuddin Dewan, D.A.G with

Ms. Syeda Sabina Ahmed Molly, A.A.G

----- For the State.

Heard on: 12.10.2023, 08.11.2023,  
09.11.2023 and

**Judgment on 15.11.2023**

This appeal is directed against the judgment and order of acquittal dated 29.08.2019 passed by the learned Sessions Judge, Dinajpur in Session Case No. 450 of 2016 arising out of C.R. Case No. 92C of 2016 (Kotwali) in acquitting the accused Respondent No. 2 from the liabilities of the charge under Section 138(1) of the Negotiable Instruments Act, 1881 and/or pass such other or further order orders as to this court may seem fit and proper.

The complainant's case, in short is that the complainant appellant and the accused respondent No. 2 both are

businessmen who deal with potatoes business. At the instance of business relation on 24.06.2015 the accused respondent No. 2 took the amount of Tk. 9,30,000/- (nine lac and thirty thousand) in cash from the residence of the complainant appellant but the accused respondent No. 2 failed to purchase potatoes and then the complainant appellant demanded to take back the aforesaid amount of taka and thereafter on 17.01.2016 the accused respondent No. 2 issued a cheque of Pubali Bank Limited, Dinajpur Branch, Dinajpur bearing the Current Account No. 0661901032269 being No. C.A. 50/L No. 5281283 amounting Tk. 9,30,000/- (nine lac and thirty thousand) and on the same date on 17.01.2016 the aforesaid cheque was deposited to the aforementioned account of the accused respondent No. 2 but the same was dishonored due to insufficient fund. Thereafter on 19.01.2016 the complainant appellant sent a Legal Notice to the accused respondent No. 2 through his learned engaged lawyer and the same was received by the accused respondent No. 2 on 26.01.2016 but on 18.02.2016 stating some false story that the complainant appellant was an employee of the accused respondent No. 2 and the Bank cheque book, cash box's key etc. were in custody of the accused appellant and he stole the same for the purpose of sending his brother to abroad as such the accused respondent

No. 2 committed offence which is punishable under section 138 (1) of the Negotiable Instruments Act, 1881. Hence the prosecution case.

The above case was filed under section 138 (1) of the Negotiable Instruments Act, 1881 after the concerned court took cognizance of the case and eventually leading and following the due procedures by way of charge sheet etc by the concerned court. In the lower court after hearing both parties the court below dismissed the complaint case by its judgment and order dated 29.08.2019 in Sessions Case No. 450 of 2016 and thereby acquitted the accused in the case. Against the judgment and order of acquittal dated 29.08.2019 the complainant in the case filed the instant Criminal Appeal which is presently before this bench for disposal.

Learned Advocate Mr. Ashok Kumar Banik appeared for the appellant while learned advocate Mr. Md. Mahbub Rashid represented the respondent No. 2 while learned Deputy Attorney General Mr. Mohiuddin Dewan along with Ms. Syeda Sabina Ahmed Molly represented the respondent No. 1.

Learned Advocate for the complainant appellant submits that the appellate court without proper consideration of the facts and evidences on record unjustly upon presumption and

assumption acquitted the accused and unjustly rejected the complaint case. He submits that the complainant is not an employee but a business partner. He submits that the court unreasonably without examining the facts and circumstances and the evidences relied upon the claim of the accused that the complainant is only an employee and not a business partner. He next submits that even though the signature in the cheque is an admitted fact but however the court unreasonably relied upon the contention of the accused that his cheque was stolen. He submits that the case which the accused filed claiming that the cheque was stolen such case was also dismissed. He submits that it is most unreasonable to hold that cheques with signatures are kept aside without putting any amount on the cheque. He reiterates that the accused could not prove anywhere that the cheque was stolen but however the trial court upon conjecture and surmise came upon a wrong finding and unjustly acquitted the accused respondent here. He reiterates that the trial court also did not examine the claim of the parties regarding the nature of the relationship between the parties. He continues that since the signature in the cheque is an admitted fact therefore it is most unreasonable for the trial court to rely on the claim of the accused that the cheque was stolen and that it was a blank cheque. He concludes his submissions upon assertion that the

accused ought to be sentenced under the provisions of Section 138 (1) of the Negotiable Instrument Act, 1881 and the appeal be allowed.

On the other hand learned Advocate for the respondent No. 2 vehemently opposes the appeal. At the threshold of his submissions he admits to the signature in the cheque. He however contends that the cheques were blank cheques and those cheques with his signature there in were stolen and against which the accused respondent duly filed a GD followed by a G.R. Case. He however concedes that the G.R case was ultimately dismissed.

He next submits that it is a fact that the complainant is only an employee of the accused and therefore there is no business relationship between the parties. He submits that since the complainant is only an employee of the accused the question of granting him a cheque of amount of Tk. 9,30,000/- does not even arise and is an absurd proposition. He submits that the appellant could not show any cogent evidences in the trial court that there existed a business relationship between the parties. He concludes his submissions upon assertion that the accused respondent was correctly acquitted by the trial court

and the appeal bears no merits and ought to be dismissed for ends of justice.

I have heard the learned advocate from both sides and perused the application and materials on record before me. The signature in the cheque is admitted by the accused. But the accused contends and claims that the cheque was in his custody and was stolen and he never inserted any amount in the cheque and that it was a blank cheque with his signature only. He also contends that after the cheque was stolen he duly filed a G.D followed by C.R case but he concedes that the C.R case was ultimately dismissed.

I am of the considered view that whether the C.R case was dismissed or not or as to why the C.R case was dismissed is not the duty of this court to adjudicate upon since that case is not before me. Presently the duty of this court is to examine as to whether the trial court properly examined the claims and counter claims. It is the claim of the accused respondent that the complainant is only an employee of the accused whereas conversely the complainant claims that he is not an employee but rather he has a business relationship with the accused.

I have examined the judgment of the courts below. Regrettably enough although determination of the nature of the

relationship between the parties is significant and vital for proper adjudication of the matter but however the nature of the relationship was not examined by cogent evidences. I am of the considered view that for proper adjudication of the matter the nature of the relationship as to whether the complainant is an employee or whether he has a business relationship must be established by producing necessary witness and other cogent evidences either oral and/or documentary evidences whatsoever. The trial court did not take up this issue although such issue ought to have been taken up. As to the claim of a blank cheque being stolen with the signature of the accused such blank cheque or whether there was number inserted in such cheque also must be examined upon adducing cogent evidences and witnesses.

Under the facts and circumstances and foregoing discussions, I am of the considered view that it is fit case for remand. I am inclined to send the case on remand to the concerned court below with directions and the observations made above.

In the result, the appeal is disposed of and the case is hereby sent back on remand to the trial court. The trial court is hereby directed to ensue a fresh trial upon properly adducing

the evidences and witnesses as per the observations made above. The trial court is also hereby directed to dispose of the case within a period of 6 (six) months from the date of receipt of this judgment.

Communicate the judgment at once.

**Shokat (B.O.)**