

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Appeal No.1530 of 2021

Md. Fojlur Rahman

.....convict-Appellant

-Versus-

The State and another

..... opposite-parties

No one appears

.....For the convict-Appellant

Mrs. Aleya Khandker, A.A.G and

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. Sanjib Chandra Das, Advocate

.....For the respondent-opposite party No.2

Heard on :28.08.2023 &

Judgment on: 29.08.2023.

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred against the judgment and order of conviction and sentence dated 26.11.2020 passed by the learned Additional Metropolitan Sessions Judge, 2nd Court, Dhaka, in Metro: Sessions Case No.20508 of 2019 corresponding to C.R. No.1544 of 2018 convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer simple imprisonment for 01(one) year also to pay fine of Tk.7,19,385/- (seven lacs nineteen thousand three hundred eighty five).

The respondent No.2 herein as Complainant filed Complaint Registrar Case No. 1544 of 2018 against the convict appellant under section 138 of the Negotiable Instruments Act, 1881.

The prosecution case, in short, is that the convict-appellant have been buying products from the respondent No.2 on credit. While the Respondent No.2 created pressure upon the convict appellant to pay back the payments due, the appellant gave a cheque being No. 7439059 dated 28.08.2018 to be drawn from Prime Bank Limited, Natore Branch, Natore for an amount of Tk. 7,19,385/- (seven lacs nineteen thousand three hundred eighty five). The respondent No.2 deposited the cheque for encashment in his bank account maintained with Pubali Bank Limited, Bongshal Branch, Dhaka but on 29.08.2018, the cheque was dishonored due to insufficient fund. On 05.09.2018, the respondent No.2 through his learned Advocate served a legal Notice upon the convict-appellant requesting him to pay the cheque amount within 30 days from the date of receiving the notice. The appellant received the legal notice on 18.09.2018 and making a mobile call promised to pay back the amount within the time mentioned in the notice. Upon expiry of time as

promised by the appellant the respondent No.2 over mobile phone call requested him to pay the cheque amount, while the appellant informed the respondent No.2 that he would not pay any amount. Hence the case.

The learned trial Court recorded the statement of complainant under section 200 of the Code of Criminal Procedure and took cognizance against the accused-convict-appellant under section 138 of the Negotiable Instruments Act, 1881 and issued a summon upon the convict-appellant.

Thereafter, the convict-appellant surrendering before the learned Court of Chief Metropolitan Magistrate, Dhaka obtained bail.

Subsequently, the case was transferred to the Court of learned Metropolitan Sessions Judge, Dhaka for trial and renumbered as Metro: Sessions Case No. 20508 of 2019. Thereafter, the learned Additional Metropolitan Sessions Judge, 2nd Court, Dhaka framed charge against the appellant under section 138 of the Negotiable Instruments Act, 1881 in his absence and his bail was also cancelled.

The prosecution has examined only 01 (one) witnesses in the trial Court to prove the case and defence examined none and it was not possible to examine the convict appellant under section 342 of Code of Criminal Procedure as the convict-appellant was absconding.

After considering all the evidence on record and deposition of the witness, the learned Additional Metropolitan Sessions Judge, 2nd Court, Dhaka passed the judgment and order of conviction and sentence on 26.11.2020, convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer simple imprisonment for 01(one) year with a fine of Tk.7,19,385/- (seven lacs nineteen thousand three hundred eighty five).

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction, the convict-appellant preferred this Appeal before this Court.

None appears on behalf of the convict-appellant to press the instant Rule.

On the other hand, Mr. Sanjib Chandra Das, the learned Advocate appearing on behalf of the respondent-opposite party

No.2 submits that the convict-appellant have been buying products from the respondent No.2 on credit. While the Respondent No.2 created pressure upon the convict appellant to pay back the payments due, the convict-appellant gave a cheque being No. 7439059 dated 28.08.2018 to be drawn from Prime Bank Limited, Natore Branch, Natore for an amount of Tk. 7,19,385/- (seven lacs nineteen thousand three hundred eighty five). The respondent No.2 deposited the cheque for encashment in his bank account maintained with Pubali Bank Limited, Bongshal Branch, Dhaka but on 29.08.2018, the cheque was dishonored due to insufficient fund. On 05.09.2018, the respondent No.2 sent a legal Notice upon the convict-appellant. The appellant received the legal notice on 18.09.2018 but did not pay the cheque amount. The convict-appellant thus committed an offence under section 138 of the Negotiable Instrument Act, 1881 by giving the said cheque to the respondent No.2.

He also submits that the prosecution rightly proved the charge brought against the convict-petitioner complying with all formalities as required under Section 138 of the Negotiable Instruments Act, 1881 and as such the trial Court found the accused-petitioner guilty and thereby sentenced him vide

judgment and order of conviction and sentence dated 26.11.2020 which warrants no interference by this Court. Therefore, he prays for dismissing the appeal.

In order to appreciate the submission of the learned Advocate for the respondent-opposite party No.2, this Court is to weigh the relevant evidence and materials on record and scan the attending evidence of the case to unearth the actual facts of the case to arrive at a proper and correct decision.

Now, let us discuss the evidence of prosecution witnesses.

P.W.1 Mrinal Kanti Saha, complainant of the case deposed that the accused bought products from his institution and for the payment of due the accused gave the disputed cheque for an amount of Tk. 7,19,385/- dated 28.08.2018 of Prime Bank Limited but it was dishonored for insufficient of fund on 29.08.2018. Thereafter, he sent a legal notice on 05.09.2018 and the accused received the legal notice on 18.09.2018 but still he did not pay the cheque amount thus he filed the case. He proved the disputed cheque, power of attorney, dishonor slip, legal notice, postal receipt with AD as Exhibit-1 series and proved the complaint and his signature therein as Exhibit-2 series.

This witness was not cross-examined by the accused as the accused was absconding from bail.

Considering the lower Court records, evidence and above facts and circumstances, it appears that complainant's complaint is Exhibit-2. The content described in it has been expressed by the complainant very coherently in his deposition before the trial Court and his deposition also supported the prosecution case. His deposition was consistent with the complaint and there was no inconsistency on the fundamentals. The deposition of the complainant was also not challenged as the accused was absconding from bail. The complainant's Exhibit-1 is the alleged cheque dated 28.08.2018. On perusal of the said Exhibit-1 shows that it is a cheque of Prime Bank Limited and there were the account number and Md. Fojlur Rahman is printed on the cheque. The said cheque bears the signature of the accused. It is a cheque for an amount of Tk. 7,19,385/- (seven lacs nineteen thousand three hundred five) in which date 28.08.2018 is written. The cheque has no rubbing and is a clean cheque. The complainant's Exhibits-1/2 is the dishonor slip dated 29.08.2018. The said dishonor slip states that it has been dishonored due to insufficient of fund. The complainant's Exhibit1/3, 1/4 and 1/5

was perused. The original copy of the Legal notice marked as Exhibit-1/3 which was issued to the convict-appellant on 05.09.2018 in registry envelope with AD. The name and address of the accused are correctly written in the envelope and those were also been stated in the complaint petition.

In the light of the above discussion, it is clear before me that the accused-convict-appellant issued a cheque amounting Tk.7,19,385/- (seven lacs nineteen thousand three hundred and eighty five) and for encashment of the said cheque the complainant presented it to his concerned bank within the prescribed time limit (within six months) of the Act. But due to insufficient of fund, the said cheque has been dishonored. Thereafter, the complainant has filed his complaint by duly fulfilling all the conditions of Section 138/141 of the Negotiable Instruments Act, 1881. The learned cognizance Court duly reviewed the plaint application and the documents on record and accepted the sworn statement of the complainant and took cognizance the offence under Section 138 of the Negotiable Instruments Act, 1881 against the accused.

Therefore, the learned Additional Metropolitan Sessions Judge, 2nd Court, Dhaka passed the judgment and order of conviction and sentence dated 26.11.2020 in Metro: Sessions Case No.20508 of 2019 corresponding to C.R. No.1544 of 2018 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 01(one) year and also to pay a fine of Tk. 7,19,385/- (seven lacs nineteen thousand three hundred and eighty five) rightly and which is maintainable in the eye of law.

Accordingly, I do not find any cogent and legal ground to interfere with the impugned judgment and order of conviction and sentence. The appeal, therefore, has no merit.

In the result, the Criminal Appeal No.1530 of 2021 is hereby dismissed. The judgment and order of conviction and sentence dated 26.11.2020 passed by the learned Additional Metropolitan Sessions Judge, 2nd Court, Dhaka in Metro: Sessions Case No.20508 of 2019 corresponding to C.R. No.1544 of 2018 is hereby upheld and confirmed.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.3,60,000/-(three lacs

sixty thousand) of the fine amount to the respondent-opposite party No.2 (if he did not take the said amount).

The convict-appellant is hereby directed to surrender before the concerned Court below (if he is on bail) within 15(fifteen) days from the date of the receipt of the judgment and order, failing which the concerned Court below will take necessary steps to secure his arrest.

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

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

Md. Mustafizur Rahman
Bench Officer