Present:

Mr. Justice Md. Khasruzzaman

Criminal Appeal No. 4453 of 2021

Md. Ali Akbar Mintu

....Convict appellant.

-Versus-

The State and another.

...Respondents

Md. Syful Aziz, Advocate

… for the convict-appellant.

Mr. SM Younus Ali Robi, D.A.G. with
Mrs. Asma Hosen, A.A.G.
Mr. George Chowdhury, A.A.G. and
Mr. Md. Rashedul Hasan Sumon, A.A.G.

.....For the State.

Mr. Md. Hasan Rajib Prodhan, Advocate with
Mr. Chowdhury Md. Redwan-E-Khuda, Advocate

..For the complainant respondent No. 1

Judgment on: 10.08.2026

The convict-appellant has preferred the appeal against the judgment and order of conviction and sentence dated 13.03.2014 passed by the learned Additional Metropolitan Sessions Judge, 5th Court, Dhaka, in Metro Sessions Case No. 4162 of 2012, arising out of C.R. Case No. 1663 of 2010, convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and

sentencing him to suffer simple imprisonment for 3 (three) months and to pay a fine of Tk. 3,75,000.00 (Three Lac and Seventy Five Thousand) only.

On 19.04.2010 the complainant-respondent No. 1 filed C.R. Case No. 1663 of 2010 before the learned Metropolitan Magistrate, Cognizance Court, Dhaka, against the accused-appellant under section 138 of the Negotiable Instruments Act, 1881.

The prosecution case, in brief, is that the complaint was instituted by Tanvir Foot Limited, through its duly authorised representative, Md. Abdul Jalil Sikder, pursuant to a Letter of Authority issued by the Managing Director of the company on its official letterhead. In discharge of the outstanding dues payable to the complainant company, the accused issued an Account Payee Cheque bearing No. 00494232, dated 25.01.2010, drawn on Current Account No. 11100011555, maintained by him with The Premier Bank Limited, Agrabad Branch, Chattogram, for an amount of Tk. 3,50,000/- (Taka Three

Lac and Fifty Thousand) in favour of Tanvir Foot Limited. The complainant presented the aforesaid cheque for encashment through BASIC Bank Limited, Principal Branch, Motijheel Commercial Area, Dhaka. But the cheque was dishonoured and returned unpaid on 16.02.2010 due to insufficiency of funds. Thereafter, the complainant, through its learned Advocate, issued a legal notice to the accused on 01.03.2010, demanding payment of the cheque amount. The accused duly received the said legal notice on 10.03.2010. Despite receipt of the legal notice and the expiry of the statutory period of 30 (thirty) days, the accused failed to make payment of the cheque amount to the complainant. Consequently, the complainant alleged that the accused had committed an offence punishable under section 138 of the Negotiable Instruments Act. Thus, the company filed the case against the accused.

The case was registered as C.R. Case No. 1663 of 2010, whereupon the learned Metropolitan Magistrate, Dhaka, took cognizance of the offence under section 138

of the Negotiable Instruments Act, 1881 against the accused and issued summons against the accused to appear before the Court. Thereafter, the accused was arrested by the police and produced before the Court and he obtained the bail. Subsequently, the case record was transmitted to the learned Metropolitan Sessions Judge, Dhaka, for trial and disposal, and the case was registered as Metro Sessions Case No. 4162 of 2012 and the learned Metropolitan Sessions Judge, Dhaka took cognizance of the offence under section 138 of the Negotiable Instruments Act, 1881 against the accused. Thereafter, the case was transferred to the Court of the learned Additional Metropolitan Sessions Judge, 5th Court, Dhaka, for trial and disposal. On 04.07.2012 charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881.

In order to substantiate the charge, the prosecution examined one witness, namely, Md. Abdul Jalil Shikder, Area in Charge of Tanvir Food Limited, on behalf of the complainant-company, as P.W.1. The said witness was not

cross-examined by the defence. On the other hand, the defence neither examined any witness nor adduced any evidence in support of its case. Since the accused had absconded, his examination under section 342 of the Code of Criminal Procedure, 1898 could not be held.

Upon conclusion of the trial, the learned Additional Metropolitan Sessions Judge, 5th Court, Dhaka, by the impugned judgment and order dated 13.03.2014, found the accused guilty of the offence punishable under section 138 of the Negotiable Instruments Act, 1881 and convicted and sentenced him as stated above.

Being aggrieved by and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict-appellant preferred the instant appeal.

Mr. Md. Syful Aziz, the learned Advocate appearing on behalf of the convict-appellant, made his submissions on the facts and the law. He further submits that no outstanding liability subsists against the appellant and that the Trial Court failed to appreciate the facts and

circumstances of the case in their proper perspective. Accordingly, he prays for setting aside the impugned judgment and order of conviction and sentence.

On the other hand, Mr. Md. Hasan Rajib Prodhan, learned Advocate with Mr. Chowdhury Md. Redwan-E-Khuda, the learned Advocate appearing on behalf of the complainant-respondent No. 1, submits that the complaint was instituted upon due compliance with all the statutory requirements contemplated under section 138 of the Negotiable Instruments Act, 1881. He further submits that the prosecution successfully proved the charge brought against the accused-appellant beyond reasonable doubt by adducing sufficient oral and documentary evidence. He also submits that the Trial Court, upon proper consideration and appreciation of the evidence and materials on record, rightly passed the impugned judgment and order of conviction and sentence. He contends that there is no illegality or infirmity in the findings of conviction recorded by the Trial Court warranting

interference by this Court. Therefore, he prays for dismissal of the appeal.

Heard the learned Advocates appearing for both sides, perused the impugned judgment and order of conviction and sentence, examined the evidence on record and other relevant materials, and considered the submissions advanced by the learned Advocates.

The deposition of P.W-1 is set out below.

P.W. 1, Abdul Jalil Sikdar, in his examination-in-chief deposed that the accused issued a cheque on 25.01.2010 towards payment of the outstanding dues, which was dishonoured on 16.02.2010. A legal notice was sent on 01.03.2010, which was received on 10.03.2010. As the accused failed to pay the amount, the complainant instituted the case. He proved the petition of complaint as Exhibit 1 and his signature thereon as Exhibit 1/1; the cheque as Exhibit 2 and the cheque dishonour slip as Exhibit 2/1; the legal notice as Exhibit 3; and the

Acknowledgment Due (A.D.) card and postal receipt as Exhibits 3/1 and 3/2, respectively.

P.W. 1 was not cross-examined by the defence, as the accused absconded.

On perusal of the evidence on record, it appears that the complainant-company examined Md. Abdul Jalil Shikder, its Area incharge, as P.W.1. The said witness supported the material allegations made in the petition of complaint and proved the petition of complaint and his signature there on, which were marked as exhibit Nos. 1 and 1/1 respectively. He further proved the dishonoured cheque and cheque dishonour slips, which were marked as Exhibit Nos. 2 and 2/1 respectively. Furthermore, he proved the legal notice, the postal receipt and acknowledgement due card, which were marked as Exhibit Nos. 3, 3/2 and 3/1 respectively.

It further appears from the records that the complainant, P.W. 1 Abdul Jalil Sikdar, categorically testified regarding the issuance of the cheque, its

subsequent dishonour, service of legal notice and failure of the accused to make payment. Although the accused had obtained bail from the learned Magistrate, he remained absent at the stage of recording the prosecution evidence and did not cross-examine P.W. 1. Consequently, the material testimony of the complainant remained unchallenged and uncontroverted. The oral testimony, being supported by the documentary exhibits, provides substantial support to the prosecution case.

It also appears from the records that the cheque in question was issued on 25.01.2010 and it was presented to the BASIC Bank, Head Office, for encashment on 11.02.2010 within its validity period and was dishonoured on account of insufficiency of funds on 16.02.2010. Thereafter, on 01.03.2010 the complainant sent a statutory legal notice demanding payment of the cheque amount and it was received by the accused on 10.03.2010. The evidence on record indicates that the said notice was sent to the accused by registered post with acknowledgement due, in compliance with the provisions of sections

138(1)(b) and 138(1A) (b) of the Negotiable Instruments Act, 1881. The accused neither challenged the service of the said notice nor adduced any evidence to rebut the prosecution case regarding its service. Accordingly, the evidence relating to service of the statutory notice remained uncontroverted.

It is also evident from the record that, notwithstanding the issuance and service of the statutory notice, the accused failed to pay the cheque amount within the period prescribed by law. Upon consideration of the evidence and materials on record, I find that the complainant instituted the case upon compliance with the statutory requirements under section 138 of the Negotiable Instruments Act, 1881. Thus, the complaint was legally maintainable.

Significantly, P.W.1 was not cross-examined by the defence. Consequently, his testimony regarding the issuance of the cheque, its dishonour, service of the statutory notice and failure of the accused to make

payment remained unchallenged and uncontroverted. Moreover, the defence did not adduce any oral or documentary evidence to substantiate its claim.

In this connection, it is pertinent to refer to section 118(a) of the Negotiable Instruments Act, 1881, which provides a rebuttable presumption that every negotiable instrument was made or drawn for consideration. In the instant case, the accused-appellant failed to adduce any evidence capable of rebutting the said statutory presumption.

Thus, upon a careful scrutiny of the evidence and materials on record, I am of the considered view that the prosecution succeeded in establishing the essential ingredients of the offence under section 138 of the Negotiable Instruments Act, 1881 beyond reasonable doubt. The findings of conviction recorded by the Trial Court are supported by the evidence on record and do not call for interference by this Court.

Upon examination of the impugned judgment and order in the light of the evidence and the applicable provisions of law, I find no illegality, impropriety or infirmity in the findings of conviction recorded by the Trial Court. The defence has failed to demonstrate any ground warranting interference with the conviction of the appellant. Accordingly, the conviction and sentence of imprisonment under section 138 of the Negotiable Instruments Act, 1881 deserve to be maintained.

However, so far as the sentence of fine is concerned, the matter calls for separate consideration. The Trial Court without any explanation imposed Tk. 25,000.00 more from the cheque amount i.e. Tk. 3,50,000.00. Thus, the sentence of fine is modified.

Considering the matter in its entirety, I am of the considered view that the ends of justice would be adequately served if the sentence of fine is reduced from Tk. 3,75,000.00 to Tk. 3,50,000.00 while maintaining the

conviction and the sentence of imprisonment imposed by the Trial Court.

In the result, the appeal is dismissed with modification of the sentence of fine.

Accordingly, the judgment and order of conviction and sentence of imprisonment dated 13.03.2014 passed by the learned Additional Metropolitan Sessions Judge, 5th Court, Dhaka, in Metro Sessions Case No. 4162 of 2012, arising out of C.R. Case No. 1663 of 2010, convicting the appellant under section 138 of the Negotiable Instruments Act, 1881, is hereby affirmed but the sentence of fine is modified. Thus, the sentence of imprisonment for 3 (three) months simple imprisonment is maintained. However, the sentence of fine is modified and reduced from Tk. 3,75,000.00 (Three Lac and Seventy Five Thousand) to Tk. 3,50,000.00 (Three Lac and Fifty Thousand).

The Trial Court is directed to pay the amount deposited by the convict-appellant before filing the appeal to the complainant-respondent and issue the process

against the convict-appellant to secure his arrest for execution of sentence of imprisonment.

The Trial Court shall take appropriate steps for realisation of the remaining amount of fine as per the provisions of section 386 of the Code of Criminal Procedure, 1898.

Send down the records along with the original challan receipt filed with the petition of appeal.

Communicate the order.

(Md. Khasruzzaman, J:)