

In the Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)

Present

Mr. Justice Md. Khairul Alam

Criminal Appeal No. 4875 of 2020

Delwar Sheikh.

.....Convict appellant.

-Versus_

The State and another.

.....Respondents.

Mr. Muhammad Tarikul Islam, Advocate

.....For the convict appellant.

Mr. Sheikh Muhammad Serajul Islam with

Ms. Lucky Ahamed, Advocates

.....For the respondent No.2.

**Heard on 26.11.2024 and
Judgment on 27.11.2024.**

Md. Khairul Alam, J.

This appeal is directed against the judgment and order of conviction and sentence dated 17.07.2016 passed by the learned Sessions Judge, Munshiganj in Sessions Case No. 243 of 2015 arising out of C.R. Case No. 148 of 2015 convicting the appellant and another under section 138 of the Negotiable Instruments Act, 1881 (shortly, the NI Act) and sentencing them to suffer imprisonment for 06 (six) months and also to pay a fine of Taka 20,00,000/-.

The prosecution case, in short, is that the present respondent No. 2 as complainant filed C.R. Case No. 148 of 2015 before the court of Judicial Magistrate, Cognizance Court No.3, Munshiganj implicating the present convict appellant and another as accused alleging, inter-alia, that to disburse the liability the accused issued three cheques in favour of the complainant. The total sum of the said three cheques was Tk. 20,00,000/-. The complainant placed the said cheques before the bank for encashment, but the cheques were dishonored on the ground of insufficiency of funds. Hence, the complainant filed the case following all the statutory provisions.

Ultimately, the case was renumbered as Sessions Case No.243 of 2015 and was tried by the learned Sessions Judge, Munshiganj who by the judgment and order of conviction and sentence dated 17.07.2016 convicted the appellant and another under section 138 of the NI Act and sentenced them as aforesaid.

Mr. Muhammad Tarikul Islam, the learned Advocate appearing on behalf of the convict-appellant at the outset of the hearing informs this Court that meanwhile the accused amicably settled the issues by paying the amount covering the amount of the

cheque to the complainant and accordingly, he prays for quashing the impugned judgment and order of conviction and sentence.

Mr. Sheikh Muhammad Serajul Islam, the learned Advocate appearing on behalf of respondent No. 2 has approved the said submission.

In the case of Subash Chandra Sarker vs. The State and another reported in 26BLT(AD)28 a petition for leave to appeal was filed by a convict challenging his conviction and sentence passed under section 138 of the NI Act. In the said petition for leave to appeal a joint application was filed for recording and disposal of the case as per terms of the compromise setting aside the judgment and order of conviction and sentence. Our apex Court dispossessed of the said petition for leave to appeal in the following manner.

“A Joint Application has been filed for recording compromise and disposal of the case as per terms of the compromise setting aside the judgment and order of conviction and sentence passed against the petitioner. The complainant and the convict are present in the Court. We have perused the compromise petition. The section is not a compoundable one. However, since the parties have settled

matter amicably and the complainant has admitted before this Court that he received the half of the amount of the dishonoured cheque in the cash and the rest of the amount was deposited with the Sessions Court before filing the appeal before the High Court Division. We are inclined to reduce the sentence to the period already undergone and accordingly the sentence awarded against the petitioner is reduced to the period undergone. We also direct the Sessions Judge, Gazipur to allow the complainant to withdraw the money deposited by the convict without making any delay.

This petition is disposed of accordingly.”

Considering the submissions advanced by the learned Advocates of both sides and also considering the facts and circumstances of the case, I am inclined to reduce the sentence to the period already undergone in the light of the above view of our apex Court.

Accordingly, the appeal is dismissed with the modification of the sentence awarded against the convict appellant, by reducing the sentence awarded against him to the period undergone.

The learned Session Judge, Munshiganj is hereby directed to allow the complainant to withdraw the money deposited by the convict without making any delay.

Send down the lower court's record and communicate this order at once.