

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

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 6327 of 2021

D.M. Nuruzzaman

...Appellant

-Versus-

The State and another

...Respondents

None appears

...For the appellant

Mr. Sharan Chandra Talukder. Advocate

.....For the respondent No. 2

Mr. S.M Golam Mostofa Tara, DAG with

Mr A. Mannan, AAG with

.....For the State.

Heard on 16.01.2024

Judgment delivered on 22.01.2024

This appeal under Section 410 of the Code of Criminal Procedure, 1898 is directed against the impugned judgment and order of conviction and sentence dated 03.11.2020 passed by Additional Metropolitan Sessions Judge, Court No.7, Dhaka in Metropolitan Session Case No. 23697 of 2015 arising out of C.R. Case No. 222 of 2018 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 02 (two) months and to pay a fine of Tk. 320,000 (three lakh twenty thousand).

The prosecution case, in short, is that the accused D.M. Nuruzzaman issued cheque No. 4006050 on 28.04.2018 drawn on his Current Account No. 0260310005606 maintained with Mutual Trust Bank Ltd for payment of Tk. 3,20,000 in favour of the complainant. The complainant presented the cheque on 30.04.2018 for encashment but the same was dishonoured on the same date with the remark "insufficient

funds”. After that, the complainant issued a legal notice on 17.05.2018 through registered post with AD upon the accused for payment of the cheque amount within 30 days. After the expiry of the said period the accused did not pay the cheque amount. Consequently, he filed the case on 12.07.2018.

After filing complaint petition, the complainant was examined under section 200 of the Code of Criminal Procedure, 1898 and the learned Magistrate was pleased to take cognizance of the offence under section 138 of the Negotiable Instrument Act, 1881. Thereafter, the case record was transmitted to the Metropolitan Sessions Judge, Dhaka and the case was registered as Metropolitan Session Case No. 23697 of 2018. Thereafter, the case record was sent to Metropolitan Sessions Judge, Court No. 7, Dhaka.

During trial, the charge was framed against the accused under section 138 of the Negotiable Instrument Act, 1881 which was read over and explained to the accused and he pleaded not guilty to the charge and claimed to be tried following law. The complainant himself was examined as P.W. 1 to prove the charge against the accused. At the time of examination of P.W.1, the accused was absconding and he did not cross-examine P.W.1. After concluding the trial, the trial court by impugned judgment and order convicted the accused and sentenced him as stated about against which he filed the instant appeal.

P.W. 1 Md. Golam Maula stated that accused D.M. Nuruzzaman issued a cheque on 28.04.2018 for payment of Tk. 320,000 to pay the loan which was dishonored on 30.04.2018 due to “insufficient funds”. Thereafter, the complainant served a legal notice upon the accused on 17.05.2018 but the accused did not pay the cheque amount within time. Consequently, the complainant filed the case. He proved the disputed cheque as exhibit-1, the dishonour slip as exhibit-2, the legal notice as exhibit-3 and the postal receipt with AD as exhibit-3/1, the complaint petition and his signature on the complaint petition as exhibit-4 series.

No one appears on behalf of the appellant.

The learned Advocate Mr. Sharan Chandra Talukder appearing on behalf of respondent No. 2 submits that the accused D.M. Nuruzzaman issued cheque No. 4006050 on 28.04.2018 drawn on his Current Account No. 0260310005606 maintained with Mutual Trust Bank Ltd for payment of Tk. 3,20,000 in favour of the complainant. The complainant presented the cheque on 30.04.2018 within 06 months from the date of issuance of the said cheque but the same was dishonoured on the same date with the remark “insufficient funds”. After that, the complainant issued a legal notice on 17.05.2018 through registered post with AD upon the accused for payment of the cheque amount within 30 days. After the expiry of the said period the accused did not pay the cheque amount. Therefore, the accused committed an offence under section 138 of the Negotiable Instruments Act, 1881 and P.W. 1 proved the charge against the accused beyond all reasonable doubt. He prayed for the dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Sharon Chandra Talukder who appeared on behalf of respondent No. 2, perused the evidence, the impugned judgment and order passed by the trial court and the records.

On perusal of the records, it appears that accused D.M. Nuruzzaman issued a cheque on 28.04.2018 for payment of Tk. 320,000 which was dishonoured on 30.04.2018 due to “insufficient funds”. Thereafter, the complainant served a legal notice upon the accused on 17.05.2018 but the accused did not pay the cheque amount within time. Consequently, the complainant filed the case. He proved the disputed cheque as exhibit-1, the dishonour slip as exhibit-2, the legal notice as exhibit-3 and the postal receipt with AD as exhibit-3/1, the complaint petition and his signature on the complaint petition as exhibit-4 series. After complying with all the legal procedures, the complainant filed the case under section 138 of the Negotiable Instruments Act, 1881.

There is a presumption under section 118(a) of the Negotiable Instruments Act, 1881 that every negotiable instrument was made or

drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. The presumption under Section 118 (a) is rebuttable. The accused was absconding and did not cross-examine P.W1. Therefore, I am of the view that the accused issued the cheque in favour of the payee complainant for consideration. After service of notice in writing the accused did not pay the cheque amount. Thereby the accused D.M. Nuruzzaman committed an offence under Section 138 of the Negotiable Instruments Act, 1881.

Because of the above evidence, findings, observation and proposition, I am of the view that the complainant proved the charge under section 138 of the Negotiable Instruments Act, 1881 against the accused to the hilt beyond all reasonable doubt and the trial court on proper assessment of the evidence legally passed the impugned judgment and order of conviction.

I do not find merit in the appeal.

Accordingly, the appeal is dismissed.

The trial court is directed to do the needful.

Send down the lower Court's records at once.