

Present

Madam Justice Kashefa Hussain

Criminal Appeal No. 6451 of 2021

Md. Shafiqul Islam (Fulu Mia)

..... Convict-Appellant-petitioner

-Versus-

The State

----- Respondent.

Mr. Mohammad Asikuzzaman, Advocate

.... for the convict-appellant

Mr. Md. Moshiul alam with

Mr. Abu Bakar Siddique, Advocate

.... for the respondent No. 2

Mr. Md. Abdul Aziz Miah, D.A.G with

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

----- For the State.

Heard on: 01.06.2023, 08.06.2023

and

Judgment on 14.06.2023

This appeal is directed against the judgment and order of conviction and sentence dated 01.04.2019 passed by the learned Additional Metropolitan Sessions Judge, 5th Court, Dhaka in Metro Sessions Case No. 2587 of 2017 arising out of Complaint Registrar (C.R) Case No. 773 of 2016 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer rigorous imprisonment for 01 (one) year and also to pay fine of Tk. 10,34,555/- (ten lacs thirty four thousand five hundred fifty five) only should not be set-aside

and/or pass such other or further order orders as to this court may seem fit and proper.

The prosecution case, in short is that the opposite party No. 2 as complainant filed a complaint case as being C.R. Case No. 773 of 2016 under Section 138 of the Negotiable Instruments Act, 1881 before the Court of learned Chief Metropolitan Magistrate, Dhaka against the convict appellant-petitioner alleging inter alia that the convict appellant petitioner took Tk. 10,34,555/- as loan and subsequently gave a cheque of taka 10,34,555/- to the complainant and the complainant presented the said cheque to the Pubali Bank Limited, Katiadi Arban Branch for encashment and the same was dishonoured on 28.04.2016 for insufficiency of fund. A legal notice was served upon the appellant petitioner on 09.05.2016 through the engaged lawyer of the opposite party No. 2 but he did not pay the same and hence the case.

That the learned Magistrate after examining the complainant under Section 200 of the Code of Criminal Procedure took cognizance against the convict-appellant petitioner under Section 138 of the Negotiable Instruments Act, 1881 and issued summons against the convict appellant petitioner and the appellant petitioner after appearing before the

court of Chief Metropolitan Magistrate, Dhaka obtained bail and faced trial.

That thereafter, the case was transmitted to the court of Additional Metropolitan Sessions Judge, 5th Court, Dhaka and it was renumbered as Metro Session Case No. 2587 of 2017 and on 17.09.2018 the said court framed charge against the convict appellant Petitioner under Section 138 of the Negotiable Instruments Act, 1881 on 23.04.2017.

That the prosecution examined only witness to prove its case and the defense also examined 1(one) witness.

That after hearing the parties the judgment and order was passed by the court of learned Additional metropolitan Sessions Judge, 5th Court, Dhaka convicting the appellant petitioner under Section 138 of the Negotiable Instruments Act, 1881 and thereby sentencing the appellant petitioner to suffer simple imprisonment for a period of 1(one) month and also to pay fine of Tk. 10,34,555/- (ten lacs thirty four thousand five hundred fifty five).

Learned Advocate Mr. Mohammad Asikuzzaman appeared for the convict appellant petitioner while learned

advocate Mr. Moshiul Alam with Mr. Md. Abu Bakar Siddique represented for the respondent-opposite party.

Learned Advocate for the appellant petitioner without entering into any argument on the factual merits of the case however submits that they are trying to reach a consensus and compromise with the complainant respondent and they pray for time. He however submits that they have already part payment of the amount of Tk. 1,00,000/-(one lac) in the meanwhile he will also pay further amount to the respondent.

Learned advocate for the complainant respondent however submits that he has no instruction of any compromise between his clients and it is only a delaying tactic of the appellant. He concludes his submissions upon assertion that the lower court correctly gave the judgment and therefore the appeal ought to be dismissed.

I have heard the learned advocate from both sides and perused the application and materials on records before me. I have particularly examined the documents produced as exhibits and I have examined the judgment of the court below. Truly enough I do not find any error of the complainant in the following procedure of Section 138 of the N.I. Act, 1881 from beginning till the filing of the case. I have examined the

exhibit-1 which is Cheque No. 1548813, exhibit-2 which is dishonored cheque, exhibit-3 which is registry receipt dated 09.05.2016, exhibit-4 which is legal notice, exhibit-5 which is acknowledgment receipt dated 17.05.2016 these are the relevant documents. I do not find any inconsistency in exhausting the procedure as provided under section 138 of the N.I. Act, 1881. I do not also find any factual denial anywhere in the records by the convict appellant either.

Under the facts and circumstances I am of the considered view that the court correctly gave it order and needs no interference with. I do not find any merit in the appeal.

In the result, the appeal is dismissed without any order as to costs.

Communicate the judgment at once.

Shokat (B.O.)