

Present:

Mr. Justice Raziuddin Ahmed

Criminal Appeal No.9537 of 2021

Md. Nasim Hossain Kuraishi

----- Complainant-Appellant

-Vs-

The State and another

----- Accused-Respondents

Mr. Sk. Zulfikar Alam, Advocate

----For the Appellant

Mr. Tapan Kumar Bepary, Advocate with

Mr. Tarak Chandra Roy, Advocate

----For the Opposite party No.2

Heard on 29.04.2026, 13.05.2026 and

Judgment on 18.05.2026

This appeal, preferred under section 417 of the Code of Criminal Procedure, is directed against the judgment and order of acquittal dated 27.10.2021 passed by the learned Joint Sessions Judge, 2nd Court, Satkhira in Sessions Case No.1441 of 2019, arising out of C.R. Case No.89 of 2019, under section 138 of the Negotiable Instruments Act, 1881, whereby the accused-respondent No.2 was acquitted of the charge.

The prosecution case, in short, is that the complainant-appellant, Md. Nasim Hossain Kuraishi, filed C.R. Case No.89 of 2019 before the Court of the learned Judicial Magistrate, Cognizance Court No.1, Sadar, Satkhira against the accused-respondent No.2 under section 138 of the Negotiable Instruments Act, 1881 alleging, inter alia, that the complainant and the accused were known to each other. The accused requested the complainant to give him a loan. Though the complainant initially refused,

he subsequently agreed to give the loan. Accordingly, on 01.11.2018 at about 10.00 a.m., the accused came to the house of the complainant and received Tk.10,49,190/- in presence of witnesses.

It was further alleged that, in discharge of the said liability, the accused issued a cheque bearing No. SBL/CDA 1913217 dated 01.12.2018 for Tk.10,49,190/- drawn on Standard Bank Limited, Satkhira Branch. The complainant presented the cheque for encashment on 06.12.2018, but the same was dishonoured for insufficiency of fund. Thereafter, the complainant sent a legal notice to the accused on 03.01.2019, which was received by the accused on 09.01.2019. As the accused failed to pay the cheque amount within the statutory period, the complainant filed the case under section 138 of the Negotiable Instruments Act, 1881.

The case was subsequently transferred to the Court of the learned Joint Sessions Judge, 2nd Court, Satkhira for trial. On 09.03.2020, charge was framed against the accused-respondent No.2 under section 138 of the Negotiable Instruments Act, 1881. The charge was read over and explained to him, to which he pleaded not guilty and claimed to be tried.

At the trial, the complainant examined one witness, while the defence also examined one witness.

Upon consideration of the evidence and materials on record, the learned Joint Sessions Judge, 2nd Court, Satkhira, by judgment and order dated 27.10.2021, acquitted the accused-respondent No.2 from the charge.

Being aggrieved by and dissatisfied with the said judgment and order of acquittal, the complainant-appellant preferred the instant appeal, which was admitted on 31.05.2022.

Mr. Sk. Zulfikar Alom, the learned Advocate appearing for the complainant-appellant, submits that the accused issued the cheque in question for Tk.10,49,190/- in favour of the complainant in discharge of his outstanding liability. The complainant presented the cheque before Standard Bank Limited for encashment, but the same was dishonoured for insufficiency of fund. Thereafter, the complainant duly issued legal notice on 03.01.2019, which was received by the accused on 09.01.2019. Since the accused failed to pay the cheque amount within the statutory period, the complainant rightly filed the case under section 138 of the Negotiable Instruments Act, 1881.

The learned Advocate further submits that the complainant proved his case by both oral and documentary evidence, but the learned trial Court, without proper appreciation of the evidence on record, acquitted the accused-respondent No.2. He submits that the accused did not deny his signature on the cheque and did not file any application for sending the cheque to a handwriting expert. Therefore, according to him, there was no real dispute regarding issuance of the cheque. He submits that the learned trial Court committed serious error in law in acquitting the accused and, as such, the impugned judgment and order of acquittal is liable to be set aside.

The learned Advocate finally submits that all legal formalities required under section 138 of the Negotiable Instruments Act, 1881 were duly complied with. The cheque was issued by the accused, it was dishonoured for insufficiency of fund, legal notice was served, and the accused failed to pay the amount within the statutory period. Therefore, the learned trial Court ought to have convicted the accused-respondent No.2. He accordingly prays for allowing the appeal.

On the other hand, Mr. Tapan Kumar Bepary, the learned Advocate appearing with Mr. Tarak Chandra Roy for the accused-respondent No.2, supports the impugned judgment and order of acquittal.

He submits that the complainant failed to prove the case beyond reasonable doubt. He submits that the accused issued a cheque from his account No.06433000859 maintained with Standard Bank Limited, but in the complaint petition the complainant mentioned the account number as 0460420017006. He further submits that no account number was mentioned in the legal notice. According to him, these inconsistencies create serious doubt about the genuineness of the complainant's case.

The learned Advocate further submits that the accused is a bricklayer, locally known as a Rajmistry. He used to purchase iron and cement from the complainant. In course of such business transaction, an amount of Tk.49,190/- remained due. In order to pay that outstanding amount, the accused issued a cheque for Tk.49,190/- by putting equal sign on the left side of the amount. The complainant, by tampering with the cheque, inserted the figure "10" before Tk.49,190/- and converted the

cheque into one for Tk.10,49,190/-. He submits that the accused wrote only the amount of Tk.49,190/- in figure and that the other writings on the cheque were not written by the accused.

The learned Advocate also submits that the complainant's case that he gave a loan of Tk.10,49,190/- is inherently improbable, particularly when the alleged loan amount is not a round figure. He submits that, in ordinary course, if such a loan had actually been advanced, there would have been some supporting document or reliable evidence. He finally submits that the learned trial Court rightly appreciated the evidence and acquitted the accused. Therefore, he prays for dismissal of the appeal.

We have heard the learned Advocates for both sides and perused the memo of appeal, the impugned judgment and order, the evidence, and the materials on record.

The only question for determination in this appeal is whether the learned trial Court committed any illegality, misreading, non-reading, or perversity in acquitting the accused-respondent No.2 from the charge under section 138 of the Negotiable Instruments Act, 1881.

In order to constitute an offence under section 138 of the Negotiable Instruments Act, 1881, the complainant is required to prove that the cheque was issued by the accused in discharge of a debt or other liability, that the cheque was presented within the prescribed period, that it was dishonoured for insufficiency of fund or for any reason contemplated by law, that legal notice demanding payment was duly served upon the

drawer, and that the drawer failed to make payment within the statutory period.

In the present case, the complainant as P.W.1 stated in his examination-in-chief that the accused issued the cheque dated 01.12.2018 for Tk.10,49,190/- in discharge of his liability. He further stated that the cheque was dishonoured on 06.12.2018 for insufficiency of fund and that legal notice was sent on 03.01.2019, which was received by the accused on 09.01.2019.

However, in cross-examination P.W.1 made certain material admissions which strike at the root of the complainant's case. He admitted that he did not mention any account number in the legal notice. He further admitted that in the legal notice he mentioned negotiation, but did not clearly mention repayment of the alleged loan amount. More importantly, although the complaint petition states that the accused came to the complainant's house on 01.11.2018 and received Tk.10,49,190/- as loan, P.W.1 admitted in cross-examination that he did not give any loan to the accused and that no transaction took place in his house.

This admission is a material contradiction. The foundation of the complaint case is that the accused received Tk.10,49,190/- as loan from the complainant at his house on 01.11.2018. But the complainant himself, while deposing before the Court, admitted that no such loan was given and no such transaction took place in his house. Such contradiction cannot be treated as minor or insignificant. It directly affects the existence of the alleged debt or liability.

It further appears that the complainant mentioned one account number in the complaint petition, namely 0460420017006, whereas the defence case is that the cheque was issued from account No.06433000859 maintained with Standard Bank Limited. It also appears that no account number was mentioned in the legal notice. In a prosecution under section 138 of the Negotiable Instruments Act, such inconsistency regarding the account from which the cheque was allegedly issued assumes significance, particularly when the defence has raised a specific plea of alteration or tampering of the cheque amount.

D.W.1 Md. Moslem Ali Sarder, the accused-respondent No.2, stated that he is a bricklayer and studied up to Class IV. He used to purchase cement from the complainant, sometimes in cash and sometimes on credit. According to him, after settlement of accounts, Tk.49,190/- remained due to the complainant. He issued a cheque for Tk.49,190/- by writing the amount in figure and putting equal signs in left side of the amount. His specific defence is that the complainant inserted "10" before Tk.49,190/- and thereby converted the cheque amount into Tk.10,49,190/-.

It is true that the accused admitted receipt of legal notice and did not give any reply to the same. It is also true that non-reply to a legal notice may, in appropriate cases, be considered as a circumstance against the accused. But such non-reply alone cannot cure the material contradictions in the complainant's own evidence. Nor can it relieve the complainant of his burden to prove the legally enforceable debt or liability when the

complainant himself has made admissions inconsistent with the very basis of the complaint.

In a case under section 138 of the Negotiable Instruments Act, once execution of the cheque is admitted or proved, a presumption may arise in favour of the holder of the cheque. But such presumption is rebuttable. The accused is not required to prove his defence beyond reasonable doubt. He may rebut the presumption by showing, on the basis of the materials on record and surrounding circumstances, that the complainant's case is doubtful or that the existence of the alleged liability is not probable.

In the present case, the defence version that the cheque was issued for Tk.49,190/- against business dues, and not for Tk.10,49,190/- as alleged loan, receives support from the complainant's own admission that he had business dealings with the accused regarding iron and cement. The complainant's further admission that he did not give any loan to the accused and that no transaction took place in his house substantially weakens the prosecution case.

The alleged loan amount of Tk.10,49,190/- also appears unusual in the facts and circumstances of the case. The complainant did not produce any independent documentary evidence showing that such a large amount was advanced as loan to the accused. No reliable explanation is forthcoming as to why such amount was allegedly paid in cash or why there was no supporting document regarding the alleged loan transaction.

In an appeal against acquittal, the appellate Court may reappraise the evidence. However, it is a well-settled principle that an order of acquittal should not be interfered with unless the findings of the trial Court are perverse, unreasonable, manifestly illegal, or based on misreading or non-reading of evidence. If the view taken by the trial Court is a possible and reasonable view, the appellate Court should be slow to disturb the acquittal.

On consideration of the evidence on record, we find that the learned trial Court considered the material contradictions in the complainant's case, the inconsistency regarding the account number, the complainant's admission denying the alleged loan transaction, and the defence plea regarding alteration of the cheque amount. The view taken by the learned trial Court cannot be said to be perverse or unreasonable. Rather, the trial Court appears to have rightly extended the benefit of doubt to the accused-respondent No.2.

In view of the above facts, circumstances, evidence, and legal position, we are of the view that the complainant failed to prove the charge under section 138 of the Negotiable Instruments Act, 1881 beyond reasonable doubt. The judgment and order of acquittal dated 27.10.2021 passed by the learned Joint Sessions Judge, 2nd Court, Satkhira in Sessions Case No.1441 of 2019 calls for no interference by this Court.

Accordingly, the appeal is dismissed.

The judgment and order of acquittal dated 27.10.2021 passed by the learned Joint Sessions Judge, 2nd Court, Satkhira in Sessions Case

No.1441 of 2019, arising out of C.R. Case No.89 of 2019, is hereby affirmed.

Send down the lower Court records at once.

Communicate this judgment and order to the Court concerned immediately.

Imam Sarwar/B.O