

**Present:**  
**Mr. Justice Md. Ataur Rahman Khan**

**Criminal Appeal No. 1508 of 2022.**

Saiduzzaman Toshar and another  
....Convict- Appellants.

-Versus-  
The State and another

.....Respondents.

No one appears for the appellants.

Ms. Anjuman Ara Begum, AAG

Mr. Miah Sirajul Islam, AAGs

..... For the State.

Mr. Md. Abdul Kader Bhuiyan, Advocate

... For the respondent No.2

**Heard on: 09.11.2023, 16.11.2023.**

**And**

**Judgment on: 26.11.2023.**

**Md. Ataur Rahman Khan, J:**

This Criminal Appeal, at the instance of convict appellant, Saiduzzaman Toshar and Harun Ur Rashid are directed against the Judgment and order of conviction and sentence dated 29.04.2019 passed by the Sessions Judge, Chandpur, in Sessions Case No. 521 of 2018 arising out of C.R Case No. 179 of 2017 (Chandpur Sadar) convicted the convict appellants under section 138 of the Negotiable Instrument Act, 1881 and sentenced them to suffer rigorous

imprisonment for a period of 06 (six) months and to pay fine of Tk. 7,00,000/- (seven lac).

The complainant case, in brief, is that, there has been an agreement between the convict appellants business institution namely Rich System Ltd and husband of respondent No. 2 namely Md. Shahjahan Khokon on condition of paying business divided commission, that accordingly to the said agreement an amount of Tk. 7,00,000/- (seven lac) was due from the convict appellants to the husband of the respondent No. 2. The convict appellants in order to pay the dues of Tk. 7,00,000/- (seven) issued jointly signed cheque in favour of the complainant's husband being cheque No. IBV 5936402, dated 20.11.2016, Tk. 7,00,000/-in the account of the convict appellants business institution with the Islami Bank Bangladesh Limited. The above said cheque was presented and the same was dishonoured for insufficient fund on 14.03.2017. The complainant's husband i.e PW 1 sent notice to the accuseds on 21.03.2017.

The learned Magistrate took cognizance and issued summons of the case under section 138 of the Negotiable

Instruments Act,1881 against the appellants. The case was transferred in the court of Sessions Judge, Chandpur, which was registered as Sessions Case No. 521 of 2018 vide order No. 01 dated 04.11.2018. Thereafter, the Sessions Judge, Chandpur by order dated 08.11.2018 i. e order No. 02 cancelled the bail of the accused appellants and issued warrant and arrest due to his absence from the court.

The trial court framed charged under section 138 of the Negotiable Instrument Act, 1881 on 21.01.2019 vide order No. 3 against the convict appellants. The complainant examined 01 (one) witness to prove his case. The Sessions Judge, Chandpur after hearing on consideration of the evidence on record and the real facts of the case on 29.04.2019 convicted the convict appellants under section 138 of the Negotiable Instruments Act, 1881 and sentenced them to suffer rigorous imprisonment for period of 06 (six) months and also to pay a fine of Tk.7,00,000/-

Being aggrieved by and dissatisfied with the Judgment and order of conviction and sentence dated 29.04.2019 passed by the Sessions Judge, Chandpur, in Sessions Case No. 521 of

2018 arising out of C.R Case No. 179 of 2017 (Chandpur Sadar). The convict appellants preferred appeal before this court and obtained Rule and bail.

No appears for the convict appellants.

Mr. Md. Abdul Kader Bhuiyan, the learned Advocate appearing on behalf of the respondent No. 2 submits that the Sessions Judge, Chandpur after hearing on consideration of the evidence on record and the real facts of the case on 29.04.2019 convicted the convict appellants under section 138 of the Negotiable Instruments Act, 1881 and sentenced them to suffer rigorous imprisonment for period of 06 (six) months and also to pay a fine of Tk.7,00,000/-. He further submits that an agreement was made the convict appellants and the complainant for the purpose of business dividend commission amount of Tk. 7,00,000/- (seven lac). The convict appellants in order to pay the dues of Tk. 7,00,000/- issued jointly signed cheque in favour of the complainant's husband being Cheque No. IBV 5936402, dated 20.11.2016 Tk. 7,00,000/- with the Islami Bank, Bangladesh Limited. The cheque was presented the bank for encashment but the cheque was dishonored due

to insufficient fund. He further submits that the complainant issued a legal notice to the convict appellants but the convict appellants did not pay the cheque money. He further submits the learned Magistrate took cognizance and issued summons of the case under section 138 of the Negotiable Instruments Act,1881 against the convict appellants. He further submits that the trial court framed charged under section 138 of the Negotiable Instrument Act, 1881 on 21.01.2019 vide order No. 3 against the convict appellants. He further submits that earlier another cases were filed against the convict appellants and they were compromise with the complainant and paid the cheque amount but in this case the convict appellants did not take any step to pay the cheque money in favour of the complainant and trying to delay disposal of the case. Accordingly, he submits that the appeal may be dismissed for ends of justice.

Ms. Anjuman Ara Begum and Mr. Miah Sirajul Ialam, the learned Assistant Attorney Generals appearing on behalf of the complainant respondent-State adopted the submissions

made by the learned Advocate appearing on behalf of the complainant respondent No. 2.

Heard the learned Advocate of complainant respondent No. 2 and Assistant Attorney Generals for the state, perused material on records, including the deposition of the witnesses and other material referred to above. It appears that the Sessions Judge, Chandpur, in Sessions Case No. 521 of 2018 arising out of C.R Case No. 179 of 2017 (Chandpur Sadar). An agreement was made the convict appellants and the complainant for the purpose of business dividend commission amount of Tk. 7,00,000/- (seven lac). The convict appellants in order to pay the dues of Tk. 7,00,000/- issued jointly signed cheque in favour of the complainant's husband being Cheque No. IBV 5936402, dated 20.11.2016 Tk. 7,00,000/- with the Islami Bank Bangladesh Limited. The cheque was presented the bank for encashment but the cheque was dishonored due to insufficient fund. The complainant issued a legal notice to the convict appellants but the convict appellants did not pay the cheque money. The complainant has been able to prove his case beyond reasonable doubt. The Sessions Judge, Chandpur

after hearing on consideration of the evidence on record and the real facts of the case on 29.04.2019 convicted the convict appellants under section 138 of the Negotiable Instruments Act, 1881 and sentenced them to suffer rigorous imprisonment for period of 06 (six) months and also to pay a fine of Tk.7,00,000/-.

On critical analysis of the aforesaid evidence on record, It transpires that the convict appellants issued cheque of at Tk. 7,00,000/- in favour of the complainant. The complainant presented the cheque to the bank for encashment but the cheque was dishonored due to insufficient fund. The complainant sent a legal notice to the convict appellants for pay the cheque money but the convict appellants did not response to pay the complainant cheque money. The Sessions Judge, Chandpur after hearing on consideration of the evidence on record and the real facts of the case on 29.04.2019 convicted the convict appellants under section 138 of the Negotiable Instruments Act, 1881 and sentenced them to suffer rigorous imprisonment for period of 06 (six) months and also to pay a fine of Tk.7,00,000/-.

So, in all fairness, the complainant has been able to prove the case beyond reasonable doubt. The Sessions Judge, Chandpur after hearing on consideration of the evidence on record rightly convicted and sentenced the convict appellants which is just and sustainable in law and deserves no interference by this court.

I have gone through the privilege that the impugned judgment and order of conviction and sentence dated 29.04.2019 and I have reason to believe that the Sessions Judge, Chandpur rightly discuss the evidence of witnesses and also rightly apply its judicial mind.

Considering the above facts and circumstances of the case as well as evidence on record, I hold and find that the Sessions Judge, Chandpur after hearing rightly convicted the convict appellants under section 138 of the Negotiable Instruments Act, 1881 and sentenced them to suffer rigorous imprisonment for period of 06 (six) months and also to pay a fine of Tk.7,00,000/- is hereby maintained.

In the result, the Criminal Appeal No. 1508 of 2022 is hereby dismissed.

The Judgment and order of conviction and sentence dated 29.04.2019 passed by the Sessions Judge, Chandpur, in Sessions Case No. 521 of 2018 arising out of C.R Case No. 179 of 2017 (Chandpur Sadar) convicted the convict appellants under section 138 (1) of the Negotiable Instrument Act, 1881 and sentenced them to suffer rigorous imprisonment for a period of 06 (six) months and to pay a fine of Tk. 7,00,000/- (seven lac) is hereby affirmed.

The bail bond furnished by the convict appellants are hereby discharged.

Let the convict appellant namely Saiduzzaman son of Younusuzzaman and convict appellant Harun Ur Rashid son of late Shamsul Alam are directed to pay the rest 50% cheque amount in favour of the complainant within 30 (thirty) days from the date of receipts of this judgment, if the convict appellants paid the cheque amount in favour of the complainant in time then the sentence will be set aside, failing which the convict appellants shall suffer rigorous imprisonment for a period of 06 (six) months and the law

enforcing agency to take them in custody in accordance with law.

The complainant respondent No. 2 is directed to withdraw the deposited 50% cheque amount from the court of Sessions Judge, Chandpur as early as possible. The Sessions Judge, Chandpur is directed to allow withdraw the deposited 50% cheque amount by the complainant.

Send down the L. C. records along with a copy of this Judgment to the Court concerned immediately for information and necessary action.

A.B.O/monir