

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

**Criminal Appeal No. 1503 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, 20.11.2023.**

**And**

**Judgment on: 28.11.2023.**

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

This Criminal Appeal, at the instance of convict appellants, Saiduzzaman Toshar and Harun Ur Rashid are directed against the Judgment and order of conviction and sentence dated 27.04.2019 passed by the Sessions Judge, Chandpur, in Sessions Case No. 347 of 2018 arising out of C.R Case No. 182 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 03 (three) months and to pay a fine of Tk. 7,00,000/- (seven lac).

The complainant case, in brief, is that, there has been an agreement between the accused's business institution namely Rich System Ltd and husband of respondent No. 2 namely Md. Shahjahan Khokon on condition of paying business divided commission. Accordingly to the said agreement an amount of Tk. 7,00,000/- (seven lac) was due from the appellants to the husband of the complainant respondent No. 2. The accused 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 5936404, dated 24.11.2016, Tk. 7,00,000/-in the account of the accused's business institution with the Islami Bank Bangladesh Limited. The above said cheque was presented for encashment but the same was dishonoured for insufficient fund. The complainant's husband i.e PW 1 sent notice to the convict appellant 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 convict appellants. The case

was transferred in the court of Sessions Judge, Chandpur, which was registered as Sessions Case No. 347 of 2018 vide order No. 01 dated 22.07.2018. Thereafter, the Sessions Judge, Chandpur framed charged under section 138 of the Negotiable Instrument Act, 1881 against the convict appellants. The complainant examined 01 (one) witness to prove the case. The Sessions Judge, Chandpur after hearing on consideration of the evidence on record and the real facts of the case on 27.02.2019 convicted the convict appellants under section 138 of the Negotiable Instruments Act, 1881 and sentenced them to suffer rigorous imprisonment for period of 03 (three) months and to pay a fine of Tk.7,00,000/-

Being aggrieved by and dissatisfied with the Judgment and order of conviction and sentence dated 27.02.2019 passed by the Sessions Judge, Chandpur, in Sessions Case No. 347 of 2018 arising out of C.R Case No. 182 of 2017 (Chandpur Sadar). The convict appellant preferred appeal before this court and obtained bail and stay realization of fine.

No appears for the convict appellants.

Mr. Md. Abdul Kader Bhuiyan, the learned Advocates appearing on behalf of the complainant 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 27.02.2019 rightly convicted the convict appellants under section 138 of the Negotiable Instruments Act, 1881 and sentenced them to suffer rigorous imprisonment for period of 03 (three) months and to pay a fine of Tk.7,00,000/-. He further submits that an agreement was made by the convict appellants and the complainant for the purpose of business for 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 5936404, dated 24.11.2016 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 amount. 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 appellants. He further submits that the Sessions Judge, Chandpur framed charges under section 138 (1) of the Negotiable Instrument Act, 1881 against the convict appellants. He further submits that earlier other cases were filed against the convict appellants and they were compromised 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.

Mrs. Anjuman Ara Begum and Mr. Miah Sirajul Islam, the learned Assistant Attorney Generals appearing on behalf of the respondent-State adopted the submissions made by the learned Advocate appearing on behalf of the complainant respondent No. 2. Accordingly, they submit that the appeal may be dismissed for ends of justice.

Heard the learned Advocates of complainant respondent No. 2 and Assistant Attorney Generals for the state, perused

material on records, including the deposition of the witness and other material referred to above. It appears that the Sessions Judge, Chandpur, in Sessions Case No. 347 of 2018 arising out of C.R Case No. 182 of 2017 (Chandpur Sadar). On agreement was made the convict appellants and the complainant for the purpose of business borrow 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 5936404, dated 24.11.2016 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 27.02.2019 convicted the convict appellants under section 138 of the Negotiable Instruments Act, 1881 and sentenced them to suffer rigorous

imprisonment for period of 03 (three) 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 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 pay the cheque money but the convict appellants did not pay the cheque money. The Sessions Judge, Chandpur after hearing on consideration of the evidence on record and the real facts of the case on 27.02.2019 rightly convicted the convict appellants under section 138 of the Negotiable Instruments Act, 1881 and sentenced them to suffer rigorous imprisonment for period of 03 (three) 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 27.02.2019 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 records, 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 03 (three) months and also to pay a fine of Tk.7,00,000/- is hereby maintained.

In the result, the Criminal Appeal No. 1503 of 2022 is hereby dismissed.

The Judgment and order of conviction and sentence dated 27.02.2019 passed by the Sessions Judge, Chandpur, in Sessions Case No. 347 of 2018 arising out of C.R Case No. 182 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 period of 03 (three) months and to pay a fine of Tk. 7,00,000/- (seven lac) is hereby affirmed.

The bail bonds furnished by convict appellants are hereby discharged.

Let the convict appellant 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 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 then the sentence will be set aside, failing which the convict appellants shall suffer rigorous imprisonment for a period of 03 (three) 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