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

MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN

CRIMINAL APPEAL NO.2254 OF 2020

Abdul Kalam …............Convict-appellant

-Versus-

The State and another ....…Respondents

Mrs. Joshna Akhter, Advocate
.....For the convict-appellant

Mr. Md. MasudulHoq, Advocate
......For the complainant respondent No. 01

Mr. Md. Anichur Rahman Khan, DAG with
Mrs.Tashrifa Sultana Jali, AAG
........For the state

Heard on: 01.03.2026, 20.04.2026 and28.04.2026

Judgment on: **The17th ofJune, 2026**

ABU TAHER MD. SAIFUR RAHMAN, J.

This appeal is directed against the Judgment and Order of conviction and sentence dated 22.11.2018 passed by the learned Additional Metropolitan Sessions Judge,Sylhet inSessions Case No. 326 of 2018, arising out ofKotwali C.R. Case No. 924 of 2017 convicting the appellant under section

138 of the Negotiable Instrument Act, 1881 and sentencing him there under to suffer imprisonment for 1 (one) year and to pay a fine of **Tk. 20, 00,000**/- (Taka Twenty lac).

For the purpose of disposal of the appeal, the relevant facts may briefly be stated as follows:

That the respondent No 01 as complainant filed a C.R case No. 924 of 2017 against the accused appellant under section 138 of the Negotiable Instrument Act 1881 alleginginteraliathat Owing to a long-standing acquaintance, the accused developed a business relationship with the complainant and, on several occasions, borrowed money from him, which he repaid in due course, thereby earning the complainant's confidence and trust.

In continuation of such relationship, the accused, at different times, borrowed a total sum of **Tk. 20,00,000**/- (Taka twenty lac only) from the complainant with an undertaking to repay the same on demand. When the complainant demanded repayment, the accused, in discharge of his legally enforceable liability, issued and delivered to the complainant Cheque No. IBH 9628513 dated 20.02.2017 for **Tk. 20,00,000**/-, drawn on Account No. 20503090100114510 maintained with Islami Bank Bangladesh Limited,Zindabazar Branch, Sylhet in the name of his business concern, “Kalam Overseas.”

Acting upon the assurance of the accused, the complainant presented the cheque through his banker, BRAC

Bank Limited, Sylhet Branch, for encashment. The cheque was duly forwarded to the drawee bank but was dishonored and returned unpaid on 16.05.2017with the endorsement "Insufficient Funds."Upon learning of the dishonour, the complainant demanded payment from the accused, but the latter failed to discharge his liability. Consequently, the complainant, through his learned Advocate, served a statutory legal notice dated 01.06.2017 upon the accused by registered post at his correct business address, calling upon him to pay the cheque amount within the period prescribed by law. Despite receipt of the said notice, the accused neither paid the amount nor gave any satisfactory reply within the statutory period.

Thus, the accused, having issued the cheque towards discharge of a legally enforceable debt and having failed to make payment within the prescribed period after dishonour and service of statutory notice, has committed an offence punishable under section 138 of the Negotiable Instruments Act, 1881. Hence the instant case was filed against the accused Abdul Kalam.

It is further stated that the accused-appellant neither appeared nor contested the case. Upon conclusion of the trial, the court below, by its judgment and order dated 22.11.2018, convicted and sentenced the accused-appellant as stated above.

Being aggrieved by the said judgment and order, the accused-appellant has preferred the present appeal before this Court.

Mrs.Joshna Akhter, the learned Advocate appeared on behalf of the convict-appellant mainly submits that the entire trial was conducted ex parte without the knowledge or participation of the appellant, who was neither served with summons nor received the statutory legal notice under section 138 of the Negotiable Instruments Act. It is contended that the complainant, despite having full knowledge of the appellant's present and permanent addresses, deliberately sent the notice to an old and incorrect address, thereby depriving the appellant of an opportunity to contest the case.

It is further submitted that there had been no business transaction between the parties for about four years prior to the institution of the case and that the complainant failed to disclose the date or circumstances in which the alleged loan of **Tk. 20,00,000**/- was advanced, nor was any written document or independent witness produced in support thereof. The complainant's evidence regarding the alleged business transaction and loan is also stated to be materially inconsistent and contradictory. The filing of a General Diary mentioning the appellant's correct address is relied upon to demonstrate that the complainant intentionally suppressed the same while initiating the case.

Accordingly, it is argued that the mandatory requirement of service of notice under section 138(1)(c) of the Negotiable Instruments Act was not complied with, the prosecution failed to prove its case beyond reasonable doubt, and therefore the impugned judgment and order of conviction are liable to be set aside and the appellant acquitted.

As against this, Mr. Md.MasudulHoq, the learned Advocate for the respondent No. 1 submits that the learned trial Court upon a thorough, meticulous and judicious appraisal of the evidence on record correctly found the accused-convict-appellant guilty of the offence charged and lawfully convicted him which does not call for any interference by this Court.

Mr. Md. Anichur Rahman Khan, the learned Deputy Attorney General concurs with the submissions made by the learned Advocate for respondent No. 01.

Heard the submissions of the learned Advocates for the respective parties and perused the evidence and materials on record.

The sole point for determination in this appeal is whether the judgment and order dated 22.11.2018 passed by the learned Additional Metropolitan Sessions Judge, Sylhet in Sessions Case No. 326 of 2018, arising out of Kotwali C.R. Case No. 924 of 2017 convicting the appellant under section 138 of the

Negotiable Instruments Act, 1881 and sentencing him to suffer imprisonment for 1 (one) year and to pay a fine of **Tk. 20,00,000/-** (Taka Twenty lac) is sustainable in law.

It is well settled that in order to sustain a conviction under section 138 of the Negotiable Instruments Act, 1881, the complainant must establish the essential statutory ingredients of the offence, namely (i) the cheque was issued by the accused in discharge of a legally enforceable debt or liability; (ii) the cheque was drawn on an account maintained by the accused; (iii) it was presented within its period of validity; (iv) it was dishonored by the bank; (v) a statutory demand notice was issued within the prescribed period, (vi) such notice was duly sent to the correct address of the accused, thereby raising a presumption of service; (vii) the accused failed to make payment within the statutory period and (viii) the complaint was instituted within the period of limitation. Once these foundational facts are established, the presumptions under sections 118 and 139 of the Act come into operation, and the burden shifts upon the accused to rebut the same on a preponderance of probabilities.

Now, let us examine whether the complainant has succeeded in proving the aforesaid mandatory requirements.

The principal contention of the appellant is that the entire trial was conducted ex-parte without his knowledge, as he was neither served with summons nor received the statutory notice under section 138 of the Negotiable Instruments Act 1881. It is further contended that the complainant deliberately sent the notice to an old and incorrect address despite having knowledge of his present address.

On a careful scrutiny of the complaint petition, the statutory legal notice and the lower Court records, it appears that the accused was described therein as the proprietor of “Kalam Overseas” and the address mentioned in the complaint petition and legal notice is the same. The record further reveals that the case was instituted on 12.07.2017 and that the notice was duly served on 13.08.2017. It also transpires that after his arrest on 01.01.2020, following the pronouncement of the judgment, the appellant obtained bail under section 426(2A) of the Code of Criminal Procedure and while executing the bail bond before the trial Court, himself furnished the very same address which had earlier been stated in the complaint petition and the statutory notice. In such circumstances, the contention that the notice was intentionally sent to a wrong or outdated address is devoid of merit.

Moreover, during the hearing, the learned Advocate for the appellant produced a photocopy of General Diary Entry No. 913 dated 16.11.2020, lodged by the appellant himself. A plain reading of the said G.D. reveals that the appellant therein also referred to the same address while additionally mentioning his current business address. More importantly, in the said G.D. the appellant admitted that a cheque dishonour case had been instituted against him, that he had been convicted therein, that he had preferred Criminal Appeal No. 2254 of 2020 before the Hon'ble High Court and obtained bail and that he was allegedly threatened by the complainant and his associates to withdraw the appeal. The main substance of the G.D. is that, because of a prior business relationship, one of his signed cheque leaves had allegedly been misappropriated and subsequently used in the cheque dishonored case.

However, it is significant to note that the cheque dishonored case was instituted on 12.07.2017 and the judgment of conviction was delivered on 22.11.2018, whereas the aforesaid G.D. was lodged only on 16.11.2020, almost two years after the conviction. The allegation that the impugned cheque had been stolen from the appellant's office in 2014 was never raised before the trial Court, nor was any contemporaneous complaint or G.D. lodged at the relevant time. Such a belated allegation, made after conviction and during the pendency of the appeal, appears to be an afterthought and does not inspire confidence. Furthermore, the appellant has neither denied the issuance of the impugned cheque nor disputed his signature appearing thereon.

The appellant has also argued that there had been no business transaction between the parties for four years preceding the institution of the case and that the complainant failed to specify the exact date or manner in which the alleged loan of **Tk. 20,00,000**/- was advanced. However, in view of the statutory presumptions embodied in sections 118 of the Negotiable Instruments Act 1881, once the execution of the cheque is admitted or proved, the law presumes that it was issued for consideration and in discharge of a legally enforceable liability. In the present case, the appellant has failed to adduce any reliable or convincing material capable of rebutting those presumptions.

In the light of the discussions made above, I find that the complainant has successfully established the essential ingredients of the offence under section 138 of the Negotiable Instruments Act, 1881 and that the appellant has failed to rebut the statutory presumptions available in favour of the complainant. The findings and decision arrived at by the learned trial Judge are based upon a proper appreciation of the evidence and the materials on record and do not suffer from any illegality or infirmity warranting interference by this Court.

Accordingly, I find no substance in the appeal.

As a result, the appeal is therefore dismissed.

The judgment and order of conviction and sentence dated 22.11.2018 passed by the learned Additional Metropolitan Sessions Judge, Sylhet, in Sessions Case No. 326 of 2018 arising out of Kotwali C.R. Case No. 924 of 2017, is hereby affirmed.

The order of stay regarding realization of fine is hereby vacated. The complainant is at liberty to withdraw the same in accordance with law.

The convict-appellant is directed to surrender before the concerned Court within **30 (thirty**) days from the date of receipt of this judgment, failing which the Court below shall take necessary steps to execute the sentence in accordance with law.

Send down the Lower Court Records (LCR) at once.

Let a copy of this judgment be communicated to the Court below forthwith.