

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Appeal No.1029 of 2023

Md. Zamal Uddin @ Koyel

.....convict-Appellant

-Versus-

The State and another

..... Respondents

No one appears

.....For the convict-Appellant

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. Md. Jakaria Habib, Advocate

.....For the complainant-respondent No.2

Heard on 18.02.2024 and

Judgment on: 19.02.2024

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred by the appellant against the judgment and order of conviction and sentence dated 10.01.2019 passed by the learned Sessions Judge, Natore in Sessions Case No.155 of 2008 arising out of C.R. Case No.60 of 2008 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 01(one) year and also to pay a fine of Tk.4,50,354/-.

The prosecution case, in short is that the complainant is a popular businessman and the convict-appellant is contractor.

According to their good relation the convict-appellant purchased a lot of raw materials like rod, cement and bricks etc from the complainant which was the amount of Tk.4,50,354/- and thereupon the appellant had issued 02 cheques bearing No.(1) S $\frac{\text{GKA}}{50}$ 0022963 of Tk.1,00,000/- and (2) S $\frac{\text{GKA}}{50}$ 0022964 of Tk.3,50,354/- in favour of the complainant on 17.07.2007 against his savings account No.824 at Sonali Bank, Lalpur Branch, Natore. The cheques were presented at Uttara Bank, Lalpur Branch for encashment lastly on 26.12.2007, but the cheques were dishonored by the said Bank due to insufficient fund. As a result of which the complainant served a legal notice upon the appellant on 06.01.2008 pursuant to section 138 of the Negotiable Instruments Act, 1881 asking him to make payment of the dues within 30 days from the date of receipt thereof. But, in spite of receipt of such notice the appellant did not make payment of the dues. For this reason, the complainant filed a complaint-petition under section 138 of the Negotiable Instruments Act, 1881 against the convict-appellant before the learned Chief Judicial Magistrate, Natore on 22.01.2008.

The learned Judicial Magistrate, Natore examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance of the offence under section 138 of the Negotiable Instruments Act, 1881 as C.R. Case No.60 of 2008(Lal) and issued Summons upon the convict-appellant. The convict-appellant voluntarily surrendered before the learned concerned lower Court and obtained bail. Thereafter, this case was transferred to the Court of learned Sessions Judge, Natore

for trial and disposal and which was renumbered as Sessions Case No.155 of 2008. Thereafter, the learned Sessions Judge, Sirajganj framed charge against the convict-appellant under section 138 of the negotiable Instruments Act, 1881 and when it was read over and explain to the convict-appellant, he pleaded not guilty and claim to be tried.

At the time of trial the complainant produced 06(six) witnesses, the prosecution witnesses were examined in cross by the defence and the defence did not produce any witness to oppose the case. After closing the witnesses the convict-appellant was examined under section 342 of the Code of Criminal Procedure and he pleaded not guilty.

The learned Sessions Judge, Natore after conclusion of the trial, hearing the parties and considering upon the evidence on record found the convict-appellant guilty and convicting under section 138 of the Negotiable Instruments Act, 1881 sentenced to suffer imprisonment for a period of 01(one) year and also to pay a fine of Tk.4,50,354/- by his judgment and order of conviction and sentence dated 10.01.2019.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 10.01.2019 passed by the learned Sessions Judge, Natore in Sessions Case No.155 of 2008 arising out of C.R. Case No.60 of 2008(Lal), the convict-appellant preferred this Appeal, before this Hon'ble High Court Division.

No one appears for the convict-appellant to press this Appeal, when this matter was taken up for hearing although it appears in the daily cause list several times for hearing.

On the other hand, Mr. Md. Jakaria Habib, the learned Advocate appearing on behalf of the respondent No.2 submits that the complainant is a popular businessman and the convict-appellant is contractor. According their good relation the convict-appellant purchased a lot of raw materials like rod, cement and bricks etc from the complainant which was the amount of Tk.4,50,354/- and thereupon the appellant had issued 02 cheques bearing No.(1) S $\frac{\text{GKA}}{50}$ 0022963 of Tk.1,00,000/- and (2) S $\frac{\text{GKA}}{50}$ 0022964 of Tk.3,50,354/- in favour of the complainant on 17.07.2007 against his savings account No.824 at Sonali Bank, Lalpur Branch, Natore. The cheques were presented at Uttara Bank, Lalpur Branch for encashment lastly on 26.12.2007 but the cheques were dishonored by the said Bank due to insufficient fund. As a result of which the complainant served a legal notice upon the appellant on 06.01.2008 pursuant to section 138 of the Negotiable Instruments Act, 1881 asking him to make payment of the dues within 30 days from the date of receipt thereof. But, in spite of receipt of such notice the appellant did not make payment of the dues. For this reason, the complainant filed a complaint-petition under section 138 of the Negotiable Instruments Act, 1881 against the convict-appellant before the learned Chief Judicial Magistrate, Natore on 22.01.2008 following all legal

formalities. Thereafter, this case was transferred to the Court of learned Sessions Judge, Natore for trial and disposal and which was renumbered as Sessions Case No.155 of 2008. The learned Sessions Judge, Natore after conclusion of the trial, hearing the parties and considering upon the evidence on record found the convict-appellant guilty and convicting under section 138 of the Negotiable Instruments Act, 1881 sentenced to suffer imprisonment for a period of 01(one) year and also to pay a fine of Tk.4,50,354/- by his judgment and order of conviction and sentence dated 10.01.2019 rightly. Accordingly, he prays for dismissing the Appeal.

I heard the submissions of the learned Advocate for the respondent No.2 and perused the judgment and order of conviction and sentence of the lower Court and the materials on record.

It appears from the record that the complainant is a popular businessman and the convict-appellant is contractor. According their good relation the convict-appellant purchased a lot of raw materials like rod, cement and bricks etc from the complainant which was the amount of Tk.4,50,354/- and thereupon the appellant had issued 02 cheques bearing No.(1) S $\frac{\text{GKA}}{50}$ 0022963 of Tk.1,00,000/- and (2)S $\frac{\text{GKA}}{50}$ 0022964 of Tk.3,50354/- in favour of the complainant on 17.07.2007 against his savings account No.824 at Sonali Bank, Lalpur Branch, Natore. The cheques were presented at Uttara Bank, Lalpur Branch for encashment, but the cheques were dishonored by the said Bank due to insufficient fund. As a result of which

the complainant served a legal notice upon the appellant on 06.01.2008 pursuant to section 138 of the Negotiable Instruments Act, 1881 asking him to make payment of the dues within 30 days from the date of receipt thereof. But, in spite of receipt of such notice the appellant did not make payment of the dues. For this reason, the complainant filed a complaint-petition under section 138 of the Negotiable Instruments Act, 1881 against the convict-appellant before the learned Chief Judicial Magistrate, Natore on 22.01.2008 following all legal formalities.

Further, it appears from depositions of the P.Ws that all P.Ws supported the case, mainly the complainant as P.W.1 categorically in his deposition stated that the appellant had issued 02 cheques bearing No.(1) S $\frac{\text{GKA}}{50}$ 0022963 of Tk.1,00,000/- and (2) S $\frac{\text{GKA}}{50}$ 0022964 of Tk.3,50354/- in favour of the complainant on 17.07.2007 against his savings account No.824 at Sonali Bank, Lalpur Branch, Natore to pay his due. The said cheques were dishonored by the said Bank for insufficient fund. Thereafter, the complainant served a legal notice upon the appellant on 06.01.2008 pursuant to section 138 of the Negotiable Instruments Act, 1881 asking him to make payment of the dues within 30 days from the date of receipt thereof. But, the appellant did not make payment of the dues. For this reason, the complainant filed this case.

It is clear from the above facts and circumstances that the appellant being aware of the fact issued cheques in favour

of the complainant had been dishonoured by the Bank, the appellant did not take any step to refund the money and having done these he committed an offence under section 138 of the Negotiable Instruments Act, 1881.

In the light of the above facts and circumstances and materials on record, it is my view that the prosecution is able to establish the case and thus succeeded in proving it beyond all reasonable doubts. Therefore, the learned Sessions Judge, Natore passed the judgment and order of conviction and sentence dated 10.01.2019 in Sessions Case No.155 of 2008 rightly, which is maintainable in the eye of law and there is no chance to interference with the said judgment and order of conviction and sentence.

Accordingly, the appeal, therefore, has no merit.

In the result, the Criminal Appeal No.1029 of 2023 is dismissed.

The judgment and order of conviction and sentence dated 10.01.2019 passed by the learned Sessions Judge, Natore in Sessions Case No.155 of 2008 is hereby confirmed and upheld.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.2,25,177/-, which has been deposited by the convict-appellant through Chalan at the time of filing the appeal to the complainant-respondent No.2 (if he did not withdraw the said amount).

The order of bail granted earlier by this Court is hereby cancelled and recalled.

The convict-appellant is hereby directed to surrender before the concerned lower Court within in 30(thirty) days from the date of receipt of this judgment and order, failing which the concerned lower Court is hereby directed to take necessary steps to secure arrest him.

Send down the lower Court records with a copy of the judgment and order to the concerned Court below at once.

Md. Anamul Hoque Parvej
Bench Officer