

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Appeal No.11222 of 2019

Md. Hafizur Rahman

.....convict-Appellant

-Versus-

The State and another

..... opposite-parties

No one appears

.....For the convict-Appellant

Mrs. Aleya Khandker, A.A.G and

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. Sanjib Chandra Das, Advocate

.....For the respondent-opposite party No.2

Heard on :28.08.2023 &

Judgment on: 29.08.2023.

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred against the judgment and order of conviction and sentence dated 21.07.2019 passed by the learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka, in Sessions Case No.21061 of 2018 corresponding to C.R. No.1477 of 2017 convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer simple imprisonment for 01(one) year also to pay fine of Tk.10,00,000/- (ten lacs).

One Md. Alamgir Hossain filed a complaint petition on 12.09.2017 before the learned Metropolitan Magistrate Court No.07, Dhaka under section 138 of the Negotiable Instruments Act, 1881.

The prosecution case, in short, is that the convict-appellant Md. Hafizur Rahman out of business transaction and on basis of the business relation, he brought the product from the complainant institution as such he was debt to complaint institution. The complainant has given pressure to pay the dues, the accused gave a cheque for make the said payment to the complainant cheque being No. NSBD0222925 dated 01.06.2017 of National Bank Limited, Chowgacha Branch, Jessore amounting of tk. 10,00,000/- (ten lacs) only, which the complainant presented to Jamuna Bank Limited, Ring road Branch, Dhaka for encashment but the same was dishonoured on 24.07.2017 for the reason of insufficient fund. Thereafter, the complainant sent a legal notice on 30.07.2017 to the accused by the registered post through his engaged advocate, demanding the cheque amount which was executed properly and received by the accused but the accused did not come

forward to pay the cheque's amount within stipulated period. Finally, the accused did not pay the money. Hence the case.

The learned trial Court recorded the statement of complainant under section 200 of the Code of Criminal Procedure and took cognizance against the accused-convict-appellant under section 138 of the Negotiable Instruments Act, 1881 and issued a summon upon the convict-appellant.

Subsequently, the instant case was transferred to the learned Metropolitan Sessions Judge, Dhaka for holding trial and renumbered as Sessions Case No.21061 of 2018 and the learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka framed charge on 28.03.2019 against the appellant under section 138 of the Negotiable Instruments Act, 1881 though the accused appellant was not present on the said date and there was an application on behalf of the accused appellant for seeking time but the learned trial Court below after rejecting the said application framed charge against the accused appellant and issued warrant of arrest against the accused appellant and in absence of the accused appellant the ingredient of the charge

could not be possible to read over to him by the learned trial Court.

The prosecution has examined only 01 (one) witness in the trial Court to prove the case but the defence examined none and it was not possible to examine the convict appellant under section 342 of Code of Criminal Procedure for his absconding.

After considering all the evidence on record and deposition of the witness, the learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka passed the judgment and order of conviction and sentence on 21.07.2019, convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer simple imprisonment for 01(one) year with a fine of Tk. 10,00,000/- (ten lacs).

After judgment and conviction dated 21.07.2019, the convict appellant surrendered before the concerned trial Court on 02.09.2019 and deposited half of the cheque's amount and also prayed for his bail on condition to file appeal before this Court and he enlarged on bail.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction, the convict-appellant preferred this Appeal before this Court.

None appears on behalf of the convict-appellant to press the instant Rule.

On the other hand, Mr. Sanjib Chandra Das, the learned Advocate appearing on behalf of the respondent-opposite party No.2 submits that the convict-appellant Md. Hafizur Rahman out of business transaction and on basis of the business relation, he brought the product from the complainant institution as such he was debt to the complainant institution. The complainant has given pressure to pay the dues, the accused gave a cheque being No. NSBD0222925 dated 01.06.2017 of National Bank Limited, Chowgacha Branch, Jessore amounting of tk. 10,00,000/- (ten lac) only for make the said payment to the complainant, which the complainant presented to Jamuna Bank Limited, Ring Road Branch, Dhaka for encashment but the same was dishonoured on 27.07.2017 for the reason of insufficient fund. Thereafter, the complainant sent a legal notice on 30.07.2017 and received by the accused but the accused did

not come forward to pay the cheque's amount within stipulated period. The convict-appellant thus committed an offence under section 138 of the Negotiable Instrument Act, 1881 by giving the said cheque to the respondent No.2.

He also submits that the prosecution rightly proved the charge brought against the convict-petitioner complying with all formalities as required under Section 138 of the Negotiable Instruments Act, 1881 and as such the trial Court found the accused-petitioner guilty and thereby sentenced him vide judgment and order of conviction and sentence dated 21.07.2019 which warrants no interference by this Court. Therefore, he prays for dismissing the appeal.

In order to appreciate the submission of the learned Advocate for the respondent-opposite party No.2, this Court is to weigh the relevant evidence and materials on record and scan the attending evidence of the case to unearth the actual facts of the case to arrive at a proper and correct decision.

Now, let us discuss the evidence of prosecution witnesses.

P.W.1 Alamgir Hossain, complainant of the case deposed that out of business transaction the accused gave the disputed cheque for an amount of Tk. 10,00,000/- dated 01.06.17 but it was dishonored for insufficient of fund on 24.07.2017. Thereafter, he sent a legal notice on 30.07.2017. The accused failed to pay the money and thereafter the case was filed. He proved the power of attorney as Exhibit-1, petition of complaint as Exhibit-2 and his signature therein as Exhibit-2/1 and the disputed cheque, dishonor slip, postal receipt with AD, legal notice as Exhibit-3 series.

Considering the lower Court records, evidence and above facts and circumstances, it appears that complainant's complaint is Exhibit-2. The content described in it has been expressed by the complainant very coherently in his deposition before the trial Court and his deposition also supported the prosecution case. His deposition was consistent with the complaint and there was no inconsistency on the fundamentals. The complainant's Exhibit-3 is the alleged cheque dated 01.06.2017. On perusal of the said Exhibit-3 shows that it is a cheque of National Bank Limited and there were the account

number is printed on the cheque. The said cheque bears the signature of the accused. It is a cheque of Tk. 10,00,000/- (ten lacs) in which date 01.06.2017 is written. The cheque has no rubbing and is a clean cheque. The complainant's Exhibits-3/1 is the dishonor slip dated 24.07.2017. The said dishonor slip states that it has been dishonored due to insufficient of fund. The complainant's Exhibits-3/2, 3/3, 3/4 was perused. The original copy of the Legal notice marked as Exhibit-3/2 which was issued to the convict-appellant on 30.07.2017 in registry envelope with AD. The name and address of the accused are correctly written in the envelope and those were also been stated in the complaint petition.

In the light of the above discussion, it is clear before me that the accused-convict-appellant issued a cheque amounting Tk.10,00,000/- (ten lacs) and for encashment of the said cheque the complainant presented it to his concerned bank within the prescribed time limit (within six months) of the Act. But due to insufficient of funds, the said cheque has been dishonored. Thereafter, the complainant has filed his complaint by duly fulfilling all the conditions of Section 138/141 of the

Negotiable Instruments Act, 1881. The learned cognizance Court duly reviewed the plaint application and the documents on record and accepted the sworn statement of the complainant and took cognizance the offence under Section 138 of the Negotiable Instruments Act, 1881 against the accused.

Therefore, the learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka passed the judgment and order of conviction and sentence dated 21.07.2019 in Sessions Case No.21061 of 2018 corresponding to C.R. No.1477 of 2017 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 01(one) year and also to pay a fine of Tk.10,00,000/- (ten lacs) rightly and which is maintainable in the eye of law.

Accordingly, I do not find any cogent and legal ground to interfere with the impugned judgment and order of conviction and sentence. The appeal, therefore, has no merit.

In the result, the Criminal Appeal No.11222 of 2019 is hereby dismissed.

The judgment and order of conviction and sentence dated 21.07.2019 passed by the learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka in Sessions Case No.21061 of 2018 corresponding to C.R. No.1477 of 2017 is hereby upheld and confirmed.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.5,00,000/-(five lacs) of the fine amount to the respondent-opposite party No.2 (if he did not take the said amount).

The convict-appellant is hereby directed to surrender before the concerned Court below within 15(fifteen) days from the date of the receipt of the judgment and order, failing which the concerned Court below will take necessary steps to secure his arrest.

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

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

Md. Mustafizur Rahman

Bench Officer