

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

Present

**Mr. Justice Md. Khairul Alam**

**Criminal Appeal No. 10894 of 2019**

Md. Bony Amin.

.....Convict- appellant.

-Versus\_

The State and another.

.....Respondents.

Mr. M.M. Sohrub Hossain with  
Ms. Nazia Jabeen, Advocates

.....For the convict appellant.

Mr. Md. Hamidur Rahman with  
Mr. Md. Delwar Hossain, Advocates

.....For the respondent No.2.

**Heard on 28.11.2024 and  
Judgment on 01.12.2024.**

**Md. Khairul Alam, J.**

This appeal is directed against the judgment and order of conviction and sentence dated 09.06.2015 passed by the learned Additional Metropolitan Sessions Judge, Sylhet in Sessions Case No. 964 of 2014 arising out of Airport C.R. Case No. 38 of 2014 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 (shortly, the NI Act) and sentencing him to suffer simple imprisonment for 06 (six) months and to pay a fine of Taka 6,00,000/-.

The prosecution case, in short, is that the present respondent No. 2 as complainant filed Airport C.R. Case No. 38 of 2014 before the court of Metropolitan Magistrate, 2<sup>nd</sup> Court, Sylhet implicating the present convict-appellant as an accused alleging, inter-alia, that to disburse the liability the accused issued a cheque bearing No. CPA-2021707 dated 02.02.2014 amounting to Tk. 6,00,000/- in favour of the complainant. The complainant placed the said cheque before the bank for encashment, but the cheque was dishonored on 09.04.2014 due to stopping the payment by the drawer. Hence, the complainant filed the case following all the statutory provisions.

Ultimately, the case was renumbered as Sessions Case No. 964 of 2015 and was tried by the learned Additional Metropolitan Sessions Judge, Sylhet who by the judgment and order of conviction and sentence dated 09.06.2015 convicted the appellant under section 138 of the Ni Act and sentenced him as aforesaid.

Challenging the said judgment and order of conviction and sentence the appellant preferred this appeal.

Mr. Md. Sohrub Hossain, the learned Advocate appearing on behalf of the convict-appellant at the outset of the hearing informs this Court that meanwhile the appellant amicably settled

the dispute by paying the amount covering the amount of the cheque to respondent No. 2 and accordingly, he prays for disposal of the appeal by modifying the sentence upon accepting the compromise entered into by the appellant and respondent No. 2.

Mr. Md. Hamidur Rahman, the learned Advocate appearing on behalf of respondent No. 2 has approved the said submission.

In the case of Subash Chandra Sarker vs. The State and another reported in 26BLT(AD)28 a petition for leave to appeal was filed by a convict challenging his conviction and sentence passed under section 138 of the NI Act. In the said petition for leave to appeal a joint application was filed for recording and disposal of the case as per terms of the compromise setting aside the judgment and order of conviction and sentence. Our apex Court dispossessed of the said petition for leave to appeal in the following manner.

“A Joint Application has been filed for recording compromise and disposal of the case as per terms of the compromise setting aside the judgment and order of conviction and sentence passed against the petitioner. The complainant and the convict are present in the Court. We have perused the compromise petition. The section is not a

compoundable one. However, since the parties have settled matter amicably and the complainant has admitted before this Court that he received the half of the amount of the dishonoured cheque in the cash and the rest of the amount was deposited with the Sessions Court before filing the appeal before the High Court Division. We are inclined to reduce the sentence to the period already undergone and accordingly the sentence awarded against the petitioner is reduced to the period undergone. We also direct the Sessions Judge, Gazipur to allow the complainant to withdraw the money deposited by the convict without making any delay.

This petition is disposed of accordingly.”

Considering the submissions advanced by the learned Advocates of both sides and also considering the facts and circumstances of the case, I am inclined to reduce the sentence to the period already undergone in the light of the above view of our apex Court.

Accordingly, the appeal is dismissed with the modification of the sentence awarded against the appellant, by reducing the sentence awarded against the appellant to the period undergone.

The learned Additional Metropolitan Session Judge, Sylhet is hereby directed to allow the complainant to withdraw the money deposited by the convict without making any delay.

Send down the lower court's record and communicate this order at once.