

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 4509 of 2022

Md. Haydar Ali Mridha

...Appellant

-Versus-

The State and another

...Respondents

Mr. K. M. Hafizur Rahman, Advocate

...For the appellant

Mr. Pranab Kanti Bhowmick, Advocate

...For the complainant-respondent No. 2

Heard on 30.10.2024 and 04.12.2024

Judgment delivered on 10.12.2024

This appeal under Section 410 of the Code of Criminal Procedure, 1898 is directed against the impugned judgment and order of conviction and sentence dated 01.12.2020 passed by Additional Metropolitan Sessions Judge, Court No. 7, Dhaka in Session Case No. 12515 of 2017 arising out of C.R. Case No. 113 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 fine of Tk. 36,00,000 (thirty-six lakh).

The prosecution case, in short, is that the complainant Almas Khan is the proprietor of Khan Overseas and the accused Md. Haydar Ali Mridha deals with the manpower business. He received Tk. 36,00,000 (thirty-six lakh) from the complainant to send 10(ten) persons to Iraq and Malaysia. The accused could not send them to abroad. The accused issued Cheque No. 7892862 on 15.02.2017 drawn on his account maintained with Pubali Bank Ltd, Banani Branch, Dhaka for payment of Tk. 36,00,000 (thirty-six lakh). The complainant presented the said cheque on 15.02.2017 for encashment but the same was returned unpaid on 19.02.2017 with a remark 'insufficient funds'. He informed the matter to the accused but he did not pay the cheque amount. On 13.03.2017 the complainant sent a legal notice through

registered post to the accused for payment of Tk. 36,00,000 (thirty six lakh) from the date of receipt of the notice and legal notice sent to the accused was received by him and another notice was returned unserved as the accused refused to receive the notice. Despite the service of notice upon the accused, he did not pay the cheque amount. After that, he filed the case on 07.05.2017.

After filing the complaint petition, the complainant was examined under Section 200 of the Code of Criminal Procedure, 1898 and the learned Magistrate was pleased to take cognizance of the offence against the accused under Section 138 of the Negotiable Instruments Act, 1881. The case was sent to the Metropolitan Sessions Judge, Dhaka who subsequently sent the case to the Additional Metropolitan Sessions Judge, Court No. 7, Dhaka for trial and disposal of the case.

During trial, charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881 which was read over and explained to the accused and he pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 1(one) P.W to prove the charge against the accused and the defence cross-examined P.W. 1. After examination of the prosecution witness, the accused was examined under Section 342 of the Code of Criminal Procedure, 1898 and he declined to adduce any D.W. After concluding trial, the Additional Metropolitan Sessions Judge, Court No. 7, Dhaka by impugned judgment and order convicted the accused and sentenced him as stated above against which the accused filed the instant appeal.

P.W. 1 Syed Humayun Kabir deposed on behalf of the complainant Almas Khan. He proved the power of attorney as exhibit 1. He stated that the accused issued a cheque on 15.02.2017 for payment of Tk. 36 lakh and the same was dishonoured on 19.02.2017 with a remark 'insufficient funds'. The complainant sent a legal notice

on 13.03.2017 but he did not pay the cheque amount. Consequently, he filed the case on 07.05.2017. He proved the cheque, dishonour slip, legal notice and postal receipt as exhibit 2 series, the complaint petition as exhibit 3 and his signature on the complaint petition as exhibit 3/1. During cross-examination, he stated that he was an employee of Almas Khan and he was present at the time of the transaction. The money was paid to send the people to Iraq and Malaysia. He admitted that there was no written agreement. He denied the suggestion that a false case was filed to harass the accused.

Learned Advocate Mr. K. M. Hafizur Rahman appearing on behalf of the appellant submits that the accused issued the cheque in favour of the complainant but after service of the notice sent by the complainant he could not pay the cheque amount due to hardship. However, he submits that the accused Md. Haydar Ali Mridha and the complainant-respondent No. 2 Almas Khan settled the dispute out of Court regarding the cheque amount and the appellant paid Tk. 18,00,000 in cash to the complainant and executed a deed of compromise on 20.11.2024 and he already deposited 50% of the remaining cheque amount before filing the appeal. He prayed for accepting the compromise made between the complainant and the accused.

Learned Advocate Mr. Pranab Kanti Bhowmick appearing on behalf of the complainant-respondent No. 2 submits that the accused Md. Haydar Ali Mridha issued the cheque for payment of Tk. 36,00,000 (thirty-six lakh) in favour of the complainant and the cheque dated 15.02.2017 issued by the accused in favour of the complainant was returned unpaid on 19.02.2017 and he sent a legal notice on 13.03.2017. Despite the service of notice upon the accused, he did not pay the cheque amount. Consequently, he filed the case. During the trial, the prosecution proved the charge against the accused beyond all reasonable doubt. However, he submits that both the complainant and

the accused settled the dispute out of Court and the complainant received Tk. 18,00,000 in cash from the accused. He is willing to withdraw the remaining 50% of the cheque amount deposited by the accused in the trial Court before filing the appeal. He also prayed for acceptance of the compromise made between the parties.

I have considered the submission of the learned Advocate Mr. K. M. Hafizur Rahman who appeared on behalf of the appellant and the learned Advocate Mr. Pranab Kanti Bhowmick who appeared on behalf of respondent No. 2, perused the evidence, impugned judgment and order passed by the trial Court and the records.

On perusal of the records, it appears that both the accused Md. Haydar Ali Mridha and the complainant filed a joint application of compromise sworn on 27.11.2024 stating that the accused Md. Haydar Ali Mridha paid Tk. 18,00,000 in cash to the complainant and he also received said amount and the accused has no objection if the complainant is allowed to withdraw the remaining 50% of the cheque amount Tk. 18,00,000 deposited in the trial Court before filing the appeal. The agreement executed on 20.11.2024 is annexed as Annexure-X.

The Negotiable Instruments Act, 1881 is a special law and the offence under Section 138 of the Negotiable Instruments Act, 1881 is not compoundable. Therefore, the appeal cannot be disposed of considering said compromise made between the parties. After filing a case under Section 138 of the Negotiable Instruments Act, 1881 the Court shall dispose of the case considering the evidence.

On perusal of the evidence, it appears that the accused Md. Haydar Ali Mridha, proprietor of M/S Bengal International issued Cheque No. 7892862 dated 15.02.2017 drawn on his Account No. 3311901017456 maintained with Pubali Bank Limited, Banani Branch for payment of Tk. 36,00,000 (thirty-six lakh) in favour of the complainant Almas Khan. The said cheque was proved as exhibit 2. A

dishonour slip was issued on 19.02.2017 by the Rupali Bank Ltd (exhibit 2/1) stating that Cheque No. 7892862 (exhibit 2) was returned unpaid with a remark 'insufficient funds'. The legal notice dated 13.03.2017 sent by complainant Almas Khan to the accused Md. Haydar Ali Mridha is proved as exhibit 2/4 and two registered postal receipts dated 13.03.2017 were proved as exhibit 2/3. During the hearing, the learned Advocate Mr. K. M. Hafizur Rahman admitted that after service of notice upon the accused, he could not pay the cheque amount due to hardship. Therefore I am of the view that the accused Md. Haydar Ali Mridha committed offence under Section 138 of the Negotiable Instruments Act, 1881.

Because of the above evidence, I am of the view that the complainant filed the case complying with the procedure made in Section 138 of the Negotiable Instruments Act, 1881 and despite the receipt of notice by the accused for payment of the cheque amount, he did not pay the money and the complainant filed the complaint petition within 30(thirty days) from the date of cause of action arose under clause (c) of Section 138 of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the accused beyond all reasonable doubt and the trial Court on proper assessment and evaluation of the evidence legally passed the impugned judgment and order of conviction.

Considering the gravity of the offence and the facts and circumstances of the case, I am of the view that the ends of justice would be best served if the sentence passed by the trial Court is modified as under;

The accused Md. Haydar Ali Mridha is found guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and he is sentenced to pay a fine of Tk. 36,00,000 (thirty-six lakh).

The complainant Almas Khan is entitled to get the fine amount. It is admitted that the complainant Almas Khan received Tk. 18,00,000

in cash from the accused Md. Haydar Ali Mridha. Therefore, he is entitled to withdraw the remaining 50% of the cheque amount Tk. 18,00,000 deposited by the accused in the trial Court before filing the appeal.

With the above findings and observation, the appeal is disposed of with a modification of the sentence.

The trial Court is directed to allow the complainant Almas Khan to withdraw 50% of the cheque amount of Tk. 18,00,000 deposited by the accused in the trial Court.

However, there will be no order as to costs.

Send down the lower Court's records at once.