

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Appeal No.6454 of 2022

S.M. Mostafa Kamal Litu

.....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. Safayeat Hossain (Sajeeb), Advocate

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

Heard on 02.11.2023 and

Judgment on: 07.11.2023

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred against the judgment and order of conviction and sentence dated 14.01.2021 passed by the learned Sessions Judge, Chandpur, in Sessions Case No.182 of 2020 arising out of C.R. Case No.87 of 2019 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 06(six) months and also to pay a fine of Tk.11,00,000/- (eleven lac) only.

The prosecution case, in short is that on 12.11.2018 the convict-appellant issued a cheque amounting Tk.10,00,000/-for

paying which was owing respondent No.1 and on 14.02.2019 the complainant submitted at Farmers Bank Limited, Kachua Branch, Chandpur and it was dishonoured for insufficient fund and after that the complainant informed the convict-appellant through mobile about dishonour and he did not give any heed. Thereafter, the complainant on 18.02.2019 issued a legal notice upon the convict-appellant allotting him 30 days to repay the aforesaid money and the convict-appellant did not give any heed to that legal notice and then he filed a complaint-petition under section 138 of the Negotiable Instruments Act, 1881 against the convict-appellant before the Chief Judicial Magistrate, Chandpur on 27.03.2019.

The learned Chief Judicial Magistrate, Chandpur examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance the offence under section 138 of the Negotiable Instruments Act, 1881 as C.R. Case No.87 of 2019 and issued summons upon the convict-appellant. The convict-appellant voluntarily surrendered before the learned lower Court and was granted bail. Thereafter, this case was transferred to the Court of learned Sessions Judge, Chandpur for trial and disposal and was renumbered as Sessions Case No.182 of 2020. Thereafter, the learned Sessions Judge, Chandpur framed charge on 03.09.2020 against the convict-appellant under section 138(1) of the negotiable Instruments Act, 1881 and the charge did not possible to read over the convict-appellant for his absconsion.

At the time of trial the complainant produced 01(one) witness and the defence did not produce any witness to oppose the case. After closing the witnesses the convict-appellant was not examined under section 342 of the Code of Criminal Procedure for his absconsion. The learned Sessions Judge, Chandpur after conclusion of the trial found the convict-appellant guilty under section 138(1) of the Negotiable Instruments Act, 1881 and convicting the appellant under the said section sentenced to suffer simple imprisonment for a period of 06(six) months and also to pay a fine of Tk.11,00,000/- (eleven lac) by his judgment and order of conviction and sentence dated 14.01.2021.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 14.01.2021 passed by the learned Sessions Judge, Chandpur in Sessions Case No.182 of 2020 arising out of C.R. Case No.87 of 2019, 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. Safeyat Hossain, the learned Advocate appearing on behalf of the respondent No.2 submits that on 12.11.2018 the convict-appellant issued a cheque amounting Tk.10,00,000/-for paying which was owing respondent No.1 and on 14.02.2019 the complainant submitted at Farmers Bank Limited, Kachua Branch, Chandpur and it was

dishonoured for insufficient fund and after that the complainant informed the convict-appellant through mobile about dishonour and he did not give any heed. Thereafter, the complainant on 18.02.2019 issued a legal notice upon the convict-appellant allotting him 30 days to repay the aforesaid money and the convict-appellant did not give any heed to that legal notice and then he filed a complaint-petition under section 138 of the Negotiable Instruments Act, 1881 against the convict-appellant before the Chief Judicial Magistrate, Chandpur on 27.03.2019. Thereafter, this case was transferred to the Court of learned Sessions Judge, Chandpur for trial and disposal and was renumbered as Sessions Case No.182 of 2020. The learned Sessions Judge, Chandpur after conclusion of the trial found the convict-appellant guilty under section 138(1) of the Negotiable Instruments Act, 1881 and convicting the appellant under the said section sentenced to suffer simple imprisonment for a period of 06(six) months and also to pay a fine of Tk.11,00,000/- (eleven lac) by his judgment and order of conviction and sentence dated 14.01.2021 rightly. Accordingly, he prays for dismissing the Appeal.

I heard the submissions of the learned Advocate for the respondent No.2 and perused the materials on record.

Now, let us discuss the evidence of prosecution witness Md. Dulal Prodhan.

P.W.1 Md. Dulal Prodhan in his deposition supporting the complaint-petition stated that on 12.11.2018 the convict-appellant issued a cheque amounting Tk.10,00,000/-for paying

which was owing respondent No.1 and on 14.02.2019 the complainant submitted at Farmers Bank Limited, Kachua Branch, Chandpur and it was dishonoured for insufficient fund and after that the complainant informed the convict-appellant through mobile about dishonour and he did not give any heed. Thereafter, the complainant on 18.02.2019 issued a legal notice upon the convict-appellant allotting him 30 days to repay the aforesaid money and the convict-appellant did not give any heed to that legal notice and then he filed a complaint-petition under section 138 of the Negotiable Instruments Act, 1881 against the convict-appellant before the Chief Judicial Magistrate, Chandpur on 27.03.2019. This witness proved the petition of complaint and his signature on it marked as Exhibit-1 series, and marked dishonoured cheque, dishonoured slip, legal notice, a copy of the newspaper as exhibit-2 series.

It appears from the record and the deposition of the P.W.1 that on 12.11.2018 the convict-appellant issued a cheque amounting Tk.10,00,000/-for paying which was owing respondent No.1 and on 14.02.2019 the complainant submitted at Farmers Bank Limited, Kachua Branch, Chandpur and it was dishonoured for insufficient fund and after that the complainant informed the convict-appellant through mobile about dishonour and he did not give any heed. Thereafter, the complainant on 18.02.2019 issued a legal notice upon the convict-appellant allotting him 30 days to repay the aforesaid money and the convict-appellant did not give any heed to that legal notice and then he filed a complaint-petition under section 138 of the Negotiable Instruments Act, 1881 against the convict-appellant

before the Chief Judicial Magistrate, Chandpur on 27.03.2019. Thereafter, this case was transferred to the Court of learned Sessions Judge, Chandpur for trial and disposal and was renumbered as Sessions Case No.182 of 2020. The learned Sessions Judge, Chandpur after conclusion of the trial found the convict-appellant guilty under section 138(1) of the Negotiable Instruments Act, 1881 and convicting the appellant under the said section sentenced to suffer simple imprisonment for a period of 06(six) months and also to pay a fine of Tk.11,00,000/- (eleven lac) by his judgment and order of conviction and sentence dated 14.01.2021 rightly.

Considering 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, Chandpur passed the judgment and order of conviction and sentence dated 14.01.2021 in Sessions Case No.182 of 2020 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.6454 of 2022 is dismissed.

The judgment and order of conviction and sentence dated 14.01.2021 passed by the learned Sessions Judge, Chandpur in Sessions Case No.182 of 2020 is hereby confirmed and upheld.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.5,00,000/-, 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 take 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. Anamu Hoque Parvej
Bench Officer