

**IN THE SUPREME COURT OF  
BANGLADESH**

**HIGH COURT DIVISION**

**(CRIMINAL APPELLATE  
JURISDICTION)**

Present:

**Mr. Justice Md. Shohrwardi**

**Criminal Appeal No. 7504 of 2022**

Mohammad Jafar Alam  
..... appellant

-Vs-

The State and another  
....respondents

Mr. Mohammad Redwanul Karim,  
Advocate

....For the appellant.

M/S. Nahida Sharmin Rahman,  
Advocate with

Mr. S.M. Amjadul Haque, Advocate  
....For the respondent

No.2

**Heard on 20.08.2024**

**Judgment delivered on: 28.08.2024**

This appeal under section 410 of the Code of Criminal Procedure, 1898 is directed against the impugned judgment and order dated 16.05.2018 passed by the Sessions Judge, Cox's Bazar in Sessions Trial Case No. 56 of 2015 arising out of C.R. No. 658 of 2014 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 1 (one) year and a fine of Tk. 40,00,000.

The prosecution case, in short, is that accused Mohammad Jafar Alam took loan of Tk. 20,00,000 from the complainant Noor Ahmed and he issued cheque No. 4920553 dated 12.05.2014 drawn

on his Current Account No. 15411060000079 maintained with Prime Bank Ltd, Cox's Bazar Branch for payment of Tk. 20,00,000. The complainant presented the said cheque on 14.05.2014 for encashment which was dishonoured on the same date with a remark, "insufficient funds". After that, the complainant sent a legal notice on 19.05.2014 to the accused and he received the legal notice on 21.05.2014. On 22.06.2014 the accused refused to pay the cheque amount. Consequently, the complainant filed the case on 24.06.2014 against the accused.

At the time of filing the complaint petition the learned Senior Judicial Magistrate, Cox's Bazar took cognizance of the offence against the accused under section 138 of the Negotiable Instruments Act, 1881. Later on, the case was sent to the Sessions Judge, Cox's Bazar and the case was renumbered as Sessions Trial Case No. 56 of 2015. On 15.02.2015 charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881 which was read over and explained to him and he pleaded not guilty to the charge and claimed to be tried in accordance with law.

During the trial, the prosecution examined 2 (two) witnesses to prove the charge against the accused and the defence cross-examined the prosecution witnesses. After examination of the prosecution witnesses, the accused was examined under section 342 of the Code of Criminal Procedure, 1898 and the defence examined none. During the trial, the accused was absconding. After concluding the trial, the trial court 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 Noor Ahmed is the complainant. He stated that the accused Jafar Alam took loan of Tk. 20,00,000 from him. On 12.05.2014 the accused issued a cheque drawn on his account maintained with Prime Bank Ltd, Cox's Bazar for payment of the said amount. He presented the cheque through Islami Bank Bangladesh Ltd. Cox's Bazar Branch for encashment. But the cheque was dishonoured on 14.05.2014 with a remark, "insufficient funds". After that on 19.05.2014, the complainant sent a legal notice and the accused received the same but he did not pay the cheque amount. Consequently, he filed the case. He proved the complaint petition as exhibit-1 and his signature on the complaint petition as exhibit-1/1 and 1/2, the cheque as exhibit-2, the dishonoured slip as exhibit-3, the legal notice as exhibit-4, AD as exhibit-5 and acknowledgement receipt as exhibit-6, and the notice published in the daily newspaper as exhibit-7. During cross-examination, he stated that the accused was known to him for 5/7 years. He deals with the land business. He denied the suggestion that he received Tk. 20,00,000 to purchase the land of the accused and that as security of the said money, the accused issued a blank cheque.

P.W.2 Abu Sufiyan is an Officer of Islami Bank Bangladesh Ltd, Cox's Bazar. He stated that the accused Jafar Alam issued a cheque for payment of Tk. 20,00,000 in favour of Noor Ahmed. He presented the said cheque through Prime Bank Ltd. but the same was dishonoured due to insufficient funds. During cross-examination, he stated that on 14.05.2014 the complainant presented the cheque.

The learned Advocate Mr Mohammad Redwanul Karim appearing on behalf of the appellant submits that the appellant and the complainant settled the dispute out of court and during the

pendency of the appeal, he paid Tk. 10,00,000 to the complainant and deposited 50% of the cheque amount i.e. 10,00,000 before the filing of the appeal. He prayed for allowing the appeal considering the compromise made between the parties.

The learned Advocate Mr. S.M. Amjadul Haque appearing on behalf of the complainant respondent No. 2 submits that the accused issued the cheque on 12.05.2014 for payment of Tk. 20,00,000 in favour of the complainant and he presented the cheque for encashment but the same was dishonoured on 14.05.2014 and after that, he issued a legal notice on 19.05.2014 but he did not pay the cheque amount and the accused committed offence under section 138 of the said Act and the complainant file the case complying with all the procedure provided in section 138 of the said Act, 1881. However, he admitted that during the pendency of the appeal, the complainant settled the dispute with the accused and he received Tk. 10,00,000 from him and the complainant is willing to collect 50% of the cheque amount deposited by the appellant before filing the appeal. He also prayed for acceptance of the compromise between them.

I have considered the submission of the learned Advocate Mr. Md. Redwanul Karim who appeared on behalf of the appellant and the learned Advocate Mr. S.M. Amjadul Hoque who appeared on behalf of complainant 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 complainant and the appellant filed a joint application for compromise sworn on 29.05.2024 stating that the appellant paid Tk. 10,00,000 during the

pendency of the appeal and he is willing to collect the remaining 50% of the cheque amount Tk. 10,00,000 from the trial court.

The Negotiable Instruments Act, 1881 is a special law and the offence under section 138 of the said Act is not compoundable. Therefore, the parties are not entitled to compromise the dispute out of court. After filing a case under section 138 of the said Act the Court shall dispose of the case considering the merit of the case. There is no scope to dispose of the case considering the compromise made between the parties.

On perusal of the records, it appears that the accused issued cheque No. 4920553 dated 12.05.2014 in favour of the complainant drawn on his account No. 15411060000079 maintained with Prime Bank Ltd, Cox's Bazar Branch for payment of Tk. 20,00,000. The complainant presented the cheque (exhibit-2) for encashment and the same was dishonoured on 14.05.2014 with a remark, "insufficient funds" and accordingly the bank issued a dishonour slip (exhibit-3). After that, the complainant issued a legal notice on 19.05.2014 (exhibit-4) to the accused for payment of the cheque amount which was received by the accused but he did not pay the cheque amount. Consequently, the complainant filed the case on 24.06.2014 complying with all the procedures provided in section 138 of the Negotiable Instruments Act, 1881.

There is a presumption under section 118(a) of the Negotiable Instruments Act, 1881 that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or

transferred for consideration. The presumption under Section 118 (a) is rebuttable. The accused failed to rebut the said presumption by cross-examining P.Ws. 1 and 2. Furthermore, the convict petitioner admitted that he issued the cheque in favour of the complainant and paid Tk. 10,00,000 out of the cheque amount i.e. 20,00,000. Therefore, I am of the view that the convict petitioner issued the cheque in favour of the payee-complainant for consideration. The cheque was dishonoured for insufficient funds. After service of notice on 19.05.2014, the convict petitioner did not pay the cheque amount and thereby he committed offence under Section 138 of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the convict petitioner beyond all reasonable doubt and the Courts below on proper assessment and evaluation of 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 convict-petitioner Mohammad Jafar Alam 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. 20,00,000.

It is admitted by the complainant respondent No. 2 that he received Tk. 10,00,000 during the pendency of the appeal

from the appellant. Since the complainant admitted that he received Tk. 10,00,000 from the appellant during the pendency of the appeal, it is not required to deposit the fine amount by the convict-petitioner again in the trial court.

The complainant is entitled to get the fine awarded by this court. The trial court is directed to allow the complainant respondent No. 2 to withdraw 50% of the cheque amount deposited by the accused before filing the appeal.

The appeal is disposed of with a modification of the sentence.

However, there will be no order as to costs.

Send down the lower Court's records at once.