

Present

Madam Justice Kashefa Hussain

**Criminal Appeal No. 8898 of 2022**

Md. Masud Rana

.....Convict-Appellant

-Versus-

The State and another

----- Respondents.

Mr. Al Reza Md. Amir, Advocate

.... for the convict-appellant

Mr. Amio Chackrabarti, Advocate

.... for the respondents

Mr. Md. Mohiuddin Dewan, D.A.G with

Ms. Syeda Sabina Ahmed Molly, A.A.G

----- For the State.

Heard on: 18.01.2024 and

Judgment on 01.02.2024

This appeal is directed against the judgment and order of conviction and sentence dated 05.11.2017 passed by the learned Additional Sessions Judge, 2<sup>nd</sup> Court, Jessore in Sessions Case No. 362 of 2017 arising out of C.R. Case No. 1293 of 2015 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer imprisonment for 06 (six) months and also to pay a fine of Tk. 1,00,000/- (One lac) only should not be set-aside and/or pass such other or further order orders as to this court may seem fit and proper.

The prosecution case, in short is that there was business relationship between the parties and on the basis of that relationship the appellant received advance amount from the complainant of Tk. 1,00,000/- with the condition that he will give lead machine within 15 days. The appellant failed to deliver the same and in order to repay the advance payment the appellant issued a cheque being bearing number AWCD 6577452 in the Account No. 2211100003897 maintained with Exim Bank Limited in favour of the complainant and on 07.10.2015. While the complainant placed the cheque before the Bank for encashment but the same was dishonored due to insufficient fund and the same was informed to the appellant but the appellant did not repay and thereby on 02.11.2015 the complainant served a legal notice upon the accused appellant through his lawyer and the same was received by the appellant on 03.11.2015 but the appellant did not pay the amount and there after the complainant on 07.12.2015 filed a petition of complaint before the learned Judicial Magistrate, Jessore and hence the petition of complaint.

The case was heard by the Additional Sessions Judge, 2<sup>nd</sup> court, Jessore in Sessions Case No. 362 of 2017 arising out of Complaint Registrar (C.R) Case No. 1293 of 2015 which the court passed the impugned judgment and order of conviction against the appeal. Being aggrieved by the judgment and order of the court below the convict as appellant filed the instant Criminal Appeal before this bench for disposal.

Although the matter appeared in the list for several days but when the matter was taken up for hearing none appeared for the appellant. However the learned advocate Mr. Amio Chackrabarti appeared for the complainant respondent.

Learned Advocate for the complainant respondent submits that there is no inconsistency or illegality in the judgment and order of the court below and therefore the judgment needs no interference. He takes me to the materials and draws upon the relevant documents. He takes me to exhibit No. 1, 1/1 which is the complaint application, exhibit-2 which is the dispute cheque, exhibit-3 which is legal notice, exhibit-4 is dishonored slip and exhibit-5 is acknowledgment slip. From these documents he points out that no fallacy in the procedure

can be revealed from these documents. He continues that therefore it is evident that the complainant duly followed the procedure under section 138 of the Negotiable Instrument Act till filing of the case. He takes me to the judgment of the court below and submits that from the judgment also these facts are clearly manifest. He submits that moreover the convict appellant was absconding he could not be examined under Section 342 of the Code of Criminal Procedure Act and it is evident that he only surfaced after passing of the judgment. He submits that it is also clear that there was no denial as to the factual merits of the case by the accused appellant at any stage. Lastly he concludes that such being the facts of the case there is no reason interfere with the judgment of the court below and therefore the appeal ought to be dismissed.

I have heard the learned advocate for the respondent and also examined the records. I have particularly examined the documents and I have compared with the judgment of the trial court. Upon examination I find that there has neither been any inconsistency nor error by the complainant in following Section 138 pursuant to the cheque dishonor till filing of the case, nor is

there any inconsistency in the judgment of the trial court. Moreover since the appellant was absconding therefore there was no examination under Section 342 of the Code of Criminal Procedure. Therefore evidently he did not produce any evidence in support of his case. Such being the facts and circumstances I do not find any merit in the appeal.

In the result, the appeal is dismissed.

The impugned judgment and order dated 05.11.2017 passed by the learned Additional Session Judge, 2<sup>nd</sup> Court, Jessore in Session Case No. 362 of 2017 arising out of C.R Case No. 1293 of 2015 under Section 138 of the Negotiable Instruments Act, 1881, finding the appellant guilty and convicted for the offence under Section 138 of the Negotiable Instrument Act, 1881 sentencing him to suffer simple imprisonment for 1(one) month with a fine of Tk. 1,00,000/- (one lac).

The convict-appellant is directed to deposit the balance amount of cheque to the trial court within 45 days from the date of received of this judgment along with lower court records to be paid to the respondent in accordance with law.

The convict-appellant is further directed to surrender before the trial court within 60 days from the same date for serving out the remaining sentence of imprisonment.

The respondent is allowed to withdraw the 50% of the cheque amount which has been deposited by the convict-appellant in the trial court through Chalan within 1(one) month from the date of receipt of this judgment.

Communicate the judgment at once.

**Shokat (B.O.)**