

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 2403 of 2021

Md. Samsudduha Khokan

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

Mr. Mohammad Shamsuzzaman, Advocate

...For the convict-petitioner

Mr. Mohammad Akbar Hossain, Advocate

...For the complainant-opposite party No. 2

Heard on 06.12.2023 and 10.12.2023

Judgment delivered on 14.12.2023

This Rule under Section 439 read with Section 435 of the Code of Criminal Procedure, 1898 was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 10.10.2021 passed by the Sessions Judge, Lakshmipur in Criminal Appeal No.246 of 2018 affirming the judgment and order of conviction and sentence dated 09.08.2016 passed by the Joint Sessions Judge, Court No. 1, Lakshmipur in Session Case No.350 of 2015 arising out of C.R. Case No.133 of 2015 convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple imprisonment for 06(six) months and a fine of taka 7,14,685 should not be set aside and/or pass such other order or further order or orders as to this Court may seem fit and proper.

The prosecution case, in short, is that the complainant Md. Moniruzzaman, Senior Officer of Rupali Bank Ltd, Ramgati Bazar Branch, Lakshmipur filed the case on behalf of the said branch of Rupali Bank Ltd and the convict-petitioner Md. Samsudduha Khokan is a businessman of Ramgati Bazar, under Ramgati Police Station of Lakshmipur District. He is the proprietor of "Messers Khokan Traders" at Ramgati Bazar. The convict-petitioner took loan of Tk. 05(five) lakh for business from the complainant bank. On 01.04.2015 he issued Cheque No. 1885662 drawn on his Current Account No. 108 maintained with Rupali

Bank Ltd, Ramgati Bazar Branch, Lakshmipur for payment of Tk. 7,14,685. The complainant presented said cheque on 08.04.2015 for encashment which was dishonoured on the same date with a remarked 'insufficient funds'. The complainant issued a legal notice on 13.04.2015 upon the accused through registered post with AD for payment of the cheque amount within 30 days but he did not pay the cheque amount. Consequently, he filed the case on 02.06.2015.

After filing the complaint petition, the complainant was examined under Section 200 of the Code of Criminal Procedure, 1898 and after recording the statement of the complainant, the learned Magistrate was pleased to take cognizance of the offence under Section 138 of the said Act against the accused. After that, he voluntarily surrendered and the case record was transferred to the Joint Sessions Judge, Court No. 1, Lakshmipur for trial. During the trial, charge was framed against the accused which was read over and explained to him and he pleaded not guilty to the charge. The prosecution examined 1(one) P.W. 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 witness.

After concluding the trial, the trial Court by judgment and order dated 09.08.2016 was pleased to convict the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer imprisonment for 6(six) months and to pay a fine of Tk. 7,14,685(seven lakh fourteen thousand six hundred and eighty-five) against which the convict-petitioner filed Criminal Appeal No. 246 of 2018 before the Sessions Judge, Lakshmipur who by impugned judgment and order was pleased to affirm the judgment and order of conviction and sentence passed by the trial Court against which the convict-petitioner obtained the instant Rule.

P.W. 1 Md. Moniruzzaman is the complainant. He stated that the accused took S.M.E loan of Tk. 05 lakh from the bank. He issued a cheque on 01.04.2015 from his current account maintained with Rupali Bank Ltd, Ramgati Bazar Branch, Lakshmipur for payment of the said amount and

he presented the said cheque on 08.04.2015 which was dishonoured on the same date with a remarked 'insufficient funds'. Thereafter, he issued a legal notice on 13.04.2015 but the accused did not pay the cheque amount. P.W. 1 proved the complaint petition as exhibit 1 and his signatures on the complaint petition as exhibit 1/1 and 1/2. He proved the dishonoured cheque as exhibit 2 and the dishonoured slip as exhibit 2/1. He proved the legal notice and postal receipt as exhibits 3 and 3/1. During cross-examination, he stated that it is not mentioned in the FIR that the accused took SME loan. He denied the suggestion that a blank cheque was received by the bank and that the complainant filled up the amount on the cheque and filed a false case.

Learned Advocate Mr. Mohammad Shamsuzzaman appearing on behalf of the convict-petitioner submits that at the time of disbursement of the loan, the bank received a blank cheque from the convict-petitioner and subsequently wrote the amount and putting the post date on the blank cheque, filed the case falsely implicating the convict-petitioner and both the Courts below illegally passed the impugned judgment and order against the convict-petitioner. Therefore, he prayed to make the Rule absolute.

Learned Advocate Mr. Mohammad Akbar Hossain appearing on behalf of the complainant-opposite party No. 2 submits that the accused issued a cheque on 01.04.2015 and the complainant presented the cheque on 08.04.2015 which was dishonoured on the same date with the remark 'insufficient funds'. Despite the notice served on 13.04.2015 upon the accused through registered post with AD, he did not pay the cheque amount in time and thereby committed offence under Section 138 of the Negotiable Instruments Act, 1881. Both the Courts below on proper assessment of the evidence legally passed the impugned judgment. Therefore, he prayed for discharging the Rule.

I have considered the submission of the learned Advocates of both parties, perused evidence, the impugned judgments and orders passed by the Courts below and the records.

On perusal of the records, it appears that the convict-petitioner issued Cheque No. 1885662 dated 01.04.2015 drawn on Current Account No. 108 maintained in his name with Rupali Bank Ltd, Ramgati Bazar Branch, Lakshimpur for payment of Tk. 7,14,685 in favour of the complainant. In the complaint petition, it has been stated that the accused Md. Samsudduha Khokan is the proprietor of “Messers Khokan Traders” at Ramgati Bazar. P.W. 1 proved the said cheque as exhibit 2, the cheque was presented on 08.04.2015 which was dishonoured on the same date with a remarked ‘insufficient funds’. P.W. 1 proved the dishonoured slip as exhibit 2/1. He proved the legal notice dated 13.04.2015 and postal receipt as exhibits 3 and 3/1.

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) of the said Act is rebuttable. By cross-examining P.W. 1, the defence could not rebut the prosecution. Therefore I am of the view that the convict petitioner Md. Samsudduha Khokan issued the cheque (exhibit 2) in favour of the payee-complainant for consideration. After service of notice in writing upon the accused under Section 138(1)(b) of the said Act, he failed to pay the cheque amount. Thereby he committed an offence under Section 138 of the Negotiable Instruments Act, 1881 and the complainant filed the case following all procedures provided in Section 138 of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the accused beyond all reasonable doubt and the Courts below on proper assessment of evidence legally passed the impugned judgments and orders of conviction.

Considering the gravity of the offence, I am of the view that the ends of justice would be best served if the sentence passed by the Courts below is modified as under;

The accused Md. Samsudduha Khokan 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. 7,14,685.

The complainant is entitled to receive the fine amount.

In view of the above observation, findings and reasoning, the Rule is disposed of with modification of sentence.

Send down the lower Court's records at once.