

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 1069 of 2022

S.M. Nurul Haque

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

No one appears.

...For the convict-petitioner

Mr. Biswojit Roy, Advocate

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

Heard on 22.08.2023 and 23.08.2023

Judgment delivered on 28.08.2023

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 judgment and order dated 24.01.2022 passed by the Metropolitan Sessions Judge, Khulna in Criminal Appeal No. 69 of 2021 affirming the judgment and order of conviction and sentence dated 10.08.2020 passed by the Joint Metropolitan Sessions Judge, Second Court, Khulna in Metropolitan Sessions Case No. 884 of 2017 arising out of C.R. Case No. 241 of 2017 convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple imprisonment for 1(one) year and to pay a fine of Tk. 18,90,000(eighteen lacs ninety thousand) should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution case, in short, is that the convict petitioner received Tk. 18,90,000 from the complainant to supply the goods made of jute but he did not supply the said goods. Consequently, on 16.08.2016 he issued Cheque No. 1360125 drawn on from his Account No. 33000362 maintained with Sonali Bank Limited, Daulatpur College Branch, Khulna for payment of Tk. 18,90,000(eighteen lacs ninety thousand). The complainant presented said cheque on 10.01.2017 for encashment which was dishonoured on same date with a remarked 'insufficient fund.' The

complainant informed the matter of dishonor of said cheque to the accused and he also issued a notice on 05.02.2017 by publishing in “দৈনিক ঢাকা প্রতিদিন” under Section 138(1)(1A)(c) of the said Act but the convict petitioner did not pay the cheque amount. Consequently, he filed the case on 15.02.2022.

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 before the concerned Court. The case record was sent to the Metropolitan Sessions Judge, Khulna. Subsequently, the case record was transferred to the Joint Metropolitan Sessions Judge, Second Court, Khulna for trial. During the trial, the prosecution examined 2(two) P.W.s. P.W. 2 was examined on 21.01.2020 and on that day the accused was absconding. Since the convict-petitioner was absconding, he was not examined under Section 342 of the Code of Criminal Procedure, 1898.

After concluding the trial, the trial Court by impugned judgment and order dated 10.08.2020 was pleased to convict the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer imprisonment for 1(one) year and to pay a fine of Tk. 18,90,000(eighteen lacs ninety thousand) against which the convict-petitioner filed Criminal Appeal No. 69 of 2021 in the Court of Metropolitan Sessions Judge, Khulna who by impugned judgment and order was pleased to affirm the judgment and order passed by the trial Court against which the convict-petitioner obtained the instant Rule.

P.W. 1 Gopal Saha is the complainant. He stated that the accused issued a cheque on 16.08.2016 from his account maintained with Sonali Bank Ltd., Daulatpur Branch, Khulna for payment of Tk. 18,90,000 and he presented the said cheque on 10.01.2017 which was dishonoured on the same date with a remarked ‘insufficient funds’. Thereafter, he issued a notice on 05.02.2017 publishing in the দৈনিক ঢাকা প্রতিদিন in accordance with law 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 3. He proved the legal notice published in the daily newspaper as exhibit 4. During cross-examination, he denied the suggestion that the accused did not issue the cheque in favour of the complainant. He affirmed that the accused had given the undertaking to supply the goods made of jute. He admitted that there is no written document that the accused had given undertaking to supply the goods made of jute. He also affirmed that the accused deals with jute business with the many jute mills. No specific date of payment of money by the complainant is mentioned in the complaint petition. He denied the suggestion that ঢাকা প্রতিদিন is not a widely circulated daily newspaper. He stated that possibly Advocate Tarik Mohammad issued the legal notice. Subsequently, the legal notice was issued through the daily newspaper. He affirmed that the drawer of the cheque had written the cheque in favour of the payee and there was a previous transaction with him and earlier he also paid Tk. 10,00,000 through vouchers. He denied the suggestion that before the earlier transaction, the accused issued the disputed cheque. He also denied the suggestion that the accused did not write on the cheque and the debt was paid before issuance of the cheque.

P.W. 2 Md. Salahuddin is the Officer (Cash), Sonali Bank Ltd., Daulatpur College Branch, Khulna. He stated that the disputed cheque was issued from his bank and was dishonoured through Sonali Bank Ltd., Daulatpur Branch, Khulna. Principal Officer Proshanta Kumar Pal issued the dishonour slip and his signature is known to him. He proved the signature of Principal Officer Proshanta Kumar Pal as exhibit 3/1. The defense did not cross-examine P.W. 2.

No one appears on behalf of the convict-petitioner to press the Rule.

The learned Advocate Mr. Biswojit Roy appearing on behalf of the complainant-opposite party No. 2 submits that the convict-petitioner issued a cheque on 16.08.2016 for payment of Tk. 18,90,000 drawn on his account maintained with Sonali Bank Limited, Daulatpur College Branch,

Khulna and the complainant-opposite party No. 2 presented the said cheque on 10.01.2017 which was dishonoured on the same date for the insufficient fund. After that he published a notice under Section 138(1)(1A)(c) of the said Act in the national daily newspaper “দৈনিক ঢাকা প্রতিদিন” but the convict-petitioner did not pay the cheque amount within time. Thereby committed an offence under Section 138 of the said Act. He further submits that both the Courts below arrived at a concurrent finding of fact that the cheque was issued by the appellant and after dishonour, he did not pay the cheque amount despite the notice under Section 138(1)(1A)(c) of the said Act was served upon the convict-petitioner. Therefore, he prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Biswojit Roy who appeared on behalf of the opposite party No. 2, perused the impugned judgments and orders passed by the Courts below, evidence and the records.

On perusal of the records, it appears that the convict-petitioner issued Cheque No. 1360125 dated 16.08.2016 drawn on Current Account No. 33000362 maintained in the name of M/S. Anik Jute International with Sonali Bank Limited, Daulatpur College Road Branch, Khulna for payment of Tk. 18,90,000 in favour of the complainant. In the complaint petition, it has been stated that the accused S.M. Nurul Haque is the Proprietor of M/S. Anik Jute International. P.W. 1 proved the said cheque as exhibit 2. The said cheque was presented on 10.01.2017 which was dishonoured on the same date with a remarked ‘insufficient fund.’ P.W. 1 proved the dishonoured slip as exhibit 3. After dishonour of the said cheque, the complainant published a notice on 05.02.2017 in the দৈনিক ঢাকা প্রতিদিন for payment of the cheque amount. P.W. 1 proved the notice as exhibit 4. The defence cross-examined P.W. 1 and thereafter absconded. The defence did not cross-examine P.W. 2. By cross-examining P.W. 1, the defence affirmed that the accused himself issued the cheque and there were also previous transactions between the drawer of the cheque and the payee-complainant.

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 refutable. By Cross-examining P.W. 1, the defence could not refute the presumption under Section 118(a) of the said Act that the cheque(exhibit 2) was issued in favour of the complainant for consideration.

The defence case is that before the issuance of the cheque, the accused paid the debt and no notice was served through the learned Advocate. During cross-examination, no suggestion was given to P.W. 1 that accused was not aware of the notice served upon him by publishing in the daily newspaper. It is found that both the Courts below arrived at a concurrent finding of fact that the accused issued Cheque No. 1360125 on 16.08.2016 in favour of the payee-complainant for payment of Tk. 18,90,000 drawn on his Account No. 33000362 maintained with Sonali Bank Limited, Daulatpur College Road Branch, Khulna and the said cheque was dishonoured on 10.01.2017 for 'insufficient fund'. Despite the notice served upon the convict-petitioner under Section 138(1)(1A)(c) of the Negotiable Instruments Act, 1881, he did not pay the cheque amount. The complainant-opposite party No. 2 filed the complaint petition following all the procedure provided in Section 138 of the Negotiable Instruments Act, 1881. Thereby the convict-petitioner committed the offence under Section 138 of the Negotiable Instruments Act, 1881.

In view of the above evidence, findings, observation and the proposition, I do not find any reason to interfere with the concurrent finding of facts arrived at by the Courts below.

At the time of awarding the sentence, the Court will consider the gravity of the offence committed by the accused. In the instant case, it is found that the convict-petitioner issued the cheque for payment of the Tk. 18,90,000.

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 trial Court is modified as under;

The convict-petitioner is found guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and he is sentenced thereunder to suffer imprisonment for 6(six) months and to pay a fine of Tk. 18,90,000. The complainant is entitled to get the fine amount imposed by this Court, if realised.

The trial Court is directed to pay 50% of the cheque amount deposited by the convict-petitioner forthwith to the complainant.

The Rule is disposed of with modification of the sentence.

Send down the lower Court's records at once.