

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Appeal No. 9730 of 2022

Zahir Ahmed

.... Convict-Appellant

-Versus-

The State and another

.... opposite-parties

Mr. S.M. Jahangir Alam, Advocate

.... For the Appellant

Mrs. Umme Masumun Nesa, A.A.G

.... For the State

Mr. Faruk Hossain, Advocate

---For the Respondent No.2

Heard and Judgment on: 10.08.2023

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred against the judgment and order of conviction and sentence dated 06.04.2015 passed by the learned Additional Sessions Judge, Cox's Bazar in Sessions Trial Case No.1258 of 2014 arising out of C.R. Case No. 233 of 2012 convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer simple imprisonment for a period of 01 (one) year and also to pay a fine of Tk.74,74,605/- only.

The prosecution case, in short is that the convict-appellant out of his business urgency took Tk.62,85,931/-from the complainant Bank as loan subject to the condition that the same will be repaid with profit within next one year. With a view to repaying the said loan money with profit the appellant gave fifteen cheques having due on 01.01.2012, 08.01.2012, 10.01.2012, 11.01.2012, 12.01.2012, 15.01.2012, 22.01.2012, 26.01.2012, 29.01.2012, 31.01.2012, 02.02.2012, 06.02.2012, 12.02.2012, 14.02.2012, 16.02.2012 bearing No.1771703, 1771704, 1771705, 9170706, 9170705, 6201894, 6201885, 1771706, 1771707,1771708, 1771709, 1771710, 1771711, 1771712, 1771713 respectively of his account No.2849 of Islami Bank Bangladesh Limited, Cox's Bazar Branch for Tk.7,74,605/-. The complainant in order to encashment the aforesaid cheques presented those before the Islami Bank Bangladesh Limited, Cox's Bazar Branch, on 20.02.2012 at his account. But the same were dishonoured for insufficient of fund on the same date. Thereafter, the complainant gave legal notice to the appellant on 26.02.2012 demanding the payment of the cheques amount. But the appellant did not give reply or did not repay the amount. For this reason, the complainant filed a

complaint-petition under Section 138 of the Negotiable Instruments Act, 1881 before the Senior Judicial Magistrate, Court No.4, Cox's Bazar against the convict-appellant and hence the case.

The learned Senior Judicial Magistrate, Cox's Bazar examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 as C.R. Case No.233 of 2012 and issued summons against him.

Thereafter, this case was ready for trial and sent to the learned Sessions Judge, Cox's Bazar for trial, where the case was registered as Sessions Case No.1258 of 2014. The convict-petitioner surrendered before the Sessions Judge, Cox's Bazar with a prayer for bail and he enlarged on bail. Later on 02.02.2015 charge was framed against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881. The charge so framed was read over and explained to the convict-appellant to which he pleaded not guilty and desired to face trial. The learned Sessions Judge, Cox's Bazar transferred the case to the learned Additional Sessions Judge, Cox's Bazar for

trial and disposal. The prosecution examined 01(one) witness as P.W.1. After examination of witness, the convict-appellant was not examined under section 342 of the Code of Criminal Procedure for his absconding.

After conclusion trial, hearing the parties and perusing the evidence on record, the learned Additional Session Judge, Cox's Bazar found guilty the convict-appellant and convicted him under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer rigorous imprisonment for a period of 01 (one) year and also to pay a fine of Tk.74,74,605 only by his judgment and order dated 06.04.2015.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 06.04.2015 passed by the learned Additional Session Judge, Cox's Bazar in Sessions Trial Case No.1258 of 2014 the convict-appellant preferred this Appeal, before the Hon'ble High Court Division.

Mr. S.M. Jahangir Alam, the learned Advocate appearing on behalf of the convict-appellant submits that both the parties agreed to settle the matter out of Court by way of compromise

subject to some terms and conditions as described in the deed of agreement. Thereafter, the parties executed a deed of compromise in presence of them. The complainant-Bank issued a certificate dated 11.04.2023 in favour of the complainant stating that the bank has reached a settlement with the appellant as well as his family members and the amount deposited through the invoice will be received by the complainant-Bank and there is no objection for the settlement of the case. According to compromise, the respondent No.2 will get Tk.37,37,303/- and the said respondent will withdraw the same from the trial Court in which the same was deposited by the appellant at the time of filing of the instant appeal. The complainant-respondent No.2 has no claim/objection to the appellant if the appeal will be allowed and the appellant be acquitted from the instant case. Therefore, the respondent No.2 is fully satisfied with the appellant on that score. Accordingly, he prays for making the Rule absolute.

Mr. Md. Faruk Hossein, the learned Advocate appearing on behalf of the Respondent No.2 agreed with the submissions of the learned Advocate for the convict-appellant.

I have perused the appeal application, the impugned judgment and order of conviction and sentence of the Court's below, compromise petition filed by both the parties, the submissions of the learned Advocates for the parties, the papers and documents as available on the record.

It appears from the record that the complainant-respondent No.2 filed this case properly against the convict-appellant following all legal formalities, which is maintainable in the eye of law.

But, the main object of the case under section 138 of the Negotiable Instruments Act, 1881 is to recovery of the cheque amount. An amicable settlement has been held between the parties and the appellant paid the cheque amount.

In the light of the above discussion, it is clear before me that since an amicable settlement has been held between the parties and the convict-petitioner paid the cheque amount, so, the judgment and order of conviction and sentence dated 06.04.2015 passed by the learned Additional Sessions Judge, Cox's Bazar in Sessions Trial Case No.1258 of 2014 is not maintainable against the appellant and it will be fair to interference there.

Accordingly, I find cogent and legal ground in the submissions of the learned Advocates for the parties and to interfere with the judgment and order of conviction and sentence dated 06.04.2015. Therefore, the instant Appeal has merit.

In the result, the Criminal Appeal No.9730 of 2022 is allowed.

The judgment and order of conviction and sentence dated 06.04.2015 passed by the learned Additional Sessions Judge, Cox's Bazar in Sessions Trial Case No.1258 of 2014 arising out of C.R. Case No.233 of 2012 is hereby set-aside and the convict-appellant be acquitted.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.37,37,303/- to the complainant-respondent No.2 (if he did not withdraw the said amount) in this case.

The order of bail granted earlier by this Court is hereby cancelled and recalled and the order of stay of the realization of fine is hereby vacated.

Send down the lower Court records with a copy of this judgment and order to the concerned Court below at once.

Md. Anamul Hoque Parvej
Bench Officer