

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

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Criminal Appeal No.10503 of 2022

Md. Harun Or Rashid

.....convict-Appellant

-Versus-

The State and another

..... opposite-parties

No one appears

.....For the convict-Appellant

Mrs. Aleya Khandker, A.A.G and

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. Md. Sajjad Hossain, Advocate

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

Heard on :20.08.2023 &

Judgment on: 21.08.2023.

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred against the judgment and order of conviction and sentence dated 30.05.2018 passed by the learned Additional Metropolitan Sessions Judge, 2nd Court, Dhaka, in Metro: Sessions Case No.3884 of 2016 corresponding to C.R. No.1692 of 2015 convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer simple imprisonment for 04(four) months also to pay fine of Tk.5,00,000/- (five lacs).

The prosecution case, in short, is that the convict-appellant took loan of Tk. Tk.5,00,000/- (five lacs) from the complainant

opposite party No.2. In order to repay the said Tk.5,00,000/- (five lacs), the appellant issued a cheque being No. 0000463 dated 28.06.2015 drawn on account No. 00333006467 maintained with Bank Asia Ltd. The complainant-opposite party No.2 deposited the aforesaid cheque for collection to the concerned bank on 29.06.2015 and the same has been dishonoured by a dishonor slip with comment "Account Closed". Thereafter, the complainant sent a legal notice with registered A/D to the accused on 07.07.2015 and requesting appellant to return the cheque amount within 30 days time of receiving of such notice but the accused failed to repay the cheque amount within the stipulated period and hence the case.

The learned Chief Metropolitan Magistrate, Dhaka recorded the statement of complainant under section 200 of the Code of Criminal Procedure and took cognizance against the accused-convict-appellant under section 138 of the Negotiable Instruments Act, 1881 and issued a summon upon the convict-appellant. Thereafter, the convict-appellant voluntarily surrendered before the learned Metropolitan Magistrate, Dhaka along with a prayer for bail and the learned Magistrate enlarged him on bail.

Subsequently, the instant case was transferred to the learned Metropolitan Sessions Judge, Dhaka for trial and it was renumbered as Metropolitan Sessions Case No.3884 of 2016. Thereafter, on 15.11.2016, the learned Additional Metropolitan Sessions Judge, 2nd Court, Dhaka framed charge against the convict-appellant under section 138 of the Negotiable Instrument Act, 1881 and charge was read over to the convict-appellant which he pleaded not guilty and claimed to be tried.

The prosecution has examined only 01 (one) witnesses in the trial Court to prove the case and defence also examined 01 (one) witness and the convict appellant had also been examined under section 342 of Code of Criminal Procedure in which again he pleaded not guilty thereto and claimed to be tried.

After considering all the evidence on record and deposition of the witnesses, the learned Additional Metropolitan Sessions Judge, 2nd Court, Dhaka passed the judgment and order of conviction and sentence on 30.05.2018, convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer simple imprisonment for 4(four) months with a fine of Tk.5,00,000/- (five lacs).

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction, the convict-appellant preferred this Appeal before this Court.

None appears on behalf of the convict-appellant to press the instant Rule.

On the other hand, Mr. Md. Sajjad Hossain, the learned Advocate appearing on behalf of the respondent-opposite party No.2 submits the convict-appellant took loan of Tk. Tk.5,00,000/- (five lacs) from the complainant opposite party No.2. In order to repay the said Tk.5,00,000/- (five lacs), the appellant issued a cheque being No.0000463 dated 28.06.2015 drawn on account No. 00333006467 maintained with Bank Asia Ltd. The complainant-opposite party No.2 deposited the aforesaid cheque for collection to the concerned bank on 29.06.2015 and the same has been dishonoured by a dishonor slip with comment "Account Closed". Thereafter, the complainant sent a legal notice with registered A/D to the accused on 07.07.2015 and requesting appellant to return the cheque amount within 30 days time of receiving of such notice but the accused failed to repay the cheque amount within the stipulated period. The convict-appellant thus committed an

offence under section 138 of the Negotiable Instrument Act, 1881 by giving the said cheque to the respondent No.2.

He also submits that the prosecution rightly proved the charge brought against the convict-petitioner complying with all formalities as required under Section 138 of the Negotiable Instruments Act, 1881 and as such the trial Court found the accused-petitioner guilty and thereby sentenced him vide judgment and order of conviction and sentence dated 30.05.2018 which warrants no interference by this Court. Therefore, he prays for dismissing the appeal.

In order to appreciate the submission of the learned Advocate for the respondent-opposite party No.2, this Court is to weigh the relevant evidence and materials on record and scan the attending evidence of the case to unearth the actual facts of the case to arrive at a proper and correct decision.

Now, let us discuss the evidence of prosecution witnesses.

P.W.1 Md. Hanif Sheikh, complainant of the case deposed that the accused gave him a cheque being No. 0000463 dated 28.06.2015 drawn on Account No.00333006467 of Tk. 5,00,000/- for repaying his loan. The said cheque was deposited

in the concerned bank on 29.06.2015 for encashment and on the same day, the cheque was dishonored due to the accused's account was closed. Later on 07.07.2015, he sent a legal notice to the accused but the accused did not repay the loan amount due to that he filed the case on 16.08.2015. He proved the complaint petition as Exhibit-1 and his signature therein as Exhibits -1/1. He identified the suit cheque as Exhibit -2, dishonor Slip as Exhibit-3, Legal Notice as Exhibit-4, postal receipt as 4/1.

In cross he stated that the accused took 20 lacs from him on different dates due to his financial problems but he could not tell the exact dates. The accused gave him 04 cheques in total including the cheque in the case. Initially, he gave the accused Tk. 2 lacs, later he paid another Tk. 18 lacs. He denied the defence suggestion that a total of 04 cheques including the cheque in the present case were kept to him by the accused as security or that he gave false evidence in a false case to harass the accused.

DW-1 Md. Mamun Or Rashid deposed that he took loan from the plaintiff on account of business transactions. Against the loan he paid the informant twice the amount with interest. The complainant took signature on the non-judicial stamp from

him. Even though he paid the money, the complainant filed another 01 case along with this case without returning the said 02 cheques.

In cross he denied the defence-suggestion that the cheques were given to the informant in payment of the dues. He gave the cheques to the informant as security.

Considering the lower Court records, evidence and above facts and circumstances, it appears that complainant's complaint is Exhibit-1. The content described in it has been expressed by the complainant very coherently in his statement before the trial Court and his deposition also supported the prosecution case. His cross-examination and the statements were consistent with the complaint and there was no inconsistency on the fundamentals. The DW.1 in his deposition did not deny the complainant's claim. The complainant's Exhibit-2 is the alleged cheque dated 28.06.2015. On perusal of the said Exhibit-2 shows that it is a cheque of Bank Asia and there were the account number and Md. Mamun-Or-Rashid is stamped on the cheque. The said cheque bears the signature of the accused. It is a cheque of Tk. 5,00,000/- (five lacs) in which date 28.06.2015 is written. The cheque has no rubbing and is a clean cheque. The complainant's

Exhibits-3 is the dishonor slip dated 29.06.2015. The said dishonor slip states that it has been dishonored due to the accused's account was closed. The complainant's Exhibits-4 and 4/1 was perused. The original copy of the Legal notice marked as Exhibit-4 which was issued to the convict-appellant on 07.07.2015 in registry envelope with AD. The name and address of the accused are correctly written in the envelope and those were also been stated in the complaint petition.

In the light of the above discussion, it is clear before me that the accused-convict-appellant issued a cheque amounting Tk.5,00,000/- (five lacs) and for encashment of the said cheque the complainant presented it to his concerned bank within the prescribed time limit (within six months) of the Act. But due to accused's account was closed, the said cheque has been dishonored. Thereafter, the complainant has filed his complaint by duly fulfilling all the conditions of Section 138/141 of the Negotiable Instruments Act, 1881. The learned cognizance Court duly reviewed the plaint application and the documents on record and accepted the sworn statement of the complainant and took cognizance the offence under Section 138 of the Negotiable Instruments Act, 1881 against the accused.

Therefore, the learned Additional Metropolitan Sessions Judge, 2nd Court, Dhaka passed the judgment and order of conviction and sentence dated 30.05.2018 in Metro: Sessions Case No.3884 of 2016 corresponding to C.R. No.1692 of 2015 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 04(four) months and also to pay a fine of Tk.5,00,000/- (five lacs) rightly and which is maintainable in the eye of law.

Accordingly, I do not find any cogent and legal ground to interfere with the impugned judgment and order of conviction and sentence. The appeal, therefore, has no merit.

In the result, the Criminal Appeal No.10503 of 2022 is hereby dismissed. The judgment and order of conviction and sentence dated 30.05.2018 passed by the learned Additional Metropolitan Sessions Judge, 2nd Court, Dhaka in Metro: Sessions Case No.3884 of 2016 corresponding to C.R. No.1692 of 2015 is hereby upheld and confirmed.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.2,50,000/-(two lacs fifty

thousand) of the fine amount to the respondent-opposite party No.2 (if he did not take the said amount).

The convict-appellant is hereby directed to surrender before the concerned Court below (if he is on bail) within 15(fifteen) days from the date of the receipt of the judgment and order, failing which the concerned Court below will take necessary steps to secure his arrest.

The order of bail granted earlier by this Court is hereby recalled and vacated.

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

Md. Mustafizur Rahman
Bench Officer