

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

**Present:**

Mr. Justice Md. Kamrul Hosssain Mollah

**Criminal Appeal No.10754 of 2022**

Halal Uddin @ Bachu Khan

.....convict-Appellant

-Versus-

The State and another

..... opposite-parties

No one appears

.....For both the parties

Mrs. Aleya Khandker, A.A.G and

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

**Heard on :28.08.2023 &**

**Judgment on: 29.08.2023.**

**Md. Kamrul Hossain Mollah.J:**

This appeal has been preferred against the judgment and order of conviction and sentence dated 15.07.2018 passed by the learned Additional Metropolitan Sessions Judge, 3rd Court, Dhaka, in Metro: Sessions Case No.16414 of 2017 corresponding to C.R. No.2026 of 2012 convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer simple imprisonment for 01(one) year also to pay fine of Tk.10,00,000/- (ten lacs).

Md. Mamun Dayan, son of Abdul Rob Dayan as complainant filed a petition of complaint before the learned

Court of Metropolitan Magistrate, Dhaka against the convict appellant under section 138 of the Negotiable Instruments Act, 1881.

The prosecution case, in short, is that the accused-appellant took loan from the complainant office and for payment of loan gave cheque to the complainant being cheque No. 2780649 dated 08.05.2012 of City Bank Ltd. Motijeel, Dhaka an amount of Tk. 10,00,000/- (ten lacs) and the complainant deposited to the Bank with a view to encash but the same was dishonor due to insufficient of fund on 17.05.2012 and thereafter, the complainant on 15.07.2012 served legal notice to the accused, demanding said money but the accused did not pay the above amount to the complainant and thereafter, the complainant filed a petition of complainant against the accused under section 138 of the Negotiable Instrument Act, 1881 before the learned Court of Metropolitan Magistrate, Dhaka. Hence the case.

The learned trial Court 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.

Subsequently, the case was transferred to the Court of learned Metropolitan Sessions Judge, Dhaka for trial and renumbered as Metro: Sessions Case No. 16414 of 2017. Thereafter, the learned Additional Metropolitan Sessions Judge, 3<sup>rd</sup> Court, Dhaka framed charge against the appellant under section 138 of the Negotiable Instruments Act, 1881 which was not read over to the convict-appellant as he was absconding

The prosecution has examined only 01 (one) witness in the trial Court to prove the case but the defence examined none and it was not possible to examine the convict appellant under section 342 of Code of Criminal Procedure as the convict-appellant was absconding.

After considering all the evidence on record and deposition of the witness, the learned Additional Metropolitan Sessions Judge, 3<sup>rd</sup> Court, Dhaka passed the judgment and order of conviction and sentence on 15.07.2018, convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer simple imprisonment for 01(one) year with a fine of Tk.10,00,000/- (ten lacs).

After arrest on 19.04.2022, he prayed for bail depositing Tk. 5,00,000/- and the learned Additional Metropolitan Sessions Judge, 3<sup>rd</sup> Court, Dhaka granted his bail to prefer appeal before this Court.

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 both the parties at the time of hearing of the appeal.

Mrs. Aleya Khandker, the learned Assistant Attorney General appearing on behalf of the state submits that the accused-appellant took loan from the complainant office and for payment of loan gave cheque to the complainant being cheque No. 2780649 dated 08.05.2012 of City Bank Ltd. Motijeel, Dhaka an amount of Tk. 10,00,000/- (ten lacs) and the complainant deposited to the Bank with a view to encash but the same was dishonor due to insufficient of fund on 17.05.2012 and thereafter, the complainant on 15.07.2012 served legal notice to the accused demanding said money but the accused did not pay the above amount to the complainant. 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 15.07.2018 which warrants no interference by this Court. Therefore, he prays for dismissing the appeal.

In order to appreciate the submission of the learned AAG for the state, 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. Mamun Deyan, complainant of the case deposed that the accused gave the disputed cheque for an amount of Tk. 10,00,000/- dated 08.05.2012 for pay of his dues but it

was dishonored for insufficient of fund on 17.05.2012. Thereafter, he sent a legal notice on 15.07.2012 and the accused received the legal notice on 23.07.2012 but still he did not pay the cheque amount thus he filed the case. He proved the disputed cheque as Exhibit-1, dishonor slip as Exhibit-2, legal notice and postal receipt as Exhibit-3 series, AD as Exhibit-4, agreement as Exhibit-5, petition of complaint as Exhibit-6 and his signature therein as Exhibit-6/1.

This witness was not cross-examined by the accused as the accused was absconding.

Considering the lower Court records, evidence and above facts and circumstances, it appears that complainant's complaint is Exhibit-6. The content described in it has been expressed by the complainant very coherently in his deposition before the trial Court and his deposition also supported the prosecution case. His deposition was consistent with the complaint and there was no inconsistency on the fundamentals. The deposition of the complainant was also not challenged as the accused was absconding. The complainant's Exhibit-1 is the alleged cheque dated 08.05.2012. On perusal of the said Exhibit-2 shows that it is a cheque of City Bank Ltd and there were the account number

and Bachu Khan are printed on the cheque. The said cheque bears the signature of the accused. It is a cheque for an amount of Tk. 10,00,000/- (ten lacs) in which date 08.05.2012 is written. The cheque has no rubbing and is a clean cheque. The complainant's Exhibits-2 is the dishonor slip dated 17.05.2012. The said dishonor slip states that it has been dishonored due to insufficient of fund. The complainant's Exhibit3, 3/1, and 4 was perused. The original copy of the Legal notice marked as Exhibit-3 which was issued to the convict-appellant on 15.07.2012 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.10,00,000/- (ten 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 insufficient of fund, 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, 3<sup>rd</sup> Court, Dhaka passed the judgment and order of conviction and sentence dated 15.07.2018 in Metro: Sessions Case No.16414 of 2017 corresponding to C.R. No.2026 of 2012 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 01(one) year and also to pay a fine of Tk.10,00,000/- (ten 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.10754 of 2022 is hereby dismissed. The judgment and order of conviction and sentence dated 15.07.2018 passed by the learned Additional Metropolitan Sessions Judge, 3<sup>rd</sup> Court, Dhaka in Metro:



Sessions Case No.16414 of 2017 corresponding to C.R. No.2026 of 2012 is hereby upheld and confirmed.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.5,00,000/-(five lacs) 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*