

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Appeal No.2699 of 2023

Md. Abdullah

.... Convict-Appellant

-Versus-

The State and another

.... Respondents

No one appears

.... For the convict-Appellant

Mrs. Umme Masumun Nesa, A.A.G

.... For the State

Mr. Muhammad Ali Akkas Chowdhury, Advocate

.... For the Opposite Party No.2

Heard on 17.10.2023 and

Judgment on: 19.10.2023

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred against the judgment and order of conviction and sentence dated 25.08.2019 passed by the learned Court of Additional Sessions Judge, Chapainawabganj in Sessions Case No. 727 of 2018 arising out of Complaint Registered Case No.53 of 2018 convicting the appellant under Section 138 of the Negotiable Instrument Act,

1881 and sentencing him to suffer imprisonment for a period of 01(one) year and to pay a fine of Tk.50,00,000/- only.

At the time of admitting the appeal this Court continued the bail of the appellant and stayed the realization of fine.

The prosecution case, in brief, is that the convict-appellant took loan in refund terms from Islami Bank Limited Chapai Nawabganj Branch, Chapai Nawabganj total amount of Tk.49,71,110/- (forty nine lac seventy one thousand one hundred and ten), but the convict-appellant failed to pay by installment regularly. Therefore, the bank noticed the convict appellant to pay the said amount, but the convict appellant gave a cheque amount of Tk.49,71,110/- (forty nine lac seventy one thousand one hundred and ten), and the bank submitted the said cheque to the Islami Bank Limited Chapainawabganj Branch, Chapainawabganj, but the said cheque was dishonored on 07.12.2017 for insufficient of fund. Thereafter, the complainant-respondent No.2 sent a legal notice to the convict-appellant to pay the due amount, however, the convict-appellant did not pay the said amount within 30 days and as such the complainant-respondent No.2 filed a complaint-petition against the convict-appellant under section 138 of the Negotiable

Instruments Act, 1881 before the learned Amoli Adalat, Chapainawabganj on 21.01.2018 and hence the case.

On 21.01.2018 after receiving the petition of complaint the learned Magistrate examined the complainant under section 200 of the Code of Criminal Procedure and thereafter the learned Magistrate took cognizance against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 as C.R. Case No.53 of 2018 and issued summons against the convict-appellant. On 15.05.2018 the appellant surrendered before the Senior Judicial Magistrate, Amoli Adalat “Ka” Anchol, Chapainawabganj and obtained bail. Thereafter, on 15.07.2018 this case was transferred to the Court of learned Sessions Judge, Chapainawabganj for trial and was renumbered as Sessions Case No.727 of 2018. Thereafter, on 27.02.2019 the learned Sessions Judge, Chapainawabganj transferred the same to the learned Additional Sessions Judge, Chapainawabganj for disposal. On 27.06.2019 the learned Additional Sessions Judge, Chapainawabganj framed charge against the convict-appellant under section 138 of the negotiable Instruments Act, 1881, which was not read over and explained the appellant for his absconsion. The prosecution side adduces one witness before

the Court to prove his case and the defense examined none. After examination of the witness the concerned Court Could not examined the appellant under section 342 of the Code of Criminal Procedure for his absconsion. The learned Additional Sessions Judge, Chapainawabganj after conclusion of the trial upon considering of the materials on record convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 sentenced him to suffer imprisonment for a period of 01(one) year and also to pay a fine of Tk.50,00,000/- (fifty lac) only by his judgment and order of conviction and sentence dated 25.08.2019.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 25.08.2019 passed by the learned Additional Sessions Judge, Chapainawabganj in Sessions Case No.727 of 2018 arising out of C.R. Case No.53 of 2018, the convict-appellant preferred this Appeal, before this Hon'ble High Court Division.

No one appears for the convict-appellant to press this Appeal, when this matter was taken up for hearing although it appears in the daily cause list several times for hearing.

Mr. Muhammad Ali Akkas, the learned Advocate appearing on behalf of the complainant-respondent No.2 submits that the convict-appellant took loan in refund terms from Islami Bank Limited Chapai Nawabganj Branch, Chapai Nawabganj total amount of Tk.49,71,110/- (forty nine lac seventy one thousand one hundred and ten), but the convict-appellant failed to pay by installment regularly. Therefore, the bank noticed the convict appellant to pay the said amount, but the convict appellant gave a cheque amount of Tk.49,71,110/- (forty nine lac seventy one thousand one hundred and ten), and the bank submitted the said cheque to the Islami Bank Limited Chapainawabganj Branch, Chapainawabganj, but the said cheque was dishonored on 07.12.2017 for insufficient of fund. Thereafter, the complainant-respondent No.2 sent a legal notice to the convict-appellant to pay the due amount, however, the convict-appellant did not pay the said amount within 30 days and as such the complainant-respondent No.2 filed a complaint-petition against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 before the learned Amoli Adalat, Chapainawabganj on 21.01.2018 as C.R. Case No.53 of 2018. Thereafter, on 15.07.2018 this case was transferred to the

Court of learned Sessions Judge, Chapainawabganj for trial and was renumbered as Sessions Case No.727 of 2018. Thereafter, on 27.02.2019 the learned Sessions Judge, Chapainawabganj transferred the same to the learned Additional Sessions Judge, Chapainawabganj for disposal. The learned Additional Sessions Judge, Chapainawabganj after conclusion of the trial upon considering of the materials on record convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 sentenced him to suffer imprisonment for a period of 01(one) year and also to pay a fine of Tk.50,00,000/- (fifty lac) only by his judgment and order of conviction and sentence dated 25.08.2019 rightly. Accordingly, he prays for discharging the Rule.

I heard the submissions of the learned Advocate for the respondent No.2 and perused the materials on record.

Now, let us discuss the evidence of prosecution witness Sohel Mahmud Al Murad.

P.W.1 Sohel Mahmud Al Murad in his deposition supported the complaint-petition. On 06.12.2017 the convict-appellant gave a cheque No.IBI 3238745 to the complainant. He submitted the said cheque to the Islami Bank Limited

Chapainawabganj Branch, Chapainawabganj on 07.12.2017, but the said cheque was dishonored on 07.12.2017 for insufficient of fund. Thereafter, he sent a legal notice to the convict-appellant to pay the due amount through Registry Post on 12.12.2017, however, the convict-appellant did not pay the said amount. He filed the case on 21.01.2018 in time. He identified the complaint-petition and his signature as exhibit-1 series, main cheque, dishonor slip, legal notice and postal receipt as exhibit-2 series.

It appears from the record that P.W.1 in his deposition supported the complaint-petition and P.W.1 was not cross-examined as the accused was absconding. The convict-appellant has not been able to adduce any proof that the amount of cheque has been paid to the complainant. The appellant complained that the impugned cheque is a security cheque. But there is no legal bar to sue with security cheque. Therefore, it appears that the appellant issued the impugned cheque to the complainant in payment of the loan amount.

Further, it appears that impugned cheque was issued on 06.12.2017, dishonoured on 07.12.2017 and the legal notice was served on 12.12.2017, but the convict-appellant did not pay the loan amount. Thereafter, the complainant filed the C.R. Case No.53 of 2018 under section 138 of the Negotiable

Instruments Act, 1881 against the convict-appellant on 21.01.2018 that is the case file in time.

Considering the above facts and circumstances and materials on record, it is my view that the learned Additional Sessions Judge, Chapainawabganj passed the judgment and order of conviction and sentence dated 25.08.2019 rightly, which is maintainable in the eye of law and there is no chance to interference with the said judgment and order.

Accordingly, the appeal, therefore, has no merit.

In the result, the Criminal Appeal No.2699 of 2023 is dismissed.

The judgment and order of conviction and sentence dated 25.08.2019 passed by the learned Additional Sessions Judge, Chapainawabganj in Sessions Case No.727 of 2018 arising out of C.R. Case No.53 of 2018 is hereby confirmed and upheld.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.24,85,555/-, which has been deposited by the convict-appellant through Chalan at the time of filing appeal to the complainant-respondent No.2 (if he did not take the said amount).

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.

The convict-appellant is hereby directed to surrender before the concerned lower Court within in 30(thirty) days from the date of receipt of this judgment and order.

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

Md. Anamul Hoque Parvej
Bench Officer