

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

**Present:**

Mr. Justice Md. Kamrul Hosssain Mollah

**Criminal Appeal No. 5446 of 2023**

Mehedi Hasan Masum

.....convict-Appellant

-Versus-

The State and another

..... opposite-parties

Mr. Md. Anwarul Islam, Advocate

.....For the convict-Appellant

Mrs. Umme Masumun Nesa, A.A.G with

Mr. Md. Ashiq-ul Haque

.....For the State

Mrs. Valley Chakma, Advocate

.....For the complainant-respondent No.2

**Heard on 08.11.2023, 13.11.2023**

**and Judgment on: 14.11.2023**

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

This appeal has been preferred against the judgment and order of conviction and sentence dated 01.03.2018 passed by the learned Additional Metropolitan Sessions Judge, 1<sup>st</sup> Court, Dhaka in Metropolitan Sessions Case No.2817 of 2017 arising out of Complaint Registrar (C.R.) Case No.812 of 2015 convicting the accused-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.15,00,000/-, (fifteen lac) only.

The prosecution case, in short is that in the course of business transaction the appellant issued a cheque being No.5901713 dated 17.02.2015 to outstanding dues of Tk.15,00,000/- infavour of complainant. The complainant on 17.08.2015 deposited the said cheque to the Pubali Bank Limited, B.B Avenue Dhaka for encashment, but the said cheque was dishonoured for insufficient fund on 17.08.2015. The complainant on 06.09.2015 sent a legal notice through lawyer to the appellant, but the appellant did not repay the cheque amount. Thereafter, the complainant filed a complaint-petitioner before the learned Metropolitan Magistrate Court, Dhaka against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881.

The learned Metropolitan Magistrate Court, Dhaka examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance as C.R. Case No.812 of 2015 against the accused-convict-appellant under section 138 of the Negotiable Instruments Act, 1881 and also issued summon against the appellant.

After summons the Court issued warrant of arrest against the convict-appellant and the instant case was transferred to the Metropolitan Sessions Judge, Dhaka and it was renumbered as Sessions Case No.2817 of 2017 and subsequently, it was transferred to the learned Additional Metropolitan Sessions Judge, 1<sup>st</sup> Court, Dhaka for trial and early disposal and accordingly charge was framed on 02.08.2017 in absence of the appellant for his absconding.

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

After conclusion of the trial, the learned Additional Metropolitan Sessions Judge, 1<sup>st</sup> Court, Dhaka the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 04(four) months and also to pay a fine of Tk.15,00,000/- (fifteen lac) by his judgment and order dated 01.03.2018.

After long fugitive, the convict-appellant was arrested by the police on 29.05.2022 and on 20.06.2022 he deposited 50% of the Cheque amount of Tk.7,50,000/- (seven lac fifty thousand) by a chalan No.308 dated 20.06.2022 and prayed for bail and after hearing the learned Advocate the trial Court enlarged the appellant on bail for a period of 60(sixty) days.

Thereafter, being aggrieved by and dissatisfied with the judgment and order of conviction after long delay the convict-appellant preferred this Appeal against the judgment and order of conviction and sentence dated 01.03.2018 passed by the learned Additional Metropolitan Sessions Judge, 1<sup>st</sup> Court, Dhaka in Metropolitan Sessions Case No.2817 of 2017 arising out of C.R. Case No.812 of 2015, before this Hon'ble High Court Division.

Mr. Md. Anwarul Islam, the learned Advocate for the convict-appellant submits that in the instant case the petitioner did not get any legal notice, though the prosecution claimed to have been served the same but there is nothing on record that the petitioner received the legal notice and there is no cause of action in the instant case as required under section 138 of the

Negotiable Instruments, Act, 1881, as such the impugned judgment and order is liable to be set-aside.

He further submits that the prosecution has failed to prove the service of legal notice upon the petitioner and the judgment and order of conviction and sentence is not based on evidences on record rather the same is based upon surmises and conjectures.

The learned Advocate lastly contends that the petition of complaint was not filed the case as per the mandatory requirement of law and as the said cheque was submitted before the concerned bank as Secretary and according to the Artha Rin Adalat Ain the complainant filed the case in wrong forum, but without considering these the trial Court passed the such the impugned judgment and order of conviction and sentence, which is liable to be set-aside. The complainant could not prove the case against the accused-convict-appellant beyond reasonable doubt. Accordingly, he prays for allowing the Criminal Appeal preferred by this convict-appellant.

On the other hand, Mrs. Valley Chakma, the learned Advocate appearing on behalf of the respondent No.2 submits

that in the course of business transaction the appellant issued a cheque being No.5901713 dated 17.02.2015 to outstanding dues of Tk.15,00,000/- infavour of complainant. The complainant on 17.08.2015 deposited the said cheque to the Pubali Bank Limited, B.B Avenue Dhaka for encashment, but the said cheque was dishonoured for insufficient fund on 17.08.2015. The complainant on 06.09.2015 sent a legal notice through lawyer to the appellant, but the appellant did not repay the cheque amount. Thereafter, the complainant filed a complaint-petition before the learned Metropolitan Magistrate Court, Dhaka against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881. Subsequently, it was transferred to the learned Metropolitan Sessions Judge Dhaka and thereafter it was transfer to the learned Additional Metropolitan Sessions Judge, 1<sup>st</sup> Court, Dhaka for trial and early disposal. After conclusion of the trial, the learned Additional Metropolitan Sessions Judge, 1<sup>st</sup> Court, Dhaka convicted the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 04(four) months and also to pay a fine of Tk.15,00,000/- (fifteen lac) by his judgment and order dated

01.03.2018 rightly. Therefore, he prays for discharging the Rule.

Now, let us discuss the evidence of prosecution witness Boiddonath Saha.

Considering the deposition of the P.W.1 it appears that P.W.1 Boiddonath Saha properly supported the prosecution case. The convict-appellant issued a cheque No.5901713 dated 17.02.2015 to outstanding dues of Tk.15,00,000/- infavour of complainant. The complainant on 17.08.2015 deposited the said cheque to the Pubali Bank Limited, B.B Avenue Dhaka for encashment, but the said cheque was dishonoured for insufficient fund on 17.08.2015. The complainant on 06.09.2015 sent a legal notice through lawyer to the appellant, but the appellant did not repay the cheque amount. The P.W.1 identified the letter of authority as exhibit-1, the complaint-petition as exhibit-2 and in which his signature as exhibit-2/1, the dishonoured cheque as exhibit-3, dishonoured slip as exhibit-4, the legal notice as exhibit-5, the postal receipt as exhibit-6 and the returned envelope as exhibit-7.

Considering the lower Court record, evidence and above facts and circumstances, it appears that the said cheque was issued on 17.02.2015 and deposited in the concerned bank on 17.08.2015 for encashment within six months from the date of cheque issue, which is maintainable under section 138 of the Negotiable Instruments Act, 1881. The said cheque was dishonoured on 17.08.2015 and the legal notice was served on 06.09.2015. Thereafter, the present case was filed on 08.11.2015 that is in time. Moreover, the appellant did not any try to contest the said case. Therefore, it is clear in the eye of law that the opposite party No.2 is able to prove the present case against the appellant beyond all reasonable doubt.

Therefore, the learned Additional Metropolitan Sessions Judge, 1<sup>st</sup> Court, Dhaka passed the judgment and order of conviction and sentence dated 01.03.2018 in Metropolitan Sessions Case No.2817 of 2017 arising out of Complaint Registrar (C.R.) No.812 of 2015 convicting the convict-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.15,00,000/-, (fifteen lac) rightly and 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.5446 of 2023 is hereby dismissed. The judgment and order of conviction and sentence dated 01.03.2018 passed by the learned the learned Additional Metropolitan Sessions Judge, 1<sup>st</sup> Court, Dhaka in Metropolitan Sessions Case No.2817 of 2017 is hereby upheld and confirmed.

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

The convict-appellant is hereby directed to surrendered before the concerned Court below (if he is on bail) with in 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 arrest him.

Further, the concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.7,50,000/- (seven lac and fifty thousand), 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).

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

*Md. Anamu Hoque Parvej*  
*Bench Officer*