

Present

**Mr. Justice Md. Khairul Alam**

**Criminal Appeal No. 6777 of 2023**

Md. Abu Noim.

.....Convict appellant.

-Versus\_

The State and another.

.....Respondents.

Mr. Jashim Uddin, Advocate

.....For the convict appellant.

Mr. Md. Ikram Hossain, Advocate

.....For the respondent No.2.

**Heard on 24.10.2024 and  
Judgment on 27.10.2024.**

This appeal is directed against the judgment and order of conviction and sentence dated 28.03.2016 passed by the learned Sessions Judge, Sirajganj in Sessions Case No. 441 of 2015 arising out of C.R. Case No. 94 of 2013 (Shah) convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 (shortly, the NI Act) and sentencing him to suffer simple imprisonment for 10 (ten) months and to pay a fine of Taka 8,01,755/-.

The prosecution case, in short, is that the present respondent No. 2 as complainant filed C.R. Case No. 94 of 2013 (Shah) before the court of Senior Judicial Magistrate,

Shahjadpur, Sirajganj alleging, inter-alia, that to disburse the liability the convict-appellant issued a cheque bearing No. MSN-1467124 dated 26.05.2014 amounting to Tk. 8,01,755/- in favour of the complainant. The complainant placed the said cheque before the bank for encashment, but the cheque was dishonored on 26.05.2014 on the ground of insufficiency of funds. Hence, the complainant filed the case following all the statutory provisions.

Ultimately, the case was renumbered as Sessions Case No. 441 of 2015 and was tried by the learned Sessions Judge, Sirajganj who by the judgment and order of conviction and sentence dated 28.03.2016 convicted the present appellant under section 138 of the Ni Act and sentenced him as aforesaid.

Mr. Jashim Uddin, the learned Advocate appearing on behalf of the convict-appellant at the outset of the hearing informed this Court that meanwhile respondent No. 2 amicably settled the issues by paying the amount covering the amount of the cheque to the complainant and accordingly, he prayed for quashing the impugned judgment and order of conviction and sentence.

Mr. Md. Ikram Hossain, the learned Advocate appearing on behalf of respondent No. 2 has approved the said submission.

In the case of Subash Chandra Sarker vs. The State and another reported in 26BLT(AD)2018 page 28 a petition for leave to appeal was filed by a convict challenging his conviction and sentence passed under section 138 of the NI Act. In the said petition for leave to appeal a joint application was filed for recording and disposal of the case as per terms of the compromise setting aside the judgment and order of conviction and sentence. Our apex Court dispossessed of the said petition for leave to appeal in the following manner.

“A Joint Application has been filed for recording compromise and disposal of the case as per terms of the compromise setting aside the judgment and order of conviction and sentence passed against the petitioner. The complainant and the convict are present in the Court. We have perused the compromise petition. The section is not a compoundable one. However, since the parties have settled matter amicably and the complainant has admitted before this Court that he

received the half of the amount of the dishonoured cheque in the cash and the rest of the amount was deposited with the Sessions Court before filing the appeal before the High Court Division. We are inclined to reduce the sentence to the period already undergone and accordingly the sentence awarded against the petitioner is reduced to the period undergone. We also direct the Sessions Judge, Gazipur to allow the complainant to withdraw the money deposited by the convict without making any delay.

This petition is disposed of accordingly.”

Considering the submissions advanced by the learned Advocates of both sides and also considering the facts and circumstances of the case, I am inclined to reduce the sentence to the period already undergone in the light of the above view of our apex Court.

Accordingly, the appeal is dismissed with the modification of the sentence awarded against the convict appellant, by reducing the sentence awarded against the petitioner to the period undergone.

The learned Session Judge, Sirajganj is hereby directed to allow the complainant to withdraw the money deposited by the convict without making any delay.

The office is directed to receive the lower court's record and send down the same.

Communicate this order at once.

Kashem, B.O