

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Appeal No. 5157 of 2017

Zillur Rahman

.... Convict-Appellant

-Versus-

The State and another

.... opposite-parties

Mr. Sheikh Muhammed Serajul Islam

.... For the Appellant

Mrs. Umme Masumun Nesa, A.A.G

.... For the State

Mr. Md. Minhazul Hoque Chowdhury, Adv.

---For the Respondent No.2

Heard on 20.08.2023 and

Judgment on: 24.08.2023

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred against the judgment and order of conviction and sentence dated 18.02.2018 passed by the learned Metropolitan Additional Sessions Judge, 1st Court, Dhaka in Metropolitan Sessions Case No. 7524 of 2014 arising out of C.R. Case No. 828 of 2012 convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer simple imprisonment for a period of 02 (two) months and also to pay a fine of Tk. 1,10,400/- (one lac

ten thousand and four hundred) and also directing the convict to pay off the same to the complainant within 60 (sixty) days in default the complainant shall be entitled to take step under section 386 of the Code of Criminal Procedure.

At the time of admitting the Appeal this Court granted ad-interim bail the convict-appellant and stayed the realization of fine.

The prosecution case, in short is that the convict-appellant against the loan amount issued a cheque being No. CCA 541181 dated 01.10.2012 of Tk. 1,10,400.00/- (one lac ten thousand four hundred only) in favour of the complainant drawn on account No.150220087869001 of the appellant maintained with the BRAC Bank Limited, Dhaka. The complainant deposited the said cheque to the concerned bank for encashment which was dishonoured and returned unpaid with the remark "In sufficient fund" in the memo issued by the BRAC Bank Limited, Gulshan Branch, Dhaka on 01.11.2012. Thereafter, on 08.11.2012 the complainant served a legal notice to the convict-appellant by his engaged lawyer, which was registered with A/D. The convict-appellant received the said

legal notice, but he did not pay the cheque amount of Tk.1,10,400/- (one lac ten thousand and four hundred) within 30 (thirty) days of the receipt of the notice. For this reason, the complainant filed a complaint-petition under Section 138 of the Negotiable Instruments Act, 1881 before the Metropolitan Magistrate, Dhaka against the convict-appellant and hence the case.

The learned Metropolitan Magistrate, Dhaka examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 as C.R. Case No.828 of 2012 and issued summons against him. The convict-petitioner surrendered before the concerned Metropolitan Magistrate, Dhaka on 07.04.2014 with a prayer for bail and he was enlarged on bail. Thereafter, when the case is ready for trial then this case was sent to the learned Metropolitan Sessions Judge, Dhaka for trial, where the case was registered as Metro: Sessions Case No.7524 of 2014. The learned Metropolitan Sessions Judge, Dhaka after taking cognizance on 04.09.2014 transferred the case to the learned Additional Metropolitan Sessions Judge, 1st Court, Dhaka for

trial and disposal. Later on 30.11.2014 charge was framed against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 and read over and explained to the convict-appellant to which he pleaded not guilty and desired to face trial. The prosecution examined 01(one) witness as P.W.1. After examination of witness, the convict-appellant was not examined under section 342 of the Code of Criminal Procedure due to his absconding.

After hearing the parties and perusing the evidence on record, the learned Additional Metropolitan Session Judge, 1st Court, Dhaka found guilty the convict-appellant and convicted him under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 02 (two) months and also to pay a fine of Tk. 1,10,400/- (one lac ten thousand and four hundred) only.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 18.02.2016 passed by the learned Additional Metropolitan Session Judge, 1st Court, Dhaka in Metropolitan Sessions Case

No.7524 of 2014 the convict-appellant preferred this Appeal, before the Hon'ble High Court Division.

Mr. Sheikh Muhammed Serajul Islam, the learned Advocate appearing on behalf of the convict-appellant submits that at the time of filing the appeal the appellant deposited Tk.55,200/- and thereafter on 22.08.2023 he deposited Tk.55,200/- only before BRAC Bank Limited, Gulistan Branch, Dhaka by way deposit slip dated 22.08.2023 being Teller No.1 against Account No.50450700123 and account name payable for recovery and thus the appellant has paid total Tk.1,10,400/- which he was directed to pay by the judgment and order of conviction and sentence dated 18.02.2016 passed by the learned Additional Metropolitan Sessions Judge, 1st Court, Dhaka in Metropolitan Sessions Case No.7524 of 2014 arising out of C.R. Case No.828 of 2012. The learned Advocate further submitted that as the accused petitioner deposited the full amount of cheque money which is in question and he prayed that the judgment and order of conviction and sentence dated 18.02.2016 passed by the learned Additional Metropolitan Sessions Judge, 1st Court, Dhaka in Metropolitan Sessions Case No.7524 of 2014 is liable to be set-aside and convict-appellant

may kindly be acquitted. Accordingly, he prays for making the Rule absolute.

Mr. Minhazul Hoque Chowdhury, the learned Advocate appearing on behalf of the Respondent No.2 agreed with the submission of the learned Advocate for the convict-appellant.

I have perused the appeal application, the impugned judgment and order of conviction and sentence of the Court's below, the submissions of the learned Advocates for the parties, the papers and documents as available on the record.

It appears from the record that the complainant filed this case properly against the convict-appellant following all legal formalities, which is maintainable in the eye of law.

But, the main object of the case under section 138 of the Negotiable Instruments Act, 1881 is recovery of the cheque amount.

In the light of the above discussion, it is clear before me that since the convict-petitioner paid the cheque amount, the judgment and order of conviction and sentence dated 18.02.2016 passed by the learned Additional Metropolitan Sessions Judge, 1st Court, Dhaka in Metropolitan Sessions Case

No.7524 of 2014 is not maintainable against the appellant and it will be fair to interference there.

Accordingly, I find cogent and legal ground in the submissions of the learned Advocates for the parties and to interfere with the judgment and order of conviction and sentence dated 18.02.2016. Therefore, the instant Appeal has merit.

In the result, the Criminal Appeal No.5157 of 2017 is allowed.

The judgment and order of conviction and sentence dated 18.02.2016 passed by the learned Additional Metropolitan Sessions Judge, 1st Court, Dhaka in Metropolitan Sessions Case No.7524 of 2014 is hereby set-aside and the convict-petitioner will be acquitted.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.55,400/- to the complainant-respondent No.2 (if he did not take the said amount) in this case.

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

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