

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 7620 of 2023

Md. Ismail Hossain Miazi

...Appellant

-Versus-

The State and another

...Respondents

Mr. Md. Wahiduzzaman Sohel, Advocate

...For the appellant

Mr. Md. Imran Hossain Rumel, Advocate

...For the complainant-respondent No. 2

Heard on 13.03.2025

**Judgment delivered on 08.05.2025**

This appeal under Section 410 of the Code of Criminal Procedure is directed against the impugned judgment and order dated 06.01.2020 passed by the Additional Metropolitan Sessions Judge, Court No. 6, Dhaka in Metropolitan Sessions Case No. 9769 of 2017 arising out of C.R. Case No. 963 of 2016 convicting the appellant under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 6(six) months and fine of Tk. 10,00,000 (ten lakh).

The prosecution case, in short, is that Asma Ahmed Benti is the complainant. The accused Md. Ismail Hossain Miazi issued Cheque No. 1063846 on 15.10.2016, drawn on his account maintained with United Commercial Bank Limited in favour of the complainant for payment of Tk. 10,00,000 (ten lakh). The complainant presented the said cheque on 17.10.2016 for encashment through BRAC Bank Limited, Asad Gate Branch, Mohammadpur, Dhaka, which was dishonoured on the same date with the remark 'insufficient funds'. On 20.10.2016, the complainant sent a legal notice through registered post with AD to the accused for payment of the cheque amount, and the accused received the notice on 24.10.2016. Despite the service of notice upon the accused, he did not

pay the cheque amount. Consequently, the complainant filed the case on 19.12.2016.

During the trial, charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881, which was read over and explained to him, and he pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 1(one) P.W. to prove the charge against the accused. After examination of the prosecution witness, the accused was examined under Section 342 of the Code of Criminal Procedure, 1898 and he declined to adduce any D.W. After concluding trial, the Additional Metropolitan Sessions Judge, Court No. 6, Dhaka by impugned judgment and order convicted the accused and sentenced him as stated above against which the accused filed the instant appeal.

P.W. 1 Asma Ahmed Benti is the complainant. She stated that the accused Md. Ismail Hossain Miazi took money from her and on 15.10.2016, he issued a cheque drawn on his account maintained with BRAC Bank, Asad Gate Branch for payment of Tk. 10,00,000. She presented the cheque on 16.10.2016, which was dishonoured on the same date for 'insufficient funds'. She sent a legal notice on 20.10.2016, and the accused received the notice, but he did not pay the cheque amount. Consequently, she filed the case. She proved the complaint petition as exhibit 1 and her signature on the complaint petition as exhibit 1/1, the disputed cheque as exhibit 2, dishonour slip as exhibit 3, legal notice as exhibit 4, postal receipt as exhibit 5, and the AD as exhibit 6.

Learned Advocate Mr. Md. Wahiduzzaman Sohel, having filed an application sworn on 19.01.2025 on behalf of the appellant, submits that during the pendency of the appeal, the appellant Md. Ismail Hossain Miazi died on 24.11.2024, and before his death, he paid Tk. 5,00,000 in cash to the complainant. He prayed for the setting aside the impugned judgment and order.

Learned Advocate Mr. Md. Imran Hossain Rumel, having filed an affidavit submits that before the death of the appellant, he paid 50% of the cheque amount, Tk. 5,00,000(five lakh) to complainant. He also prayed for setting aside the judgment and order passed by the trial Court.

I have considered the submissions of the learned Advocates of both parties, perused the evidence, the impugned judgments and orders passed by the Courts below, and the records.

On perusal of the evidence, it appears that the accused issued Cheque No. 1063846 on 15.10.2016, drawn on his Account No. 0443201000023929, maintained with United Commercial Bank Limited in favour of the complainant for payment of Tk. 10,00,000 (ten lakh). The said cheque was presented on 17.10.2016, but the same was dishonoured, and the BRAC Bank issued a dishonour slip on 17.10.2016. P.W. 1 proved the cheque as exhibit 2 and the dishonour slip as exhibit 3. The complainant sent a legal notice on 20.10.2016 through registered post with AD. P.W. 1 proved the legal notice dated 20.10.2016 as exhibit 4, the postal receipt as exhibit 5, and the AD as exhibit 6. From the acknowledgement due, it appears that the accused received the notice on 24.10.2016, but he did not pay the cheque amount. Consequently, the complainant filed the case on 19.12.2016 complying with all the procedure under clauses (a) to (c) of the proviso to Section 138 and Section 141(b) of the Negotiable Instruments Act, 1881. During the trial, the prosecution proved the charge against the accused beyond all reasonable doubt.

In the result, the appeal so far relates to the conviction is abated, and the fine awarded by the trial Court is affirmed.

Since the complainant-respondent No. 2 admitted that she received 50% of the cheque amount, Tk. 5,00,000(five lakh) from the appellant Md Ismail Hossain Miazzi, before his death, the complainant is only entitled to get the remaining fine amount Tk. 5,00,000(five

lakh) deposited by the accused before filing the appeal in the trial Court.

The trial Court is directed to allow the complainant Asma Ahmed Benti to withdraw 50% of the remaining cheque amount Tk. 5,00,000(five lakh) within 7(seven) days from the date of filing the application , if any.

However, there will be no order as to costs.

Send down the lower Court's records at once.