

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 8952 of 2023

Hefaztur Rahman

...Appellant

-Versus-

The State and another

...Respondents

No one appears.

...For the appellant

Ms. Tanjin Akter, Advocate

...For the complainant-respondent No. 2

Heard on 14.05.2024 and 27.05.2024

**Judgment delivered on 03.06.2024**

This appeal under Section 410 of the Code of Criminal Procedure, 1898 is directed against the judgment and order dated 18.10.2020 passed by Additional Sessions Judge, Cox's Bazar in S.T. Case No. 1203 of 2019 arising out of C.R. No. 1374 of 2018 convicting the appellant under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 6(six) months and a fine of Tk. 7,75,000 (seven lakh seventy-five thousand).

The prosecution case, in short, is that the complainant opposite party No. 2 Saber Ahamed and the appellant Hefaztur Rahman was previously known to each other. The accused took a loan of Tk. 7,75,000 (seven lakh seventy-five thousand) from the complainant opposite party No. 2 and on 12.02.2018 executed an agreement on the non-judicial stamp to pay the said loan within 04.03.2018. The accused issued Cheque No. 7782054 dated 17.09.2018 drawn on First Security Islami Bank Limited for payment of Tk. 2,00,000 in favour of the complainant. Subsequently, he also issued Cheque No. 7782055 dated 18.09.2018 for payment of Tk. 2,00,000, Cheque No. 7782056 dated 19.09.2018 for payment of Tk. 2,00,000 and Cheque No. 7782057 dated 20.09.2018 for payment of Tk. 1,75,000 in favour of the complainant. All the cheques were drawn on from his account maintained with First Security Islami Bank Limited. The complainant

presented the first and second cheques on 30.09.2018 and the third and fourth cheques on 01.10.2018 for encashment which were dishonoured on the dates of presentation with remarks 'insufficient funds'. After that, the complainant issued a legal notice on 10.10.2018 through the learned Advocate to the accused to pay the cheque amount within thirty days from the date of receipt of the notice but the accused did not pay the cheques amount total Tk. 7,75,000 (seven lakh seventy-five thousand) following the legal notice dated 10.10.2018. Although he received the legal notice on 25.10.2018. Consequently, he filed the case.

After filing the complaint petition, the complainant was examined under Section 200 of the Code of Criminal Procedure, 1898 and the learned Magistrate was pleased to take cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 against the accused. After that the case was sent to the Additional Sessions Judge, Cox's Bazar for trial and the case was registered as S.T. Case No. 1203 of 2019.

During the trial, charge was framed on 11.09.2019 against the accused under Section 138 of the Negotiable Instruments Act, 1881. The prosecution examined 1(one) witness to prove the charge against the accused. The defence did not cross-examine P.W. 1. After concluding the trial, the trial Court by impugned judgment and order convicted the accused as stated above against which he filed the instant appeal.

P.W. 1 Saber Ahmad stated that the accused took a loan of a total of Tk. 7,75,000 (seven lakh seventy-five thousand) and issued four cheques being Nos. 7782054, 7782055, 7782056 and 7782057 dated 17.09.2018, 18.09.2018, 19.09.2018 and 20.09.2018 respectively. The said cheques were presented on 30.09.2018 and 01.10.2018 for encashment which were dishonoured with remarks 'insufficient funds'. He issued a legal notice on 10.10.2018 upon the accused through registered post with AD but the accused did not pay the cheque amount.

P.W. 1 proved the complaint petition and his signatures on the complaint petition, dishonoured cheque, dishonoured slip, legal notice with AD as exhibits 1, 1/1, 2, 2/1, 2/2, 2/3, 3, 3/1, 3/2, 3/3, 4 and 4/1. The accused was absconding.

No one appears on behalf of the appellant.

Learned Advocate Ms. Tanjin Akter appearing on behalf of the complainant-respondent No. 2 submits that the accused issued the 4(four) cheques for payment of Tk. 7,75,000 (seven lakh seventy-five thousand) on 17.09.2018, 18.09.2018, 19.09.2018 and 20.09.2018 and the same were dishonoured on 30.09.2018 and 01.10.2018 with the remark 'insufficient funds' and after complying with all the procedures provided in Section 138 of the Negotiable Instruments Act, 1881, the complainant filed the complaint petition and P.W. 1 proved the charge against the accused beyond all reasonable doubt. Therefore, the accused committed an offence under Section 138 of the Negotiable Instruments Act, 1881. He prayed for dismissing the appeal.

I have considered the submission of the learned Advocate Ms. Tanjin Akter who appeared on behalf of respondent No. 2, perused the evidence, impugned judgment and order passed by the trial Court and the records.

On perusal of the records, it appears that during the trial, the accused was absconding and he did not cross-examine P.W. 1. Therefore, the evidence of P.W. 1 as regards the issuance of 4(four) cheques by the accused in favour of the complainant for payment of Tk. 7,75,000/- remains uncontroverted.

There is a presumption under Section 118(a) of the Negotiable Instruments Act, 1881 that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. The presumption under Section 118(a) of the said Act is rebuttable. The accused neither adduced evidence nor cross-examined P.W. 1 to rebut the presumption

under Section 118(a) of the said Act. Therefore I am of the view that the accused issued the cheques in favour of the payee-complainant for consideration. The cheques were dishonoured on 30.09.2018 and 01.10.2018. The complainant sent a legal notice through registered post with AD and after service of notice the accused did not pay the cheque amount. Thereby the accused committed an offence under Section 138 of the Negotiable Instruments Act, 1881 and the complainant filed the case following all procedures provided in Section 138 of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the accused beyond all reasonable doubt and the trial Court on proper assessment and evaluation of the evidence legally passed the impugned judgment and order.

Considering the gravity of the offence, I am of the view that the ends of justice would be best served if the sentence passed by the trial Court is modified as under;

The accused Hefaztur Rahman is found guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and he is sentenced thereunder to suffer imprisonment for 2(two) months and a fine of Tk. 7,75,000 (seven lakh seventy-five thousand).

In the result, the appeal is disposed of with a modification of the sentence.

Send down the lower Court's records at once.