

**Present:**

Mr. Justice Md. Shohrowardi

**Criminal Revision No. 3154 of 2023**

Swadin Hasan Selim

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

Mr. Md. Aktarujjaman, Advocate

...For the convict-petitioner

Mr. Mohammad Abul Kashem Bhuiyan, Advocate

...For the complainant-opposite party No. 2

Heard on 09.06.2024

**Judgment delivered on 02.07.2024**

On an application filed under Section 439 read with Section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 10.07.2023 passed by the Additional Sessions Judge, Court No. 2, Tangail in Criminal Appeal No. 374 of 2022 affirming the judgment and order of conviction and sentence dated 18.05.2022 passed by the Joint Sessions Judge, Court No. 3, Tangail in Session Case No. 854 of 2021 arising out of Complaint Register (C. R.) Case No. 2 of 2021 (Ghatail) convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple imprisonment for 5(five) months and a fine of Tk. 10,00,000 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The prosecution case, in short, is that the complainant A.K.M Masud Khan is a businessman and former Chairman of Sandhanpur Union Parishad and the accused Swadin Hasan Selim is his neighbour and also a relative. The accused is the proprietor of Messers Akash Bricks Field and Titas Bricks Field. On 12.10.2018 the accused came to the house of the complainant and received Tk.

43,00,000(forty-three lakh) in advance to supply total 716666 pieces of bricks within the first of April, 2019 but he did not supply the bricks. The accused issued Cheque No. GaChha 0635576 on 13.06.2020 for payment of Tk. 10,00,000 drawn on his Current Account No. 6028502000555 maintained with Sonali Bank Limited, Shaheed Salauddin Cantonment Branch for part payment of the said amount. The complainant presented the said cheque on 16.11.2020 for encashment which was dishonoured with a remark 'insufficient funds'. After that, he sent a legal notice on 23.11.2020 to the accused for payment of the cheque amount through registered post with AD but he did not pay the cheque amount. Consequently, he filed the case on 03.01.2021.

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 against the accused under Section 138 of the Negotiable Instruments Act, 1881. The case record was transferred to the Sessions Judge, Taingail and the case was registered as Session Case No. 854 of 2021. The Sessions Judge, Tangail transferred the case to the Joint Sessions Judge, Court No. 3, Tangail for trial.

During trial, the 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 complainant examined 1(one) witness to prove the charge. The defence cross-examined P.W. 1. After examination of the prosecution witness, the accused was examined under Section 342 of the Code of Criminal Procedure, 1898 and he again pleaded not guilty. Thereafter, the defence examined one witness who was cross-examined by the complainant.

After concluding the trial, the trial Court by judgment and order dated 18.05.2022 convicted the accused Swadin Hasan Selim

under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer imprisonment for 5(five) months and a fine of Tk. 10,00,000 against which the accused filed Criminal Appeal No. 374 of 2022 before the Sessions Judge, Tangail who was pleased to transfer the case to the Additional Sessions Judge, Court No. 2, Tangail. After hearing the appeal, the Additional Sessions Judge, Court No. 2, Tangail by impugned judgment and order dated 10.07.2023 affirmed the judgment and order of conviction and sentence passed by the trial Court against which the convict-petitioner obtained the instant Rule.

P.W. 1 A.K.M Masud Khan is the complainant. He stated that the accused Swadin Hasan Selim issued a cheque on 13.06.2020 for payment of Tk. 10 lakh which was dishonoured on 16.11.2020. He sent a legal notice on 23.11.2020 through registered post. After receipt of the notice, he did not pay the cheque amount. Consequently, he filed the case. He proved the complaint petition as exhibit 1 and his signature on the complaint petition as exhibit 1/1. He proved the cheque as exhibit 2, dishonour slip as exhibit 3, postal receipt as exhibit 4 and the legal notice as exhibit 5. During cross-examination, he stated that the accused is the proprietor of Titas Bricks Field and issued the cheque for payment of Tk. 10 lakh. He denied the suggestion that the cheque was issued for payment of Tk. 3 lakh and the accused paid the entire amount.

Learned Advocate Mr. Md. Aktarujjaman appearing on behalf of the convict-petitioner submits that the convict-petitioner issued a blank cheque as security and partly supplied the bricks to the complainant. The complainant failed to prove the charge against the accused beyond all reasonable doubt and both the Courts below illegally passed the impugned judgment and order wrongly convicting the petitioner. He prayed to make the Rule absolute.

Learned Advocate Mr. Mohammad Abul Kashem Bhuiyan appearing on behalf of the complainant-opposite party No. 2 submits

that the accused issued the cheque for payment of Tk. 10,00,000 on 13.06.2020 and the same was dishonoured on 16.11.2020 for 'insufficient funds' and after complying with all the procedures in Section 138 of the Negotiable Instruments Act, 1881, the complainant filed the complaint petition and P.W. 1 proved the charge against the convict-petitioner under Section 138 of the Negotiable Instruments Act, 1881 beyond all reasonable doubt. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Md. Aktarujjaman who appeared on behalf of the convict-petitioner and the learned Advocate Mr. Mohammad Abul Kashem Bhuiyan who appeared on behalf of the opposite party No. 2, perused the evidence, the impugned judgments and orders passed by the Courts below and the records.

On perusal of the records, it appears that the issuance of the cheque (exhibit 2) by the accused in favour of the complainant for payment of Tk. 10,00,000 is not disputed by the defence. The convict-petitioner did not cross-examine P.W. 1. Therefore the evidence of P.W. 1 that the accused issued the cheque for payment of Tk. 10,00,000 is admitted by the accused.

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 convict-petitioner failed to rebut the presumption under Section 118(a) of the said Act. Therefore I am of the view that the convict-petitioner Swadin Hasan Selim issued the cheque (exhibit 2) in favour of the payee-complainant for consideration. The cheque was dishonoured on 16.11.2020. 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 convict-petitioner beyond all reasonable and the Courts below on proper assessment and evaluation of evidence legally passed the impugned judgments and orders.

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 convict-petitioner Swadin Hasan Selim is found guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and he is sentenced to suffer imprisonment for 3(three) months and a fine of Tk. 10,00,000.

The convict-petitioner is directed to surrender forthwith.

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

Send down the lower Court's records at once.