

Present

Mr. Justice Sheikh Abdul Awal

Criminal Appeal No. 270 of 2018

Md. Monzur Morshed

.....Convict-appellant.

-Versus-

The State and another

.....Respondents.

Mr. Md. Asaduzzaman, Advocate

.....For the convict-appellant.

None appears

.....For the Respondent No. 2.

Ms. Shahida Khatoon, D.A.G with
Ms. Sabina Perven, A.A.G with,
Ms. Koheenoor Akter, A.A.G.

..... For the State.

Heard on 23.01.2024 and

Judgment on 18.02.2024

Sheikh Abdul Awal, J:

This Appeal at the instance of convict appellant, Md. Monzur Morshed is directed against the judgment and order of conviction and sentence dated 12.11.2013 passed by the learned Metropolitan Sessions Judge, Rajshahi in Sessions Case No. 774 of 2013 arising out of C.R. Case No. 1009 of 2011 convicting the appellant

under section 138(1) of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple imprisonment for a period of 6 (six) months and to pay a fine of Tk. 10,00,000/- (Ten lakhs).

The gist of the case is that one, Ahmmed Ali as complainant filed a petition of complaint being C.R Case No. 1009 of 2011 in the Court of the learned Chief Metropolitan Magistrate, Rajshahi against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 stating, inter-alia, that in order to pay the outstanding dues the appellant issued a cheque of Tk 10,00,000/-(Ten Lakhs) bearing cheque No. OIU-9299789 dated 04.07.2011 of A/C No. 4150, Agrani Bank Ltd, Madrasha Market Branch, Rajshahi in favour of the complainant and thereafter, the complainant presented the said cheque for encashment which was dishonoured for insufficient of fund and thereafter, the complainant sent a legal notice through his Advocate to the convict-appellant on 01.08.2011 asking him to pay the cheque's amount within 30 days but the accused-appellant in spite of receiving the said notice did not turn to pay the cheque's amount and hence, the case.

On receipt of the petition of complaint, the learned Metropolitan Magistrate-1, Rajshahi examined the complainant under Section 200 of the Code of Criminal Procedure and took cognizance against the accused-appellant under section 138 of the Negotiable Instruments Act, 1881 and also issued summon against the accused-appellant fixing next date on 28.11.2011.

Thereafter, in usual course the case record was sent to the Court of the learned Metropolitan Sessions Judge, Rajshahi, wherein the case was registered as Metropolitan Sessions Case No. 774 of 2013, who framed charge under section 138 of the Negotiable Instruments Act in absentia against the accused-appellant. The appellant became absconding after being enlarged on bail.

At the trial the complainant himself was examined as PW-1, who categorically stated the complaint case. No one cross-examined the accused-appellant as the appellant was absconding after being enlarged on bail.

On conclusion of trial, the learned Metropolitan Sessions Judge, Rajshahi by the impugned judgment and order dated 12.11.2013 convicted the accused appellant under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer simple

imprisonment for a period of 6 (six) months and to pay a fine of Tk. 10,00,000/- (Ten lakhs).

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 12.11.2013, the convict-appellant preferred this criminal appeal.

Mr. Md. Asaduzzaman, the learned Advocate appearing for the convict-appellant however could not show any legal infirmity from the impugned judgment and order of conviction and sentence. He simply submits that there was a dialogue between the parties to the effect that the convict-appellant will pay the cheque's amount to complainant-respondent No.2.

No one found present on behalf of the complainant-respondent No.2.

Having heard the learned Advocate for the appellant and having gone through the materials on record, the only question that calls for our consideration in this appeal is whether the trial Court committed any error in finding the accused-appellant guilty of the offence under 138 of the Negotiable Instruments Act, 1881.

On perusal of record, it is found that the complainant-respondent No. 2 after exhausting all the

legal formalities filed C.R. case No. 1009 of 2011 under section 138 of the Negotiable Instruments Act against the convict-appellant and during trial the complainant himself was examined as PW-1 and exhibited some documents to prove his case, who in his deposition categorically stated the complaint case in details. This witness was not cross-examined as the convict-appellant became absconding after being enlarged on bail.

To constitute an offence under Section 138 of the NI Act, the following elements need to be fulfilled:

1. A cheque should have been issued by the payer for the discharge of a debt or other liability.

2. The cheque should have been presented or deposited by the payee within a period of six months from the date of drawing of the cheque or within the period of validity of the cheque, whichever is earlier.

3. The payee should have issued a notice in writing to the payer within 30 days of receipt of information regarding the return of the cheque as unpaid from the bank.

4. The payer/drawer of the cheque should have paid the cheque amount within 30 days of receipt of the said notice from the payee.

5. If the payer has failed to pay in time the cheque amount, the payee should have filed a complaint within one month.

On an overall consideration of the facts, circumstances and the materials on record, it can be easily suggested that all the above quoted key elements are exist in the present case.

On an analyses of impugned judgment and order of conviction and sentence dated 12.11.2013 passed by the learned Metropolitan Sessions Judge, Rajshahi in Sessions Case No. 774 of 2013, I find no flaw in the reasonings of the trial Court or any ground to assail the same inasmuch as all the key elements of Section 138 of Negotiable Instruments Act are exist in the case.

The learned Judge of the trial Court below appears to have considered all the material aspects of the case and justly convicted the accused appellant under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer simple imprisonment for a period of 6 (six) months and to pay a fine of Tk. 10,00,000/- (Ten lakhs).

In the result the appeal is dismissed. The impugned judgment and order of conviction and sentence dated 12.11.2013 passed by the learned Metropolitan Sessions

Judge, Rajshahi in Sessions Case No. 774 of 2013 arising out of C.R. Case No. 1009 of 2011 is affirmed.

Since the appeal is dismissed the convict appellant is directed to surrender his bail bond within 3 (three) months from today to suffer his sentence, failing which the Trial Court shall take necessary steps to secure arrest against him.

The complainant-respondent No.2 is permitted to withdraw half of the cheque's amount as deposited in the Trial Court by the convict-appellant for the purpose of preferring this Criminal Appeal.

Send down the lower Court records at once.