

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 2325 of 2022

Md. Shamsuzzaman

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

No one appears.

...For the convict-petitioner

Mr. Shahjada Al-Amin Kabir, Advocate

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

Heard on 30.01.2024 and 06.02.2024

Judgment delivered on 11.02.2024

This Rule under Section 439 read with Section 435 of the Code of Criminal Procedure, 1898 was issued calling upon the opposite parties to show cause as to why the judgment and order dated 14.02.2022 passed by Sessions Judge, Chapainawabgonj in Criminal Appeal No. 370 of 2020 affirming the judgment and order of conviction and sentence dated 09.10.2019 passed by the Joint Sessions Judge, Court No. 1, Chapainawabgonj in Session Case No. 203 of 2019 arising out of C.R. No. 333 of 2018 (Gomastapur) convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple imprisonment for 6(six) months and a fine of Tk. 5,60,000 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution case, in short, is that the convict-petitioner Md. Shamsuzzaman took loan of Tk. 5,60,000 from the complainant Islami Bank Bangladesh Ltd, Rahanpur Branch, Chapai Nawabgonj for business. On 08.08.2018, he issued Cheque No. 6963889 drawn on his Current Account No. 2076 maintained with Islami Bank Bangladesh Ltd, Rahanpur Branch for payment of Tk. 5,60,000(five lakh sixty thousand). The complainant presented said cheque on 08.08.2018 for encashment which was dishonoured on the same date with the remark 'insufficient funds.' Thereafter, the complainant issued a legal notice on 13.08.2018

upon the convict-petitioner through registered post with AD for payment of the cheque amount within 30 days but he did not pay the cheque amount. Consequently, he filed the case.

After concluding the trial, the Joint Sessions Judge, Court No. 1, Chapainawabgonj by judgment and order dated 09.10.2019 convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer imprisonment for 6(six) months and fine of Tk. 5,60,000(five lakh sixty thousand) against which the convict-petitioner filed Criminal Appeal No. 370 of 2020 before the Sessions Judge, Chapainawabgonj who by impugned judgment and order dated 14.02.2022 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 Harun Rashid is the Senior Officer, Islami Bank Bangladesh Ltd. He stated that the accused Md. Shamsuzzaman issued a cheque on 08.08.2018 for payment of Tk. 5,60,000. On 08.08.2018, the cheque was dishonoured for 'insufficient funds'. A legal notice was issued on 13.08.2018 upon the accused and he received the legal notice on 19.08.2018. Thereafter, he filed the complaint petition on 24.09.2018. He proved the complaint petition as exhibit 1 and his signature as exhibit 1/1. He proved the disputed cheque as exhibit 2, dishonoured slip as exhibit 3, legal notice as exhibit 4, postal receipt as exhibit 5, A.D. as exhibit 6 and the power of attorney as exhibit 7. The defense did not cross-examine P.W. 1.

No one appears on behalf of the convict-petitioner.

The learned Advocate Mr. Shahjada Al-Amin Kabir appearing on behalf of the complainant-opposite party No. 2 submits that the convict-petitioner issued a cheque on 08.08.2018 for payment of Tk. 5,60,000 drawn on his account maintained with Islami Bank Bangladesh Ltd, Rahanpur Branch and the complainant-opposite party No. 2 presented the said cheque on 08.08.2018 which was dishonoured on the same date with a remark 'insufficient funds' and subsequently, the complainant issued a legal notice on 13.08.2018 upon the accused but he did not pay the cheque

amount. Therefore, the accused committed an offence under Section 138 of the Negotiable Instruments Act, 1881. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Shahjada Al-Amin Kabir who appeared on behalf of the opposite party No. 2, perused the impugned judgments and orders passed by the Courts below, evidence and the records.

On perusal of the records, it appears that during the trial, the convict-petitioner was absconding and charge was framed in absentia. The convict-petitioner did not cross-examine the P.W. 1. Therefore, the evidence of P.W. 1 as regards the issuance of the cheque by the convict-petitioner 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 convict-petitioner 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 convict petitioner Md. Shamsuzzaman issued the cheque in favour of the payee-complainant for consideration. After service of notice in writing under Section 138(1)(b) of the said Act, he failed to pay the cheque amount. Thereby he 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 doubt and the Courts below on proper assessment 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 Courts below is modified as under;

The convict-petitioner Md. Shamsuzzaman is found guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and he is sentenced thereunder to pay a fine of. Tk. 5,60,000.

The convict-petitioner is directed to pay the fine within 30 days failing which the complainant is entitled to recover the fine amount following law. The fine amount awarded by this Court against the accused, if realized, will be deducted from the total loan of the convict-petitioner.

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

Send down the lower Court's records at once.