

**Present**

**Mr. Justice Sheikh Abdul Awal**

**Criminal Appeal No. 1879 of 2018**

Md. Rakibul Islam

.....Convict-appellant.

-Versus-

The State and another

.....Respondents.

No one appears

.....For the convict-appellant.

Ms. Shahida Khatoon, D.A.G. with

Ms. Sabina Perven, A.A.G with,

Ms. Koheenoor Akter, A.A.G.

..... For the respondent No.1

**Judgment on 21.03.2024.**

**Sheikh Abdul Awal, J:**

This criminal appeal at the instance of convict appellant, Md. Rakibul Islam is directed against the impugned judgment and order of conviction and Sentence dated 31.05.2017 passed by the learned Additional Metropolitan Sessions Judge, 7<sup>th</sup> Court, Dhaka in Metropolitan Sessions Case No. 7228 of 2016 arising out of C.R. Case No. 37 of 2016 convicting the accused appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for a period of 01 (one) year and to pay a fine of Tk. 13,48,881/-

(thirteen Lacs forty eight thousand eight hundred and eighty one only).

The gist of the case is that one, Md. Asraf Manik Tanvir, Law Officer and representative of Runner Motors Limited as complainant filed a petition of complaint being C.R. Case No. 37 of 2016 in the Court of the learned Metropolitan Magistrate, cognizance Court No.5, Dhaka against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 stating, inter-alia, that to pay the outstanding dues the convict-appellant on 22.11.2015 issued a cheque being No. SB/A 5715881/- of Dutch Bangla Bank Ltd. of Tk. 13,48,881/-(thirteen Lacs forty eight thousand eight hundred and eighty one only) in favour of the complainant-respondent and thereafter, the complainant presented the said cheque for encashment in bank but the said cheque was dishonoured for insufficient of fund on 23.11.2015 and thereafter, a legal notice was sent through Advocate to the accused appellant on 22.12.2015 asking him to pay the cheque's amount within 30 days but the accused appellant did not pay any heed to it and hence, the case.

On receipt of the petition of complaint, the learned Additional Chief Metropolitan Magistrate, Dhaka examined the complainant under Section 200 of the Code of Criminal Procedure, who after being satisfied took cognizance against the accused-appellant under section 138 of the Negotiable

Instrument Act, 1881 and also issued summon against him fixing next date on 09.03.2016 and thereafter, the accused appellant voluntarily surrendered on 10.04.2016 before the learned Additional Chief Metropolitan Magistrate and obtained bail.

In this background the case record was sent to the Court of the learned Metropolitan Sessions Judge, Dhaka wherein it was registered as Metropolitan Sessions Case No. 7228 of 2016. Ultimately, the case was transferred to the Court of the learned Additional Metropolitan Sessions Judge, 7<sup>th</sup> Court, Dhaka for disposal, wherein the accused appellant was put on trial to answer a charge under Section 138 of the Negotiable Instruments Act, 1881 in which the accused appellant pleaded not guilty and claimed to be tried stating that he has been falsely implicated in this case.

At the trial the complainant examined 1 witness and also exhibited some documents to prove his case, while the defence examined none.

On conclusion of trial, the learned Additional Metropolitan Sessions Judge, 7<sup>th</sup> Court, Dhaka by the impugned judgment and order dated 31.05.2017 convicted the accused appellant under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder, to suffer imprisonment for a period of 01 (one) year and to pay a fine of Tk. 13,48,881/-(thirteen Lacs forty eight thousand eight hundred and eighty one only).

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 31.05.2017, the convict-appellant preferred this criminal appeal.

No one found present to press the appeal on repeated calls in spite of fact that this old criminal appeal has been appearing in the list for hearing with the name of the learned Advocate for the appellant for number of days.

In view of the fact that this petty old criminal appeal arising out of 01 (one) year sentence under Section 138 of the Negotiable Instruments Act, 1881, I am inclined to dispose of it on merit.

On perusal of record, it is found that the complainant after exhausting all the legal formalities filed C.R. Case No. 37 of 2016 under section 138 of the Negotiable Instruments Act, 1881 against the convict appellant and during trial the complainant himself was examined as PW-1 and exhibited some documents to prove its case.

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 is 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.

Besides, it appears from the record that a single bench of this Court at the time of admission of appeal by order dated 25.02.2018 granted ad-interim bail to the convict-appellant for a period of 01 (one) year and thereafter, no one took any steps to extend the order of bail as a result of which the said bail was expired long before on 25.02.2019. Therefore, in the attending facts and circumstances of the case, I find no difficulty whatever in holding that the convict-appellant is a fugitive from law and justice.

In the case of Anti-Corruption Commission Vs. Dr. HBM Iqbal Alamgir, reported in 15 BLC(AD) 44, it has

been held that the Court would not act in aid of an accused person who is a fugitive from law and justice.

On an analyses of impugned judgment and order of conviction and sentence dated 31.05.2017 passed by the learned Additional Metropolitan Sessions Judge, 7<sup>th</sup> Court, Dhaka in Metropolitan Sessions Case No. 7228 of 2016, 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 Additional Metropolitan Sessions Judge, 7<sup>th</sup> Court, Dhaka appears to have considered all the material aspects of the case and justly convicted the accused appellant under Section 138 of the Negotiable Instrument Act, 1881 and sentenced him thereunder to suffer imprisonment for a period of 01 (one) year and to pay a fine of Tk. 13,48,881/-(thirteen Lacs forty eight thousand eight hundred and eighty one only).

On the above, 2 (two) counts, this appeal must fail.

In the result the appeal is dismissed. The impugned judgment and order of conviction and Sentence dated 31.05.2017 passed by the learned Additional Metropolitan Sessions Judge, 7<sup>th</sup> Court, Dhaka in Metropolitan Sessions Case No. 7228 of 2016 arising out of C.R. Case No. 37 of 2016 convicting the accused appellant under section 138 of the Negotiable Instruments Act, 1881 is hereby affirmed.

Since the appeal is dismissed the convict appellant, Md. Rakibul Islam is directed to surrender his bail bond within 6 (six) months from today to suffer his sentence, failing which the trial Court shall take necessary steps to secure arrest against him.

The complainant 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.