

Present:
Mr. Justice Md. Shohrowardi

Criminal Appeal No. 2580 of 2024

Md. Gias Mahmud

...Appellant

-Versus-

The State and another

...Respondents

Mr. Md. Shaheen Khan, Advocate

...For the appellant

Mr. Md. Khurshedul Alam, Advocate

...For the complainant-respondent No. 2

Heard on 28.08.2025

Judgment delivered on 03.12.2025

This appeal under section 410 of the Code of Criminal Procedure, 1898 is directed against the judgment and order of conviction and sentence dated 10.10.2017 passed by (Special District and Session Judge) Jananirapatta Bighnakari Aparadh Daman Tribunal, Dhaka in Sessions Case No. 104 of 2017 (Metro. Sessions Case No. 5668 of 2017) arising out of C.R Case No. 103 of 2016 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 1(one) year and fine of Tk. 16,80,000.

The prosecution's case, in short, is that the accused issued Cheque No. 2219468 on 13.07.2015 for payment of Tk. 16,80,000(sixteen lakh eighty thousand) drawn on his account maintained with City Bank Limited. The complainant presented the said cheque on 27.12.2015 for encashment through the Janata Bank Ltd, Dhaka College Gate Branch, Dhaka, but the said cheque was dishonoured with the remark 'insufficient funds' on 27.12.2015 and lastly on 30.12.2015. The complainant informed the matter, but the accused did not pay the cheque amount. The complainant sent a legal notice on 24.01.2016 to the accused for payment of the amount of the cheque. Despite the service of notice upon the accused, he did not pay

the cheque amount. Consequently, the complainant filed the case on 20.03.2016.

During trial charge was framed on 05.07.2017 against the accused under Section 138 of the Negotiable Instruments Act, 1881. At the time of the framing charge, the accused was absconding. The prosecution examined 1(one) P.W. 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 Farida Yeasmin is the complainant. She stated that the accused Md. Gias Mahmud took a loan of Tk. 16,80,000(sixteen lakh eighty thousand) from her. The accused issued Cheque No. 2219468 on 13.07.2015, drawn on his account maintained with City Bank Limited for payment of the said loan. The complainant presented the said cheque on 28.12.2015 for encashment through the Janata Bank Ltd, Dhaka College Branch, Dhaka but the said cheque was dishonoured with the remark ‘insufficient funds’ on 30.12.2015. On 24.01.2016, she sent a legal notice but the accused did not pay the cheque amount. Subsequently, the complainant filed the case on 20.03.2016. She proved the complaint petition as Exhibit 1 and his signatures on the complaint petition as Exhibits 1/1, 1/2, 1/3, 1/4 and 1/5. She proved the disputed cheque as Exhibit 2, the dishonour slip as Exhibit 3, the deposit slip as Exhibit 4, the legal notice as Exhibit 5, the postal receipt as Exhibit 6, and legal notices, two envelopes with AD as Exhibits 7 and 7/1. The defence did not cross-examine P.W. 1.

Learned Advocate Mr. Md. Shaheen Khan appearing on behalf of the appellant submits that the appellant did not issue any cheque in favour of the complainant and no notice under section 138(1)(b) of the Negotiable Instruments Act, 1881 was served upon the accused and the prosecution failed to prove any cause of action for filing the case and the trial Court illegally passed the impugned

judgment and order. He prayed for setting aside the impugned judgment and order of conviction and sentence passed by the trial Court.

Learned Advocate Mr. Md. Khurshedul Alam, appearing on behalf of the complainant-respondent No. 2, submits that the accused issued cheque drawn on his account maintained with City Bank Limited for payment of Tk. 16,80,000(sixteen lakh eighty thousand). The complainant presented the said cheque on 28.12.2015 within six months from the date of issuance of the cheque and the said cheque was dishonoured on 30.12.2015 and the complainant sent a legal notice on 24.01.2016 but the accused did not pay the amount of the cheque and the complainant filed the case on 20.03.2016 complying with all the procedures under section 138 of the Negotiable Instruments Act, 1881. During the trial, the prosecution proved the charge against the accused under section 138 of the Negotiable Instruments Act, 1881 and the trial Court on correct assessment and evaluation of the evidence, passed the impugned judgment and order. He prayed for the dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Md. Shaheen Khan, who appeared on behalf of the appellant and the learned Advocate Mr. Md. Khurshedul Alam, who appeared on behalf of complainant-respondent No. 2, perused the evidence, impugned judgment and order passed by the trial Court, and the records.

On perusal of the evidence, it appears that the accused Md. Gias Mahmud issued Cheque No. 2219468 dated 13.07.2015 for payment of Tk. 16,80,000(sixteen lakh eighty thousand) drawn on his account maintained with City Bank Limited in favour of the complainant (Exhibit 2). The said cheque was presented on 28.12.2015, but the cheque was dishonoured with the remark 'insufficient funds' and the bank issued the dishonour slip, which was proved as Exhibit 3. The complainant sent the legal notice on 24.01.2016 for payment of the cheque amount Tk. 16,80,000(sixteen

lakh eighty thousand), which was proved as Exhibit 5. The said legal notice was sent through registered post with AD, and the postal receipt was proved as Exhibit 6. Two return envelopes, legal notices with AD were proved as Exhibits 7 and 7/1. Despite the service of notice upon the accused, he did not pay the cheque amount, and the complainant filed the case on 20.03.2016, complying with the procedures under section 138 of the Negotiable Instruments Act, 1881.

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 cheque in favour of the payee-complainant for consideration. The cheque was dishonoured, and after service of notice in writing under section 138(1)(b) of the said Act, the accused did not pay the cheque amount. The complainant filed the case following the procedures of 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 correct assessment and evaluation of the evidence, legally passed the impugned judgment and order of conviction.

Considering the gravity of the offence and the facts and circumstances of the case, 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 Md. Gias Mahmud is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881, and he is

sentenced to suffer imprisonment for 6(six) months and fine of Tk. 16,80,000(sixteen lakh eighty thousand).

The trial Court is directed to allow the complainant to withdraw the 50% of the cheque amount deposited by the accused before filing the appeal.

The accused Md. Gias Mahmud is directed to surrender forthwith and deposit the remaining fine amount Tk. 8,40,000(eight lakh forty thousand) within 1(one) month from date.

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

Send down the lower Court's records at once.