

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 261 of 2021

Md. Manju

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

No one appears.

...For the convict-petitioner

Mr. Md. Abdullah Al Mamun, Advocate

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

Heard on 04.12.2024

Judgment delivered on 09.12.2024

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 impugned judgment and order dated 19.11.2020 passed by Additional Sessions Judge, Court No. 1, Naogaon in Criminal Appeal No. 186 of 2018 partly affirming the judgment and order dated 15.07.2018 passed by the Joint Sessions Judge, Court No. 2, Naogaon in Sessions Case No. 544 of 2017 arising out C.R. Case No. 174-C of 2016 (Mohadebpur) convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 6(six) months and fine of taka 1,50,000 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 complainant Md. Alomgir Hosen is a businessman and the accused Md. Manju is the Proprietor of M/S Mavia Traders. The accused took loan of Tk. 1,28,500 from the complainant. On 30.11.2015 the accused issued Cheque No. 0322966 drawn on his Account No. 21211010001918 maintained with Prime Bank Ltd for payment of Tk. 1,28,500 in favour of the complainant. He presented the said cheque on 27.03.2016 for

encashment which was dishonoured on the same date with a remark 'insufficient funds'. He sent a legal notice on 28.03.2016 to the accused for payment of the cheque amount. The accused received the notice on 03.04.2016 but he did not pay the cheque amount. Consequently, the complainant filed the complaint petition on 02.06.2016.

After filing the complaint petition, the learned Magistrate was pleased to take cognizance of the offence against the accused under Section 138 of the Negotiable Instruments Act, 1881. On 16.01.2017 the case was sent to the Sessions Judge, Naogaon who took cognizance of the offence against the accused on 06.03.2017 and by order dated 08.03.2017 transferred the case to the Joint Sessions Judge, Court No. 2, Naogaon for trial and disposal of the case. During the trial, the charge was framed 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) witness to prove the charge against the accused.

After concluding the trial, the Joint Sessions Judge, Court No. 2, Naogaon by judgment and order dated 15.07.2018 convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer imprisonment for 6(six) months and fine of Tk. 2,57,000 against which he filed Criminal Appeal No. 186 of 2018 before the Sessions Judge, Naogaon which was heard by the Additional Sessions Judge, Court No. 1, Naogaon. After hearing, the Additional Sessions Judge, Court No. 1, Naogaon by impugned judgment and order partly allowed the appeal and modified the sentence passed by the trial Court and sentenced him to suffer imprisonment for 6(six) months and fine of Tk. 1,50,000 against which the convict-petitioner obtained the Rule.

P.W. 1 Md. Alamgir Hosen is the complainant. He stated that the accused issued a cheque for payment of Tk. 1,28,500 which was dishonoured on 27.03.2016. On 28.03.2016 he sent a legal notice to the accused for payment of the cheque amount. The accused received the

notice on 03.04.2016 but he did not pay the cheque amount. After that, on 02.06.2016 he filed the complaint petition. He proved the cheque as Exhibit 1, dishonour slip as Exhibit 2, legal notice as Exhibit 3, postal receipt and AD as Exhibit 4 series. The defence declined to cross-examine P.W. 1.

No one appears on behalf of the convict-petitioner.

Learned Advocate Mr. Md. Abdullah Al Mamun appearing on behalf of the complainant-opposite party No. 2 submits that the accused issued a cheque on 30.11.2015 and the said cheque was presented on 27.03.2016 which was dishonoured on the same date and he sent a notice on 28.03.2016 to the accused. He received the notice on 03.04.2016 and after complying all the procedure under Section 138 of the Negotiable Instruments Act, 1881 filed the case on 02.06.2016 and the prosecution proved the charge against the accused beyond all reasonable doubt and the appellate Court below legally passed the impugned judgment and order.

I have considered the submission of the learned Advocate Mr. Md. Abdullah Al Mamun 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 accused was arrested by police and obtained bail on 05.12.2016 and thereafter he absconded and the trial was held in absentia and after passing the judgment and order by the trial Court, the accused filed the appeal and at the time of hearing the appeal the learned Advocate for the appellant remained absent.

On perusal of the records, it appears that the accused Md. Manju is the Proprietor of M/S Mavia Traders. He issued Cheque No. 0322966 dated 30.11.2015 drawn on his Account No. 21211010001918 maintained with Prime Bank Ltd, Mahadebpur Branch maintained in the name of M/S Mavia Traders. P.W. 1 proved the said cheque as Exhibit 1. The cheque was presented on 27.03.2016 which was

dishonoured with a remark 'insufficient funds' and the legal notice was sent on 28.03.2016. The accused received the notice on 03.04.2016 but he did not pay the cheque amount to the complainant and the complainant filed the case on 02.06.2016 following the procedures under Section 138 of the Negotiable Instruments Act, 1881 and the P.W. 1 proved the charge against the accused beyond all reasonable doubt.

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 convict-petitioner Md. Manju is found guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and he is sentenced to pay a fine of Tk. 1,50,000.

The complainant is entitled to get the fine amount Tk. 1,28,500. The convict-petitioner Md. Manju is directed to deposit the remaining fine amount within 30(thirty) days.

The trial Court is directed to deposit the remaining fine amount Tk. 21,500 in the public exchequer.

In view of the above evidence, findings, observation and proposition, the Rule is disposed of with modification of the sentence.

The trial Court is directed to allow the complainant to withdraw 50% of the cheque amount deposited by the convict-petitioner Md. Manju before filing the appeal.

The trial Court is directed to take steps following the law.

Send down the lower Court's records at once.