

Present
Mr. Justice Md. Khairul Alam
Criminal Appeal No. 3512 of 2024
Md. Abu Rashid

.....Convict-Appellant.

-Versus_
The State and another.

.....Respondents.

Mr. A.K.M Daudur Rahman Mina, Advocate

.....For the Convict-Appellant.

Mr. Ataur Rahman, Advocate

.....For the respondent No.2.

Heard on 09.12.2024 and
Judgment on 11.12.2024.

This criminal appeal is directed against the judgment and order of conviction and sentence dated 04.06.2018 passed by the learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka in Sessions Case No. 17689 of 2017 arising out of C.R. Case No. 779 of 2015 (Paltan) convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 (shortly, the NI Act) and sentencing him to suffer simple imprisonment for 04 (four) months and also to pay a fine of Taka 11,00,000/-.

The prosecution case, in short, is that the present respondent No. 2 as complainant filed C.R. Case No. 779 of 2015 (Paltan)

before the court of Chief Metropolitan Magistrate, Dhaka implicating the present appellant as an accused alleging, inter-alia, that to disburse the liability the accused issued a cheque bearing No.3482479 dated 22.1.2015 amounting to Tk. 11,00,000/- in favour of the complainant. The complainant placed the said cheque before the bank for encashment, but the cheque was dishonored on 09.06.2015 on the ground of Account closed/dormant/block. Hence, the complainant filed the case following all the statutory provisions.

Ultimately, the case was renumbered as Metro. Sessions Case No. 17689 of 2017 and was tried by the learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka who by the judgment and order of conviction and sentence dated 04.06.2018 convicted the appellant under section 138 of the NI Act and sentenced him as aforesaid.

Challenging the said judgment and order of conviction and sentence the appellant preferred this appeal.

Mr. A.K.M. Daudur Rahman Mina, the learned Advocate appearing on behalf of the petitioner at the outset of the hearing informs this Court that meanwhile the appellant amicably has settled

the dispute with the respondent No. 2 and accordingly, he prays for dispose of the criminal appeal on the terms of the compromise.

Mr. Ataur Rahman, the learned Advocate appearing on behalf of respondent No. 2 has approved the said submission.

In the case of Subash Chandra Sarker vs. The State and another reported in 26BLT(AD)28 a petition for leave to appeal was filed by a convict challenging his conviction and sentence passed under section 138 of the NI Act. In the said petition for leave to appeal a joint application was filed for recording and disposal of the case as per terms of the compromise setting aside the judgment and order of conviction and sentence. Our apex Court dispossessed of the said petition for leave to appeal in the following manner.

“A Joint Application has been filed for recording compromise and disposal of the case as per terms of the compromise setting aside the judgment and order of conviction and sentence passed against the petitioner. The complainant and the convict are present in the Court. We have perused the compromise petition. The section is not a

compoundable one. However, since the parties have settled matter amicably and the complainant has admitted before this Court that he received the half of the amount of the dishonoured cheque in the cash and the rest of the amount was deposited with the Sessions Court before filing the appeal before the High Court Division. We are inclined to reduce the sentence to the period already undergone and accordingly the sentence awarded against the petitioner is reduced to the period undergone. We also direct the Sessions Judge, Gazipur to allow the complainant to withdraw the money deposited by the convict without making any delay.

This petition is disposed of accordingly.”

Considering the submissions advanced by the learned Advocates of both sides and also considering the facts and circumstances of the case, I am inclined to reduce the sentence to the period already undergone in the light of the above view of our apex Court.

Accordingly, the appeal is dismissed with the modification of the sentence awarded against the appellant, by reducing the sentence awarded against him to the period already undergone.

The learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka is hereby directed to allow the convict-appellant to withdraw the money deposited by him without making any delay.

Communicate a copy of this judgment and order at once.