

In the Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)

Present

Mr. Justice Md. Khairul Alam

Criminal Appeal No. 6168 of 2024

Ferdous Miah.

.....Convict appellant.

-Versus_

The State and another.

.....Respondents.

Mr. Md. Mizanur Rahman Khan, Advocate

.....For the convict appellant.

Mr. M. Mohiuddin Yousuf, Advocate

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

**Heard on 28.11.2024 and
Judgment on 01.12.2024.**

Md. Khairul Alam, J.

This appeal is directed against the judgment and order of conviction and sentence dated 19.10.2015 passed by the learned Additional Metropolitan Sessions Judge, Khulna in Metropolitan Sessions Case No. 681 of 2014 arising out of C.R. Case No. 1032 of 2013 (Khulna) convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 (shortly, the NI Act) and sentencing him to suffer simple imprisonment for 1 (one) year and to pay a fine of Taka 5,00,000/-.

The prosecution case, in short, is that the present respondent No. 2 as complainant filed C.R. Case No. 1032 of 2013 (Khulna) before the court of Chief Metropolitan Magistrate, Cognizance Court, 'Ka' Anchol, Khulna implicating the present convict-appellant alleging, inter-alia, that to disburse the liability the appellant issued a cheque bearing No. $\frac{CD}{A}$ 1902753 dated 21.10.2013 amounting to Tk. 5,00,000/- in favour of the complainant. The complainant placed the said cheque before the bank for encashment, but the cheque was dishonored on 21.10.2013 on the ground of insufficiency of funds. Hence, the complainant filed the case following all the statutory provisions.

Ultimately, the case was renumbered as Metropolitan Sessions Case No. 681 of 2014 and was tried by the learned Additional Metropolitan Sessions Judge, Khulna who by the judgment and order of conviction and sentence dated 19.10.2015 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. Md. Mizanur Rahman, the learned Advocate appearing on behalf of the appellant at the outset of the hearing informs this Court that meanwhile the appellat amicably settled the dispute by paying the amount covering the amount of the cheque to the complainant and accordingly, he prays for setting aside the impugned judgment and order of conviction and sentence as per terms of the compromise.

Mr. M. Mohiuddin Yousuf, 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 the appellant to the period undergone.

The learned Additional Metropolitan Sessions Judge, Khulna is hereby directed to allow the complainant to withdraw the money deposited by the convict without making any delay.

Send down the lower court's record and communicate this order at once.