

**IN THE SUPREME COURT OF
BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)**

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 8938 of 2024

Arifur Rahman Arif @ Ruhul Kuddus
..... Appellant

-Vs-

The State and another

....Respondents

Mr. Md. Shariful Islam, Advocate

....For the Appellant.

Mr. Yusuf Ali, Advocate

.....For the respondent No.2

Mr. Sultan Mahmood Banna, AAG with

Ms. Sharmin Hamid, AAG

..... For the State

Heard on 13.03.2025

Judgment delivered on: 15.05.2025

This appeal under section 410 of the Code of Criminal Procedure, 1898 is directed challenging the legality and propriety of the impugned judgment and order dated 01.07.2019 passed by Additional Metropolitan Sessions Judge, Court No. 1, Dhaka in Metropolitan Sessions Case No. 18216 of 2018 arising out of C.R. No. 681 of 2018 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple imprisonment for 3(three) months and fine of Tk. 10,00,000.

The prosecution case, in short, is that the accused Arifur Rahman Arif @ Ruhul Kuddus issued cheque No. C0180190 on 01.08.2015 drawn on his account No. 003-0210014864 drawn maintained with NCC Bank Ltd. Agrabad Branch, Chattogram for payment of Tk. 10,00,000 in favour of the complainant Monwar Hossain Majumder. The complainant presented said cheque on 27.01.2016 for encashment but the cheque was dishonoured on the same date with a remark “insufficient funds”. He sent a legal notice on 25.02.2016 to the accused by registered post for payment of the cheque amount within 30 days from the date of receipt of the notice but he did not pay the cheque amount. Consequently, the complainant filed the case on 24.04.2016.

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. Thereafter the learned Magistrate sent the case to the Metropolitan Sessions Judge, Dhaka. During trial, charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881 and at the time of framing charge, the accused was absconding. During the trial, the prosecution examined 01(one) witness to prove the charge against the accused. After examination of prosecution witness, the accused was also absconding. After concluding the trial, the trial court by impugned judgment and order convicted the accused and sentenced him as stated above against which the accused filed the instant appeal.

P.W. 1 Manowar Hossain Majumder stated that the accused issued a cheque on 01.08.2015 for payment of Tk. 10,00,000 in favour of the complainant. He presented said cheque on 27.01.2016 for encashment but the cheque was dishonoured on the same date with a remark “insufficient funds”. He sent a legal notice on 25.02.2016 to the accused by registered post for payment of the cheque amount but the accused did not pay the cheque amount. He proved the complaint petition as exhibit-1 and his signature on the complaint petition as exhibits-1/1, disputed cheque as exhibit-2, dishonour slip as exhibit-3, legal notice as exhibit-4 and postal receipt as exhibit-5. After granting bail the accused absconded.

The learned Advocate Mr. Md. Shariful Islam appearing on behalf of the accused submits that the accused issued the cheque on 01.08.2015 in favour of the complainant for payment of Tk. 10,00,000 but after dishonour of cheque and service of notice, the accused could not pay the cheque amount due to financial hardship. He further submits that the accused and the complainant settled the dispute out of court and paid 50% of the cheque amount to the complainant in cash. He prayed for setting aside the impugned judgment and order considering the compromise between the parties.

The learned Advocate Mr. Yusuf Ali appearing on behalf of the complainant submits that the accused issued the cheque for payment of Tk. 10,00,000. The complainant presented the said cheque for encashment but the same was dishonoured with a remark “insufficient funds”. After complying with all the procedures under section 138 of the N.I. Act, 1881 filed the complaint petition.

However, he submits that both the accused and the complainant settled the dispute between them out of court and the complainant received 50% of the cheque amount in cash and he is willing to withdraw 50% of the remaining cheque amount deposited by the accused in the trial court. He also prayed for acceptance of the compromise made between the accused and the complainant.

I have considered the submission of the learned Advocates of both parties, perused the evidence, impugned judgment and order passed by the trial court and the records.

On perusal of the records, it appears that a joint application for compromise sworn on 27.02.2025 has been filed by P.W.1. In the application it has been stated that the accused paid 50% of the cheque amount to the complainant in cash and he also received the said amount. The Negotiable Instruments Act, 1881 is a special law and the offence under section 138 of the said Act is not compoundable. Therefore, the appeal cannot be disposed of considering the compromise between the parties. After filing a case under section 138 of the said Act the court shall dispose of the case considering the merit of the case. There is no scope to accept the compromise made between the parties.

By filing a joint application, the accused stated that he settled the dispute with the complainant out of court. During the trial, the accused was absconding and did not cross-examine P.W. 1. Therefore, the evidence of P.W.1 that the accused issued the cheque in favour of the complainant (exhibit-2) for consideration remains uncontroverted by the defence.

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) is rebuttable. The accused admitted that he issued the cheque in favour of the complainant. The cheque was dishonoured for insufficient funds and after service of notice upon the accused, he could not pay the cheque amount due to hardship. Thereby he committed offence under Section 138 of the Negotiable Instruments Act, 1881 and the complainant filed the case following the provision made in clause a to c of the proviso to Section 138 of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the convict petitioner beyond all reasonable doubt and the Courts below on proper assessment and evaluation of 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 Arifur Rahman Arif alias Ruhul Kuddus is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and he is sentenced thereunder to pay a fine of Tk. 10,00,000.

The complainant is entitled to get the fine amount.

The complainant admitted that he received 50% of the cheque amount from the accused Arifur Rahman Arif alias Ruhul Kuddus in cash. He is entitled to withdraw remaining 50% of the cheque amount deposited by the accused before filing the appeal.

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

With the above findings, observation and the direction, the appeal is disposed of with modification of the sentence.

However there will be no order as to costs.

Send down the lower Court's records at once.

