

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 1822 of 2011

Solaiman Khan Shujon
.....Convict-appellant.

-Versus-
The State and another.
.....Respondents.

Mr. Md. Aminul Islam, Advocate
.....For the appellant.

None appears
...For the complainant-respondent No.2

Ms. Shahida Khatoon, D.A.G with
Ms. Sabina Perven, A.A.G with
Ms. Kohenoor Akter, A.A.G
.... For the Sate.

Heard on 29.02.2024 and
Judgment on 04.03.2024

Sheikh Abdul Awal, J:

This Appeal at the instance of convict appellant, Solaiman Khan Shujon is directed against the judgment and order of conviction and sentence dated 13.03.2011 passed by the learned Sessions Judge, Jhalakathi in Sessions Case No. 30 of 2010 arising out of C.R. Case No. 78 of 2009 (Katha) convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for a

period of 1 (one) year and to pay a fine of Tk. 1,02,124/- (one Lakh two thousand one hundred twenty four).

Brief fact is that one, Md. Ruhul Amin, associate Manager (Recovery and Legal Administration), Brac Bank Limited, Amua Bandar, Kathalia Unit, Police Station-Kathalia, District-Jhalakathi on 23.11.2009 as complainant filed C.R. Case No. 78 of 2009 (Katha) before the learned Court of Senior Judicial Magistrate, Jhalakathi alleging, inter-alia, that the accused-appellant, Solaiman Khan Sujon being proprietor of M/s. Manir Medical Hall took money as loan from the complainant Bank to flourish his business. But the accused-appellant could not reimburse the loan in time according to the terms and conditions of the loan sanction letter and therefore, the outstanding dues stood at Tk. 1,02,124 (Taka one lac two thousand one hundred twenty four) as on 02.08.2009. Thereafter the complainant gave repeated reminders to the accused-appellant to adjust the loan. In this back ground the convict-appellant to pay the loan money issued a cheque of Tk 1,02,124/- (one Lakh two thousand one hundred twenty four) in favour of the complainant-bank and thereafter, the complainant-bank presented the said cheque before the Bank for encashment, which was returned unpaid for insufficient of fund. Thereafter, the

complainant bank sent a legal notice through his Advocate to the convict-appellant asking him to pay the cheque's amount within 30 days but the convict-appellant did not pay any heed to it and hence the complainant filed the case. On receipt of the petitioner of complaint the Magistrate examined the complainant under section 200 Cr.P.C. and took cognizance against the appellant under section 138 of the Act and issued summon against accused appellant fixing next date.

In this backdrop the accused-appellant voluntarily surrendered before the learned Court of Senior Judicial Magistrate, Jhalakathi and obtained bail. Thereafter the case was transferred to the Court of learned Sessions Judge, Jhalakathi wherein the case was numbered as Sessions Case No. 30 of 2010 and the accused-appellant again voluntarily surrendered before the trial Court. The said learned Sessions Judge in the course of trial framed charge against the accused-appellant in his presence under section 138 of the Negotiable Instrument Act, 1881 and the next date of the case was fixed on 10.06.201 and summon was issued upon the local witnesses. The trial was held in-absentia against the appellant since after being enlarged on bail the accused appellant became absconding. During trial the

prosecution examined the complainant (P.W. 1) while defence examined none.

After completion of trial, the learned Sessions Judge, Jhalakathi by the impugned judgment dated 13.03.2011 convicted the accused-appellant under section 138 of the Negotiable Instrument Act, 1881 and sentenced him there under to suffer rigorous imprisonment for 1(one) year and to pay a fine of Tk. 1,02,124 (one Lac two thousand one hundred twenty four).

Aggrieved accused appellant then preferred this criminal appeal.

Mr. Md. Aminul Islam, the learned Advocate appearing for the convict-appellant at the very outset takes me through the supplementary affidavit dated 11.02.2024 and thereafter, submits that during pendency of the trial the convict-appellant deposited an amount of Taka 50,000/- to the complainant bank and after delivery of the judgment of the case he deposited rest of the impugned cheque's money amounting to Taka 52,124/- through treasury challan dated 20.03.2011 and in this way the convict-appellant paid entire impugned cheque's amount of Taka (50,000/-+52,124/-) = 1,02,124/- (Annexure- F-1, H, H-1 and H-2). He further submits

that since the convict-appellant has already paid the entire cheque's amount the convict-appellant is entitled to get an order of acquittal.

Ms. Shahida Khatoon, the learned Deputy Attorney General, on the other hand, in the facts and circumstances of the case could not oppose the prayer of the learned Advocate for the convict-appellant.

Having heard the learned Advocate for the appellant and the learned Deputy Attorney General and gone through the materials on record including the supplementary affidavit dated 11.02.2024 with annexures as filed thereto.

On scrutiny of the record, it appears that admittedly, the convict-appellant to pay the loan money issued a cheque of Tk 1,02,124/- (one Lakh two thousand one hundred twenty four) in favour of the complainant-bank and thereafter, the complainant-bank presented the said cheque before the Bank for encashment, which was returned unpaid for insufficient of fund. Thereafter, the complainant sent a legal notice through his Advocate to the convict-appellant asking him to pay the cheque's amount within 30 days but the convict-appellant did not pay any heed to it and thereafter, the complainant filed the case.

At the time of trial the complainant himself was examined as PW-1 who in his evidence categorically stated the complaint case.

To constitute an offence under Section 138 of the NI Act, the following elements need to be fulfilled:

1. A cheque should have been issued by the payer for the discharge of a debt or other liability.

2. The cheque should have been presented or deposited by the payee within a period of six months from the date of drawing of the cheque or within the period of validity of the cheque, whichever is earlier.

3. The payee should have issued a notice in writing to the payer within 30 days of receipt of information regarding the return of the cheque as unpaid from the bank.

4. The payer/ drawer of the cheque should have paid the cheque amount within 30 days of receipt of the said notice from the payee.

5. If the payer is failed to pay in time the cheque amount, the payee should have filed a complaint within one month.

On an overall consideration of the facts, circumstances and the materials on record, it can be

easily suggested that all the above quoted key elements are exist in the present case.

On an analyses of impugned judgment and order of conviction and sentence dated 13.03.2011 passed by the learned Sessions Judge, Jhalakathi in Sessions Case No. 30 of 2010, I find no flaw in the reasonings of the trial Court or any ground to assail the same inasmuch as all the key elements of Section 138 of Negotiable Instrument Act are exist in the case.

However, it appears that the convict-appellant during pendency of the trial deposited an amount of Taka 50,000/- to the complainant bank and after delivery of the judgment of the case he has deposited rest of the impugned cheque's amount of Taka 52,124/- through treasury challan dated 20.03.2011 in this way the convict-appellant having been already deposited the entire cheque's amount in favour of the complainant-bank.

On a quarry from the court, Ms. Shahida Khatoon, the learned Deputy Attorney General, submits that as per direction of the court she gave a telephone call to the complainant bank to know about the matter in which the complainant bank informed her that bank received entire

cheque's money and now bank has no claim against the accused appellant.

In the Supreme Court of India, it has been consistently decided that the offence under Section 138 of the Negotiable Instruments Act being compoundable.

Having regard to the submission made by the learned Advocate for the convict-appellant and the learned Deputy Attorney General, I am of the view that there is no reason not to accept the submission of the learned Advocate for the convict-appellant. Since N.I. Act proceeding arises out of monetary transaction and the proceeding is a quasi civil and quasi criminal in nature, maximum sentence under the law is one year, I am of the view that the accused-appellant under Negotiable Instruments Act proceeding to pay the entire cheque's amount has been deposited an amount of Taka 50,000/- to the complainant bank and after delivery of the judgment of the case he has deposited rest of the impugned cheque's amount of Taka 52,124/- through treasury challan dated 20.03.2011 and the same should be accepted by the Court at any stage of the proceeding even at the appellate or revisional stage.

Considering all the facts and circumstances of the case as revealed from the materials on record, I am of the view that the convict-appellant may be acquitted from

the charge under section 138 of the Negotiable Instruments Act proceeding.

Accordingly, the appeal is allowed. The impugned judgment and order of conviction and sentence passed by the learned trial Court below is set-aside and the appellant is acquitted of the charge levelled against him under Section 138 of the Act. Convict appellant, Solaiman Khan Shujan is discharged from his bail bond and the complainant-Respondent No.2 is permitted to withdraw the deposited money amount deposited in the Trial Court by the convict-appellant.

The appeal stands disposed of in the above terms.

Send down the lower Court records at once.