

Present

Mr. Justice Sheikh Abdul Awal

Criminal Appeal No. 1222 of 2012

Nurul Islam

.....Accused-appellant.

-Versus-

Monjur Alam and another

.....Respondents.

Mr. M. L. Das, Advocate

.....For the Accused -appellant.

Mr. Sayed Mehfuz Islam, Advocate

...For the respondent No. 1

Ms. Shahida Khatoon, D.A.G. with

Ms. Sabina Perven, A.A.G with,

Ms. Koheenoor Akter, A.A.G.

..... For the respondent No.2

Judgment on 12.05.2024.

Sheikh Abdul Awal, J:

This Appeal at the instance of convict appellant, Nurul Islam is directed against the judgment and order of conviction and sentence dated 29.09.2011 passed by the learned Additional Sessions Judge, 5th Court, Chittagong in Sessions Case No. 625 of 2011 arising out of C.R. Case No. 13 of 2011(Boalkhali) convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 (as amended in 2006) and sentencing him thereunder to suffer simple

imprisonment for a period of 1 (one) year and to pay a fine of Tk. 600000/-(six Lac).

The gist of the case is that one, Monjur Alam as complainant filed C.R. Case No. 13 of 2011(Boalkhali) in the Court of the learned Judicial Magistrate, Chittagong against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 stating, inter-alia, that the complainant respondent No. 1 out of previous good relationship paid Tk. 2,00,000/- (two Lac) as loan and thereafter, the accused to pay the loan amount issued a cheque being No. 4273256 amounting to Tk. 2,00,000/-(two Lac) of A.B. Bank in favour of the complainant respondent No.1 and thereafter, the complainant as per request of the accused presented the said cheque before bank on 25.08.2010 for encashment but the said cheque was returned unpaid for insufficient of fund and thereafter, the complainant sent a legal notice through his Advocate to the accused appellant on 29.12.2010 asking him to pay the cheque's amount within 30 days but the accused-appellant did not pay any heed to it and hence , the case.

On receipt of the petition of complaint, the learned Judicial Magistrate, Chittagong examined the complainant under Section 200 of the Code of Criminal Procedure and took cognizance against the accused-appellant under section 138 of the Negotiable Instruments Act, 1881 and also issued summon against the accused appellant fixing next date on

14.03.2011. Thereafter the accused appellant voluntarily surrendered before the Court and obtained bail.

In usual course the case record was sent to the Court of the learned Sessions Judge, Chittagong for trial, wherein the case was registered as Sessions Case No. 625 of 2011 which was subsequently, transmitted to the Court of the learned Additional Session Judge, 5th Court, Chittagong for disposal. The trial was held in absentia against the accused appellant as the accused appellant was absconding.

At the trial the complainant himself was examined as PW-1 and also exhibited some documents to prove its case, while the defence examined none.

On conclusion of trial, the learned Additional Sessions Judge 5th Court, Chittagong by the impugned judgment and order dated 29.9.2011 held the accused guilty under Section 138 of the Negotiable Instrument Act, 1881 (as amended in 2006) and sentenced him thereunder to suffer simple imprisonment for a period of 1 (one) year and to pay a fine of Tk. 6,00,000/-(six Lac).

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 29.9.2011, the convict-appellant preferred this criminal appeal.

Mr. Mr. M. L. Das, the learned Advocate appearing for the petitioner submits that the learned trial Judge without applying his judicial mind to the facts and circumstances of

the case most illegally passed the impugned judgment and order of conviction and sentence, which is liable to be set-aside.

Mr. Sayed Mehfuz Islam, the learned Advocate, on the other hand, supports the impugned judgment which was according to him just, correct and proper.

Having heard the learned Advocates for both the sides and perused the memo of Appeal, deposition of witnesses and other materials on record including the impugned judgment and order, the only question that calls for consideration in this appeal is whether the trial Court committed any error in finding the accused- appellant guilty of the offence under Section 138 of the Negotiable Instrument Act, 1881(as amended in 2006).

On scrutiny of the record, it appears that one, Monjur Alam as complainant filed a petition of complaint being C.R. Case No. 13 of 2011(Boalkhali) in the Court of the learned Judicial Magistrate, Chittagong against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 stating, inter-alia, that the complainant respondent No. 1 out of previous good relationship paid Tk. 2,00,000/- (two Lac) as loan and thereafter, the accused to pay the loan amount issued a cheque being No. 4273256 amounting to Tk. 2,00,000/-(two Lac) of A.B. Bank in favour of the complainant respondent No.1 and thereafter, the complainant as per request of the accused presented the said

cheque before bank on 25.08.2010 for encashment but the said cheque was returned unpaid for insufficient of fund and thereafter, the complainant sent a legal notice through his Advocate to the accused appellant on 29.12.2010 asking him to pay the cheque's amount within 30 days but the accused-appellant did not pay any heed to it.

On perusal of record, it is found that the complainant-after exhausting all the legal formalities filed C.R. Case No. 13 of 2011(Boalkhali) under section 138 of the Negotiable Instruments Act, 1881 against the convict appellant and during the trial the complainant himself was examined as PW-1 and exhibited some documents to prove its case. It further appears that PW-1 in his evidence deposed the case in details.

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 having 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 29.09.2011 passed by the learned Additional Sessions Judge, 5th Court, Chittagong in Sessions Case No. 625 of 2011, 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 Instruments Act are exist in the case.

The learned Judge of the trial Court below appears to have considered all the material aspects of the case and justly convicted the accused appellant under Section 138 of the Negotiable Instruments Act, 1881 (as amended in 2006) and sentenced him thereunder to simple imprisonment for a period of 1 (one) year and to pay a fine of Tk. 600000/- (six Lac). No interference is therefore called for.

In the result, the appeal is dismissed. The impugned judgment and order of conviction and sentence dated 29.09.2011 passed by the learned Additional Sessions Judge, 5th Court, Chittagong in Sessions Case No. 625 of 2011 arising out of C.R. Case No. 13 of 2011(Boalkhali) against the convict-appellant is hereby affirmed.

Since the appeal is dismissed the convict appellant, Nurul Islam is directed to surrender his bail bond within 3 (three) months from today to suffer his sentence, failing which the Trial Court concerned shall take necessary steps to secure arrest against him.

The complainant respondent No. 1 is permitted to withdraw half of the cheque's amount as deposited in the Trial Court concerned by the convict-appellant for the purpose of preferring this Criminal Appeal.

Send down the lower Court records at once.