

**Present**

**Mr. Justice Sheikh Abdul Awal**

**Criminal Appeal No. 263 of 2014**

Md. Alal Mia

.....Convict-appellant.

-Versus-

The State and another

.....Respondents.

No one appears

.....For the convict-appellant.

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

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

Ms. Koheenoor Akter, A.A.G.

..... For the respondent No.1

No one appears

...For the complainant-respondent No. 2

**Judgment on 16.05.2024.**

**Sheikh Abdul Awal, J:**

This criminal appeal at the instance of convict appellant, Md. Alal Mia is directed against the impugned judgment and order of conviction and Sentence dated 30.04.2013 passed by the learned Sessions Judge, Kishoreganj in Session Case No. 303 of 2010 arising out of C.R. Case No. 132(1)10 convicting the accused appellant under section 138 of the Negotiable Instruments Act and sentencing him thereunder to pay a fine of Tk. 4,00,000/- (four Lacs) in default to suffer simple imprisonment for a period of 01 (one) year.

The gist of the case is that one, Md. Mostafizur Rahman, Associate Manager (recovery and legal admin), representative of BRAC Bank Limited, Kishoreganj Zonal Office as complainant filed a petition of complaint being C.R. Case No. 132(1)10 before the learned Judicial Magistrate, Cognizance Court No.1, Kishoregonj against the convict-appellant, Md. Alal Miah under section 138 of the Negotiable Instruments Act,1881 stating, inter-alia, that due to business purpose the accused appellant took loan amounting to Tk. 4,50,000/- (four Lac and fifty thousand) from the BRAC Bank Limited and thereafter he deposited some loan with interest in bank and thereafter the accused stopped to pay any loan amount with interest and thereafter, on 15.11.2009 to pay the loan amount the accused issued a cheque being No. 7544100 amounting to Tk. 3,15,711/- (three Lac fifteen thousand seven hundred and eleven) of Pubali Bank limited in favour of BRAC Bank and the cheque was deposited on 10.03.2010 in bank as per request of the accused but the said cheque was dishonoured due to insufficient of fund. Thereafter, the bank sent a legal notice through its lawyer to the accused appellant on 24.03.2010 asking him to pay the cheque's amount within 30 days and the accused appellant did not pay any heed to it and hence, the case.

On receipt of the petition of complaint, the learned Senior Judicial Magistrate, Cognizance Court No.1, Kishoregonj 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 Instrument Act, 1881 and issued summon against the accused-appellant by his order dated 06.05.2010 fixing next date on 10.06.2010 Thereafter, the accused-appellant voluntarily surrendered on 10.06.2010 before the Court concerned and obtained bail.

In usual course the case record was sent to the Court of learned Sessions Judge, Kishoreganj, wherein the case was registered as Session Case No. 303 of 2010 in which the accused-appellant was put on trial to answer a charge under Section 138 of the Negotiable Instrument Act, 1881 to which the accused-appellant pleaded not guilty and prayed to be tried stating that he has been falsely implicated in the case.

At the trial, the complainant examined in all 2 witnesses to prove the case, while the defence examined none.

On conclusion of trial, the learned Sessions Judge, Kishoreganj by his judgment and order dated 30.04.2013 found the accused appellant guilty under Section 138 of the Negotiable Instrument Act, 1881 and sentenced him thereunder to pay a fine of Tk. 4,00,000/-(four Lacs) in default to suffer simple imprisonment for a period of 01 (one) year.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 30.04.2013, the convict-appellant preferred this criminal appeal.

No one found present to press the appeal on repeated calls inspite of fact that this old criminal appeal has been appearing in the list for hearing with the name of the learned Advocate for a number of days.

In view of the fact that this petty old criminal appeal arising out of Negotiable Instruments Act, I am inclined to dispose of it on merit.

On scrutiny of the record, it appears that Md. Mostafizur Rahman, Associate Manager (recovery and legal admin), representative of BRAC Bank Limited, Kishoreganj Zonal Office as complainant filed a petition of complaint being C.R. Case No. 132(1)10 before the learned Judicial Magistrate, Cognizance Court No.1, Kishoregonj against the convict-appellant, Md. Alal Miah under section 138 of the Negotiable Instruments Act,1881 stating, inter-alia, that due to business purpose the accused appellant took loan amounting to Tk. 4,50,000/- ( four lac and fifty thousand) from the BRAC Bank and thereafter he deposited some loan with interest in bank and thereafter, the accused appellant stopped to pay any loan amount with interest in bank and thereafter, on 15.11.2009 the accused to pay the loan amount issued a cheque of Tk. 3,15,711/- (three Lac fifteen thousand seven hundred and eleven) of Pubali Bank Ltd. in

favour of BRAC Bank Ltd. and the cheque was deposited on 10.03.2010 in bank as per request of the accused but the said cheque was dishonoured due to insufficient of fund. Thereafter, the bank sent a legal notice through its lawyer to the accused appellant on 24.03.2010 asking him to pay the cheque's amount within 30 days but the accused appellant did not pay any heed to it. It further appears that on receipt of the petition of complaint, the learned Senior Judicial Magistrate, Cognizance Court No.1, Kishoregonj examined the complainant under Section 200 of the Code of the Criminal Procedure and also took cognizance by his order dated 06.05.2010 against the accused appellant. It further appears that at the time of trial the complainant party examined in all 2 witnesses out of which PW-1, Mostafizure Rahman as employee of BRAC Bank, Kishoreganj (complainant) stated in his deposition that bank paid Tk. 4,50,000/-(four Lac and fifty thousand) as loan to accused but he did not repay the same with interest and thereafter in order to pay the loan amount the accused issued a cheque of Tk. 3,15,711/- but the said cheque was dishonoured and thereafter the bank sent a legal notice through its lawyer to the accused appellant asking to pay the cheque's amount but the accused appellant did not pay any heed to it. PW-2, Md. Nurul Islam, stated in his deposition that he knew the fact that accused took loan from the bank and thereafter, he issued a cheque in favour of the bank which was dishonoured.

On perusal of record, it is found that the complainant- after exhausting all the legal formalities filed C.R. Case No. 132(1)10 under section 138 of the Negotiable Instruments Act 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 30.04.2013 passed by the learned Sessions Judge, Kishoreganj in Sessions Case No. 303 of 2010, I find no flaw in the reasonings of the trial Court or any ground to assail the same. No interference is therefore called for.

In the result, the appeal is dismissed. The impugned judgment and order of conviction and Sentence dated 30.04.2013 passed by the learned Sessions Judge, Kishoreganj in Session Case No. 303 of 2010 arising out of C.R. Case No. 132(1)10 convicting the accused appellant under section 138 of the Negotiable Instruments Act and sentencing him thereunder to pay a fine of Tk. 4,00,000/- (four Lac) in default to suffer simple imprisonment for a period of 01 (one) year is hereby affirmed.

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

The complainant bank 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.