

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

Present:

**Mr. Justice Md. Riaz Uddin Khan**

**Criminal Appeal No. 3634 of 2014**

In the matter of:

A petition of appeal under section 410 of the Code of  
Criminal Procedure

-And-

In the matter of:

**Md. Humayon Islam**

...Convict-Appellant

-Versus-

The State and another

...Respondents

None

...For the parties

**Heard and Judgment on: 16.05.2024**

**Md. Riaz Uddin Khan, J:**

This appeal is directed against the judgment and order dated 02.03.2014 passed by the learned Sessions Judge, Sirajgonj, in Sessions Case No. 557 of 2013 arising out of C.R. Case No. 158 of 2013 (Sadar) convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer rigorous imprisonment for 01(one) year and to pay a fine of Tk. 233,772/-(Two lac thirty three thousand and seven hundred seventy two) in default to suffer simple imprisonment for 3(three) months more.

The brief facts, relevant for the purpose of disposal of this appeal, are that the accused Md.

Humayon Islam took loan of Tk, 200,000/- from the complainant BRAC BDP on 11.01.2012 and for repayment on 20.03.2013 he issued a cheque of Tk. 77924/- only being chequ No. ৭৭/১০ ৮৩৬৩০১৮ of his account maintained with the Sonali Bank Ltd. Sirajgonj Branch in favour of the complainant. The complainant presented the aforesaid cheque for encashment before Rajshahi Krishi Unnayan Bank, Khokshabari Branch on 27.03.2013 but the cheque was dishonoured by the Bank concerned on the ground for insufficient fund on the same day. Thereafter, the complainant sent a legal notice on 31.03.2013 to the accused asking him to pay the cheque amount within 30 days but the accused did not pay the same. So, the complainant filed this case under section 138 of the Negotiable Instruments Act for proper adjudication.

In course of time the convict-appellant was enlarged on bail by the court below and the case was transmitted to the Court of Sessions on due completion of legal formalities and the Sessions Judge framed charge under section 138 of the Negotiable Instruments Act against the accused in absentia and after conclusion of trial by his impugned judgment and order dated 02.03.2014 convicted and sentenced him as mentioned at the very outset.

Being aggrieved by and dissatisfied with the aforesaid judgment and order of conviction and

sentence passed by the learned Sessions Judge, the convict-appellant filed the instant appeal under section 410 of the Code of Criminal Procedure before this Court and obtained ad-interim bail on 18.06.2014.

No one appears for the parties.

It appears from record that the learned Sessions Judge examined the sole prosecution witness on 02.03.2014 and on the same date he passed the impugned judgment and order of conviction without fixing any date for argument or judgment. However, the judgment and order was passed in absence of the convict-appellant. It transpires from the order sheet that the appellant by depositing 50% of the cheque amount on 02.04.2014 voluntarily surrendered before the trial court and obtained bail.

The sole prosecution witness Md. Abu Bakkar Siddique deposed that accused Humayon Islam on 20.03.2013 issued a cheque of tk-77924/- which was dishonoured by the bank. The cheque was marked as exhibit-1 and dishonor slip as exhibit-2. He served legal notice upon the accused through registered post which is marked as exhibit-3 and the postal receipt as exhibit-4. Then he filed the petition of complaint which is marked as exhibit-5 and his signature on it as exhibit-5/1. He was not cross-examined as the accused was not present on the dock.

I have examined the lower court records including the petition of complaint, deposition and the exhibits. There is no defence case as the convict was all through absent in the trial court. In other words, the convict appellant did not deny the transaction and issuance of such cheque and of its dishonor for insufficient fund and nonpayment of the cheque amount. In the petition of appeal the learned advocate taken a ground that procedure under section 138(C) of the Negotiable Instruments Act was not followed. There is no such section in the Negotiable Instruments Act, 1881. However, according to proviso (c) of section 138(1) of the Negotiable Instruments Act the offence is commenced if the drawer of the cheque fails to make payment within 30 days of the receipt of the notice of payment. I find in the present case this condition was fulfilled. According to sub-section (1A) of section 138 of the Act the notice demanding payment should be served (a) by delivering to the person on whom it is to be served; or (b) by sending it by registered post with acknowledgement due to that person at his usual or last known place of abode or business in Bangladesh; or (c) by publication in a daily Bangla national newspaper having wide circulation. I find this condition was also fulfilled in the present case as the notice was

given in accordance with the provision of (b) mentioned above. So, I find no procedural mistake in the case. The prosecution has proved the case beyond all reasonable doubt. Thus the appellant was rightly convicted under section 138 of the Negotiable Instruments Act, 1881 by the trial court.

However, the sentence awarded against the convict-appellant is too harsh in the given facts and circumstances of the case. The cheque amount was of Tk-77924/- only. The trial court sentenced him to suffer 1 year rigorous imprisonment which the law does not permit. The law permits imprisonment for a term which may extent to 1 (one) year and not rigorous imprisonment. The trial court also asked to pay a fine of Tk-233772/-, thrice the amount of cheque, the highest fine provided in the section. I find no reason in awarding such severe sentence by the trial court for which I am inclined to interfere with the sentence awarded against the convict-appellant. In the given facts and circumstances, my considered view, justice would be best served if the sentence is reduced to 1 (one) month simple imprisonment with a fine of Tk-77924/-, the amount of the cheque. The appellant has already paid 50% of the said cheque amount and thus he has to pay the rest 50%.

In the result the appeal is **allowed in part.**

The judgment and order of conviction passed by the learned Sessions Judge, Sirajgonj convicting the accused-appellant under section 138 of the Negotiable Instruments Act, 1881 is maintained, but the **sentence is modified and reduced** from rigorous imprisonment for 1 (one) year to **simple imprisonment for 1(one) month with a fine of TK-77924/- only.**

The convict-appellant is on bail hence directed to surrender before the trial court within 2 (two) months from date of receipt of the notice issued by the trial court. The trial court is directed to notify the convict-appellant accordingly within 30 days from receipt of this judgment and order.

Send down the lower court's record along with a copy of this judgment at once.