

Present

Mr. Justice Sheikh Abdul Awal

Criminal Appeal No. 6846 of 2014

Md. Sumon Ahammed

.....Convict-appellant.

-Versus-

The State and another

.....Respondents.

None appears

.....For the convict-appellant.

None appears

.....For the Respondent No. 2.

Ms. Shahida Khatoon, D.A.G with
Ms. Sabina Perven, A.A.G with,
Ms. Koheenoor Akter, A.A.G.

..... For the State.

Heard on 09.06.2024 and

Judgment on 10.06.2024

Sheikh Abdul Awal, J:

This Appeal at the instance of convict appellant, Md. Sumon Ahammed is directed against the judgment and order of conviction and sentence dated 10.08.2014 passed by the learned Sessions Judge, Sirajgonj in Sessions Case No. 474 of 2014 arising out of C.R. Case No. 274 of 2012 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and

sentencing her thereunder to suffer rigorous imprisonment for a period of 1 (one) year and to pay a fine of Tk. 3,53,661/- (Three lakhs fifty three thousand six hundred sixty one) in default to suffer simple imprisonment for a period of 3 (three) months more.

The gist of the case is that one, Md. Shahanur Alam , 2nd Officer, The Dhaka Mercantile Co-operative Bank Ltd., Sirajgonj Branch, Sirajgonj as complainant filed a petition of complaint being C.R Case No. 274 of 2012 in the Court of the learned Judicial Magistrate, Cognizance Court No.1, “Ka” Anchol, Sirajgonj against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 stating, inter-alia, that the accused-appellant took loan amounting to Taka 1,00,000/- on 12.04.2009 from the complainant-co-operative bank for his business. Thereafter, in order to pay the loan money the convict-appellant on 17.06.2012 issued a cheque of Tk. 1,17,887/- (One lakh seventeen thousand eight hundred eighty seven) of BASIC Bank Ltd., Sirajgonj Branch, Sirajgonj in favour of complainant-bank and on 17.06.2012 the complainant presented the said cheque before the bank for encashment, which was returned unpaid for insufficient of fund and thereafter, the complainant sent a legal notice through its Advocate to the accused appellant on

12.07.2012 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, cognizance Court 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 issued summon against the accused-appellant fixing next date on 02.12.2012.

Thereafter, in usual course the case record was sent to the Court of the learned Sessions Judge, Sirajgonj wherein the case was registered as Sessions Case No. 474 of 2014 in which the accused-appellant was put on trial to answer a charge under section 138 of the Negotiable Instruments Act, 1881.

At the trial the complainant himself was examined as PW-1 and also exhibited some documents to prove its case. No one cross-examined the witness as the appellant was absconding.

On conclusion of trial, the learned Sessions Judge, Sirajgonj by the impugned judgment and order dated 10.08.2014 convicted the accused-appellant under Section 138 of the Negotiable Instrument Act, 1881 and

sentenced him thereunder to suffer rigorous imprisonment for a period of 1 (one) year and to pay a fine of Tk. 3,53,661/- (Three lakhs fifty three thousand six hundred sixty one) in default to suffer simple imprisonment for a period of 3 (three) months more.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 10.08.2014, the convict-appellant preferred this criminal appeal.

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

In view of the fact that this is a petty old case arising out of Negotiable Instruments Act, 1881, I am inclined to dispose of it on merit on the basis of the evidence and materials on record.

On scrutiny of the record, it appears that the complainant filed the petition of complaint being C.R Case No. 274 of 2012 in the Court of the learned Judicial Magistrate, cognizance Court No.1, "Ka" anchol, Sirajgonj against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 and during trial

the complainant himself was examined as PW-1 who in his deposition stated that the accused issued a cheque of Tk. 1,17,887/- which was dishonoured and thereafter, he sent a legal notice through his Advocate but the accused did not come forward to pay the cheque's amount. This witness exhibited the cheque as "Ext.-1", dishonoured slip as "Ext.-2", legal notice as "Ext.-3", Postal receipt as "Ext.4", petition of complaint and his signature thereon as "Ext. Nos. 5, 5/1".

On perusal of record, it is found that the complainant-respondent No. 2 after exhausting all the legal formalities filed C.R. case No. 274 of 2012 under section 138 of the Negotiable Instruments Act against the convict appellant.

To constitute an offence under Section 138 of the N.I. 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. Besides, it appears from the record that a single bench of this Court at the time of admission of appeal by order dated 28.10.2014 granted bail to the convict-appellant for a period of 06(six) months, and thereafter, no one took any step to extend the order of bail as a result of which, the said bail was expired long before on 28.04.2015. Therefore, in the attending facts and circumstances of the case, I find no difficulty whatever in holding that the convict-appellant is a fugitive from law and justice.

In the case of Anti-Corruption Commission Vs. Dr. HBM Iqbal Alamgir, reported in 15 BLC(AD) 44, it has

been held that the Court would not act in aid of an accused person, who is a fugitive from law and justice.

On an analyses of impugned judgment and order of conviction and sentence dated 10.08.2014, passed by the learned Sessions Judge, Sirajgonj, 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 Sessions Judge, Sirajgonj appears to have considered all the material aspects of the case and justly passed the impugned judgment and order of conviction and sentence dated 10.08.2014.

On the above, 2 (two) counts, this appeal must fail.

In the result, the appeal is dismissed. The impugned judgment and order of conviction and sentence dated 10.04.2014 passed by the learned Sessions Judge, Sirajgonj in Sessions Case No. 474 of 2014 arising out of C.R. Case No. 274 of 2012 against the accused appellant is hereby affirmed.

Since the appeal is dismissed the convict appellant, Md. Sumon Ahammed 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.2 is permitted to withdraw half of the cheque's amount as deposited in the Trial Court by the convict-appellant for the purpose of preferring this Criminal Appeal.

Send down the lower Court records at once.