

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 6893 of 2014

Md. Saiful Islam
.....Convict-appellant.

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

Mr. Md. Abdul Hai Sarker, Advocate
.....For the appellant.

None appears.
.... For the 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 11.06.2024 and
Judgment on 07.07.2024

Sheikh Abdul Awal, J:

This Appeal at the instance of convict appellant, Md. Saiful Islam is directed against the judgment and order of conviction and sentence dated 24.04.2014 passed by the learned Sessions Judge, Sirajgonj in Sessions Case No. 189 of 2014 arising out of C.R. Case No. 290 of 2013 (Sadar) convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him thereunder to suffer imprisonment for a

period of 1 (one) year and to pay a fine of Tk. 15,00,000/- (fifteen lakhs) in default to suffer simple imprisonment for a period of 3 (three) months more.

Mr. Md. Abdul Hai Sarkder, the learned Advocate appearing for the convict-appellant after placing supplementary affidavit dated 02.07.2024 submits that during the pendency of the appeal, the convict-petitioner has paid rest 50% cheque's amount of Taka 2,50,000/- (Two lakhs fifty thousand) to the complainant-respondent No.2 and at the time of preferring this criminal appeal, the convict appellant deposited 50% cheque's amount of Taka 2,50,000/- (Two lakhs fifty thousand) in the trial Court for the purpose of preferring this Criminal Appeal, which has already withdrawn by the complainant-respondent No.2, vide Court's order No. 11 dated 26.06.2014. In this way the accused-appellant has paid entire cheque's amount to the complainant-respondent No.2. He next submits that during pendency of the appeal the parties have amicably compromised the matter by making a deed of "apashnama" which is annexed with the supplementary affidavit dated 02.07.2024 and marked as "annexure-B".

Finally, learned Advocate for appellant submits that since both the parties have already made compromise over the dispute, the appeal may kindly be

allowed upon recording compromise, offence under Section 138 of the Act may be compounded and the conviction of the appellant is liable to be set-aside.

Having heard the learned Advocate for the appellant and perused the supplementary affidavit dated 02.07.2024 together with the deed of “apashnama” sworn by the parties (Annexure-B).

Having regard to the submission made by the learned Advocate for appellant, I am of the view that there is no reason not to accept the compromise entered into between the parties. The Negotiable Instruments Act, 1881 is silent about compromise of offences under the Act but the Act does not make any provision therein prohibiting such compromise. 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 dispute between the parties under Negotiable Instruments Act proceeding has been resolved out of Court by the parties on compromise and the same should be allowed by the Court at any stage of the proceeding even at the appellate or revisional stage.

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

For the reasons stated above, I allow the prayer made on behalf of the contesting parties with the direction that compromise done by the parties is hereby accepted and dispose of the appeal on the basis of the said compromise.

Accordingly, the appeal is allowed by holding that since the matter has been compromised between the parties and the amount in terms of the said compromise has been paid, the appellant is entitled to acquittal.

The order of conviction and sentence passed by the trial Court below is set-aside and the appellant is acquitted of the charge under Section 138 of the Act. Convict appellant, Md. Saiful Islam is discharged from his bail bond.

The appeal stands disposed of in the above terms.

Send down the lower Court records at once.