

Present

Madam Justice Kashefa Hussain

Criminal Appeal No. 1293 of 2015

Ahad Ali Sarker

.....Convict-Appellant

-Versus-

The State and another

----- Respondents.

Mr. Md. Abdul Malek Howlader, Advocate

.... for the convict-appellant

Mr. Sanjib Chandra Banik, Advocate

.... for the respondent No. 2

Mr. Md. Mohiuddin Dewan, D.A.G with

Ms. Syeda Sabina Ahmed Molly, A.A.G

----- For the State.

Heard on: 11.05.2023, 18.05.2023

and

Judgment on 25.05.2023

This appeal is directed against the judgment and order of conviction and sentence dated 27.04.2016 passed by the learned Additional Sessions Judge, 3rd Court, Dhaka in Sessions Case No. 356 of 2014 arising out of Complaint Registrar (C.R) Case No. 277 of 2013 (Ashulia) convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer imprisonment for 01 (one) year and also to pay a fine of Tk. 3,80,000/- (three lac eighty thousand) only should not be set-aside and/or pass such other or further order orders as to this court may seem fit and proper.

The prosecution case, in short is that the respondent No. 2 being complainant filed the instant complaint petition before the court of learned Chief Judicial Magistrate, Dhaka on 03.04.2013 against the convict appellant petitioner under Section 138 of the Negotiable Instruments Act, 1881 alleging inter alia that, in order to payout loan liability, the convict appellant petitioner issued two separate cheques in favour of the complainant being cheque No. 0021615 and 0021603, dated 15.01.2013 and 24.01.2013 amounting of Tk. 80,000/- only and Tk. 3,00,000/- (Three lac) only and accordingly, the respondent No. 2 deposited the same for encashment but the same were dishonored on the grounds of 'Insufficient Fund' thereafter, the respondent No. 2 issued a legal notice addressing the convict appellant petitioner to refund the aforesaid amount of money as per provision of section 138 of the Negotiable Instruments Act, 1881; but the appellant petitioner did not take any steps to refund the same and after failing to recover the said amount of money filed this petition of complaint. Hence the case.

The case was heard by the Metro Sessions Judge, 3rd court, Dhaka in Sessions Case No. 356 of 2014 arising out of Complaint Registrar (C.R) Case No. 277 of 2013 which the court passed the impugned judgment and order of conviction

against the appeal. Being aggrieved by the judgment and order of the court below the convict as appellant filed the instant Criminal Appeal before this bench for disposal.

Although the matter appeared in the list when the matter was taken up for hearing none appeared for the appellant. However the learned advocate Mr. Sanjib Chandra Banik appeared for the complainant respondent.

Learned Advocate for the complainant respondent submits that there is no inconsistency or illegality in the judgment and order of the court below and therefore the judgment needs no interference. He takes me to the materials and draws upon the relevant documents. He takes me to exhibit No. 1 which is the complaint petition exhibit-1/1-1/3 are the signature exhibit-2,2/1 cheques of different dates which were dishonored, exhibit-3, 3/1 are two dishonor slips, exhibit-4 is legal notice, exhibit-5 is postal receipts and exhibit-6 is acknowledgment slip. From these documents he points out that no fallacy in the procedure can be revealed from these documents. He continues that therefore it is evident that the complainant duly followed the procedure under section 138 of the Negotiable Instrument Act till filing of the case. He takes me to the judgment of the court below and submits that from

the judgment also these facts are clearly manifest. He submits that moreover the convict appellant was absconding from the date of his examination under Section 342 of the Code of Criminal Procedure Act and it is evident that he only surfaced after passing of the judgment. He submits that it is also clear that there was no denial as to the factual merits of the case by the accused appellant at any stage. Learned advocate for the complainant respondent in his cross examination also prays that an order may be passed by this bench that the amount that was deposited by the convict appellant during filing of the appeal the said amount may be given to the respondent complainant. Lastly he concludes that such being the facts of the case there is no reason interfere with the judgment of the court below and therefore the appeal ought to be dismissed.

I have heard the learned advocate for the respondent and also examined the records. I have particularly examined the documents produced as exhibits and I have compared with the judgment of the trial court. Upon examination I find that there has neither been any inconsistency nor error by the complainant in following Section 138 pursuant to the cheque dishonor till filing of the case, nor is there any inconsistency in the judgment of the trial court. Moreover since the appellant was absconding

from the date of his examination under Section 342 of the Code of Criminal Procedure therefore evidently he did not produce any evidence in support of his case. Such being the facts and circumstances I do not find any merit in the appeal.

In the result, the appeal is dismissed. The trial court is hereby directed to allow the complainant respondent to withdraw the deposit money that was given by the convict appellant during filing of the appeal.

Communicate the judgment at once.

Shokat (B.O.)