

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CRIMINAL APPELLATE JURISDICTION)

**Present:**

Mr. Justice Md. Kamrul Hosssain Mollah

**Criminal Appeal No.2246 of 2015**

Khairul Alam

.... Convict-Appellant

-Versus-

Nahid Akter and another

.... Respondents

No one appears

.... For the convict-Appellant

Mrs. Umme Masumun Nesa, A.A.G

.... For the State

Mr. Mohammad Mohsin Kabir, Advocate

.... For the Respondent No.1(c)

**Heard on 24.04.2024 and**  
**Judgment on: 29.04.2024**

**Md. Kamrul Hossain Mollah.J:**

This appeal has been preferred by the appellant against the judgment and order of conviction and sentence dated 18.11.2014 passed by the learned Court of Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Chattogram in Sessions Case No.508 of 2013 arising out of C.R. Case No.1106 of 2012 (Panchlaish Zone) convicting the appellant under Section 138 of the Negotiable Instrument Act, 1881 and sentencing him to

suffer simple imprisonment for a period of 01(one) year and also to pay a fine of Tk.6,50,000/-.

At the time of admitting the appeal this Court continued the bail of the appellant and stayed the realization of fine.

The prosecution case, in brief, is that the convict-appellant is a fraud. He fraudulently created a power of attorney and he also created a deed of agreement with the complainant to sell a land. The appellant has taken money from the complainant. Subsequently, he paid some cash money and issued a cheque amount of Tk.6,50,000/- cheque No.5111228. The appellant issued the dispute cheque from the National Credit and Commerce Bank Limited O.R. Nizam Road Branch Chattogram on 10.06.2012 cheque No.5111228. The complainant presented the cheque in the bank on 02.08.2012 for encashment, but for insufficient fund the cheque was dishonoured. The complainant issued a legal notice on 13.08.2012 giving the appellant a chance for making received the notice on 17.08.2012. But, the appellant did not make any payment of the said cheque amount and thereafter, the complainant-respondent No.1 filed a complaint-petition against the convict-appellant under section 138 of the Negotiable

Instruments Act, 1881 before the learned Chief Metropolitan Magistrate, Chattogram on 15.10.2012 and hence the case.

On 15.10.2012 after receiving the petition of complaint the learned Magistrate examined the complainant under section 200 of the Code of Criminal Procedure and thereafter the learned Magistrate took cognizance against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 as C.R. Case No.1106 of 2012J(Panchlaish Zone) and issued summons against the convict-appellant. On 26.11.2012 the appellant surrendered before the learned concerned Metropolitan Magistrate, Chattogram and obtained bail. Thereafter, this case was transferred to the Court of learned Metropolitan Sessions Judge, Chattogram for trial and was renumbered as Sessions Case No.508 of 2013. Thereafter, on 27.01.2013 the learned Metropolitan Sessions Judge, Chattogram took cognizance in the case and transferred the same to the learned Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Chattogram for hearing and disposal.

On 25.07.2013 the learned Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Chattogram framed charge against the convict-appellant under section 138 of the negotiable

Instruments Act, 1881, it was read over and explained the appellant and he pleaded not guilty and claimed to be tried.

The prosecution side adduces one witness before the Court to prove his case and the defense examined none.

After examination of the witness the concerned Court examined the appellant under section 342 of the Code of Criminal Procedure and he pleaded innocent and claimed to be tried.

The learned Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Chattogram after conclusion of the trial upon considering of the materials on record convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 sentenced him to suffer simple imprisonment for a period of 01(one) year and also to pay a fine of Tk.6,50,000/- by his judgment and order of conviction and sentence dated 18.11.2014.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 18.11.2014 passed by the learned Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Chattogram in Sessions Case No.508

of 2013 arising out of C.R. Case No.1106 of 2012(Panchlaish Zone), the convict-appellant preferred this Appeal, before this Hon'ble High Court Division.

No one appears for the convict-appellant to press this Appeal, when this matter was taken up for hearing although it appears in the daily cause list several times for hearing.

Mr. Mohammad Mohsin Kabir, the learned Advocate appearing on behalf of the complainant-respondent No.1(c) submits that the appellant has taken money from the complainant. Subsequently, he paid some cash money and issued a cheque amount of Tk.6,50,000/- cheque No.5111228. The appellant issued the dispute cheque from the National Credit and Commerce Bank Limited O.R. Nizam Road Branch Chattogram on 10.06.2012 cheque No.5111228. The complainant presented the cheque in the bank on 02.08.2012 for encashment, but for insufficient fund the cheque was dishonoured. The complainant issued a legal notice on 13.08.2012 giving the appellant a chance for making received the notice on 17.08.2012. But, the appellant did not make any payment of the said cheque amount and thereafter, the complainant-respondent No.1 filed a complaint-petition against

the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 before the learned Chief Metropolitan Magistrate, Chattogram on 15.10.2012. Thereafter, this case was transferred to the Court of learned Metropolitan Sessions Judge, Chattogram for trial and was renumbered as Sessions Case No.508 of 2013. Thereafter, on 27.01.2013 the learned Metropolitan Sessions Judge, Chattogram took cognizance in the case and transferred the same to the learned Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Chattogram for hearing and disposal. The learned Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Chattogram after conclusion of the trial upon considering of the materials on record convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 sentenced him to suffer simple imprisonment for a period of 01(one) year and also to pay a fine of Tk.6,50,000/- by his judgment and order of conviction and sentence dated 18.11.2014 rightly. Accordingly, he prays for discharging the Rule.

I heard the submissions of the learned Advocate for the respondent No.2, considered the judgment and order of conviction and sentence dated 18.11.2014 and perused the materials on record.

Now, let us discuss the evidence of prosecution witness S.M Shahidur Rahman as P.W.1.

P.W.1 S.M. Shahidur Rahman in his deposition supported the complaint-petition. He stated that the appellant issued the disputed cheque on 10.06.2012 with an amount of Tk.6,50,000/- in order to clear his dues. Later on he placed the cheque to the bank on 02.08.2012 for collection of money which was dishonoured for insufficient of fund. The he issued a legal notice on 13.08.2012 upon the appellant which he received on 17.08.2012. The complainant failed to realize the money and then he filed this case.

It appears from the record that P.W.1 in his deposition supported the complaint-petition and P.W.1 in his cross examination stood on the same footing by stating that the complainant gave 6,50,000/- to the appellant for purchase land. The convict-appellant has not been able to adduce any proof that the amount of cheque has been paid to the complainant.

Further, it appears that the appellant issued the disputed cheque on 10.06.2012 with an amount of Tk.6,50,000/- in order to clear his dues. Later on he placed the cheque to the bank on 02.08.2012 for collection of money which was dishonoured for insufficient of fund. The he issued a legal notice on 13.08.2012 upon the appellant which he received on 17.08.2012.

Thereafter, the complainant filed the C.R. Case No.1106 of 2012 under section 138 of the Negotiable Instruments Act, 1881 against the convict-appellant in time.

Considering the above facts and circumstances and materials on record, it is my view that the learned Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Chattogram passed the judgment and order of conviction and sentence dated 18.11.2014 rightly, which is maintainable in the eye of law and there is no chance to interference with the said judgment and order.

It is also found that during the pendency of the case complainant-respondent No.1 died on 20.02.2015 leaving behind (a) wife- Sajeda Begum (b) Son- S.M. Asif Imran (c) Daughter- Nahid Akter.

It is also mentioned that applicant No.1(a) and 1(b) made an Ammokternama deed and appointed an attorney their daughter and sister namely Nahid Akter for conducting this appeal as complainant No.1(c).

Accordingly, the appeal, therefore, has no merit.

In the result, the Criminal Appeal No.2246 of 2015 is dismissed.

The judgment and order of conviction and sentence dated 18.11.2014 passed by the learned Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Chattogram in Sessions Case No.508 of 2013 arising out of C.R. Case No.1106 of 2012 is hereby confirmed and upheld.



The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.3,25,000/-, which has been deposited by the convict-appellant through Chalan at the time of filing appeal to the respondent No.1(c) (if he did not withdraw the said amount).

The order of bail granted earlier by this Court is hereby cancelled and recalled and the order of stay of the realization of fine is hereby vacated.

The convict-appellant is hereby directed to surrender before the concerned lower Court within in 30(thirty) days from the date of receipt of this judgment and order, failing which the concerned Court will take necessary steps to secure arrest him.

Send down the lower Court records with a copy of the judgment and order to the concerned Court below at once.

*Md. Anamul Hoque Parvej*  
*Bench Officer*