

**Present**

**Mr. Justice Sheikh Abdul Awal**

**Criminal Appeal No. 4615 of 2015**

Md. Jahangir Alam

.....Convict-appellant.

-Versus-

The State

.....Respondent.

None appears

.....For the convict-appellant.

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

..... For the State.

**Judgment on 25.04.2024**

Sheikh Abdul Awal, J:

This Appeal at the instance of convict appellant, Md. Jahangir Alam is directed against the judgment and order of conviction and sentence dated 21.05.2013 passed by the learned Sessions Judge, Sirajganj in Sessions Case No. 78 of 2013 arising out of C.R. Case No. 259 of 2012 (Sadar) convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer rigorous imprisonment for a period of 1 (one) year and to pay a fine of Tk. 12,00,000/- (twelve Lac) in default to suffer simple imprisonment for 03 (three) months more.

The gist of the case is that one, Md. Abdus Salam as complainant filed a petition of complaint being C.R Case No. 259 of 2012 (Sadar) in the cognizance Court No.1, Sirajganj against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 stating, inter-alia, that accused being a cloth businessman purchased cloths amounting to Tk. 4,00,000/-(four Lac) on credit from the complainant disclosing that he will pay the said amount within 7 days and thereafter, to meet the outstanding dues amounting to Tk 4,00,000/-(four Lac) the accused issued a cheque being No. CBL 3132850 amounting to Tk. 4,00,000/- of BRAC Bank in favour of the complainant and thereafter, the complainant presented the said cheque for encashment in bank but the said cheque was dishonoured for insufficient of fund. Thereafter, the complainant sent a legal notice through his Advocate to the accused appellant on 26.07.2012 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 Additional Chief Judicial Magistrate, Sirajganj 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 also issued summon against the accused appellant fixing next date on 20.11.2012. Thereafter the

accused appellant voluntarily surrendered before the Court and obtained bail.

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. 78 of 2013. Ultimately, the accused-appellant was put on trial in the court of learned Sessions Judge, Sirajgonj to answer a charge under section 138 of the Negotiable Instruments Act, 1881. The trial was held in absentia against the accused appellant as the accused appellant was absconding.

At the trial the complainant himself was examined as PW-1 and also exhibited some documents to prove its case, while the defence examined none.

On conclusion of trial, the learned Sessions Judge, Sirajgonj by the impugned judgment and order dated 21.05.2013 found the accused guilty 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. 12,00,000/- (twelve Lac) in default to suffer simple imprisonment for 3 (three) months more.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 21.05.2013, the convict-appellant preferred this criminal appeal.

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

In view of the fact that this petty old criminal appeal arising out of 01(one) year sentence under Section 138 of the Negotiable Instruments Act, 1881 , I am inclined to dispose of it on merit on the basis of the materials on record.

On perusal of record, it is found that the complainant-after exhausting all the legal formalities filed C.R. Case No. 259 of 2012 (Sadar) under section 138 of the Negotiable Instruments Act against the convict appellant and during the trial the complainant himself was examined as PW-1 and exhibited some documents to prove its case. It further appears that PW-1 in his evidence deposed the case in details.

To constitute an offence under Section 138 of the NI 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 having 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.

On an analyses of impugned judgment and order of conviction and sentence dated 21.05.2013 passed by the learned Sessions Judge, Sirajgonj in Sessions Case No. 78 of 2013, 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 Judge of the trial Court below appears to have considered all the material aspects of the case and justly convicted the accused appellant under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer rigorous imprisonment for a period of 1

(one) year and to pay a fine of Tk. 12,00,000/- (Twelve Lac) in default to suffer simple imprisonment for 3 (three) months more. No interference is therefore called for.

In the result, the appeal is dismissed. The impugned judgment and order of conviction and sentence dated 21.05.2013 passed by the learned Sessions Judge, Sirajgonj in Sessions Case No. 78 of 2013 arising out of C.R. Case No. 259 of 2012 (Sadar) against the convict-appellant is hereby affirmed.

Since the appeal is dismissed the convict appellant is directed to surrender his bail bond within 3 (three) months from today to suffer his sentence, failing which the Trial Court shall take necessary steps to secure arrest against him.

The complainant is permitted to withdraw half of the cheque's amount as deposited in the Trial Court concerned by the convict-appellant for the purpose of preferring this Criminal Appeal.

Send down the lower Court records at once.