

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 5465 of 2015

Mst. Sahanara Begum @ Bulu

...Appellant

-Versus-

The State

...Respondent

Ms. Nargis Tanjima, Advocate

...For the appellant

Ms. Sharmin Hamid, A.A.G with

Mr. Sultan Mahmood Banna, A.A.G

...For the State

Heard on 09.01.2025 and 23.01.2025

Judgment delivered on 26.01.2025

This appeal under Section 410 of the Code of Criminal Procedure, 1898 is directed against the impugned judgment and order dated 26.06.2013 passed by Sessions Judge, Rajshahi in Sessions Case No. 476 of 2011 arising out of C.R Case No. 206 of 2011 convicting the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentencing her to suffer imprisonment for 06(six) months and fine of Tk. 70,000(seventy thousand).

The prosecution case, in short, is that the accused Mst. Sahanara Begum @ Bulu issued Cheque No. 4673461 on 12.12.2010 drawn on her Account No. 090811930 maintained with Dutch-Bangla Bank Limited, Rajshahi Branch in favour of the complainant Ruhul Amin for payment of Tk. 70,000(seventy thousand). The complainant presented the said cheque on 15.12.2010 for encashment which was dishonoured with a remark 'insufficient funds'. The complainant sent a legal notice on 06.01.2011 to the accused for payment of the cheque amount which he received on 10.01.2011 but he did not pay the cheque amount. Consequently, the complainant filed the case on 28.02.2012.

During trial, the Sessions Judge, Rajshahi framed the charge against the accused under Section 138 of the Negotiable Instruments Act, 1881 which was read over and explained to her and she pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 2(two) witnesses to prove the charge against the accused and the defence did not cross-examine prosecution witnesses. During trial, the accused was absconding for which he was not examined under Section 342 of the Code of Criminal Procedure, 1898. After concluding the trial, the trial Court by impugned judgment and order convicted the accused and sentenced her as stated above against which she filed the instant appeal.

P.W. 1 Md. Ruhul Amin is the complainant. He stated that the accused Mst. Sahanara Begum obtained the loan of Tk. 70,000 from him. On 12.12.2010 she issued a cheque drawn on Dutch-Bangla Bank Limited, Rajshahi Branch for payment of Tk. 70,000. He presented the cheque on 15.12.2010 which was dishonoured on the same date with the remark 'insufficient funds'. Thereafter, he sent legal notice on 06.01.2011 and the accused received the said legal notice on 10.01.2011. He proved the complaint petition as exhibit 1 and his signature on the complaint petition as exhibit 1/1, the cheque as exhibit 2, the dishonour slip as exhibit 3, legal notice as exhibit 4, the postal receipt and the AD as exhibits 5 and 5/1. The defense declined to cross-examine the P.W. 1.

P.W. 2 Shafi Md. Farah Siddique is an Officer of the Dutch-Bangla Bank Limited, Rajshahi Branch. He stated that Cheque No. 4673461 dated 12.12.2010 for payment of Tk. 70,000 was presented through the Dutch-Bangla Bank Limited, Rajshahi Branch which was dishonoured on 15.12.2010 for 'insufficient funds' and the bank issued the dishonour slip. He proved the signature of the officer of the bank on the dishonour slip as exhibit 3/1. The defense did not cross-examine P.W. 2.

Learned Advocate Ms. Nargis Tanjima appearing on behalf of the accused submits that under coercion and duress, the accused issued the cheque and the complainant failed to prove that the accused issued the cheque for consideration and the prosecution failed to make out a case under Section 138 of the Negotiable Instruments Act, 1881 and the trial Court illegally convicted the accused. She prayed for allowing the appeal.

Learned Assistant Attorney General Ms. Sharmin Hamid appearing on behalf of the State submits that the accused issued the cheque on 12.12.2010 in favour of the complainant for payment of Tk. 70,000(seventy thousand) which was dishonoured on 15.12.2010 for 'insufficient funds' and the complainant filed the case complying with the procedure made in clause a to (c) of Section 138 and 141(b) of the Negotiable Instruments Act, 1881 and the prosecution proved the charge against the accused beyond all reasonable doubt. The defence did not cross-examine the prosecution witnesses. Therefore, the evidence of P.Ws 1 and 2 remains uncontroverted by the defence. The trial Court after assessment and evaluation of the evidence of the prosecution witnesses legally passed the impugned judgment. She prayed for the dismissal of the appeal.

I have considered the submission of the learned Advocate Ms. Nargis Tanjima who appeared on behalf of the appellant and the learned Assistant Attorney General Ms. Sharmin Hamid who appeared on behalf of the State, perused the evidence, impugned judgment and order passed by the trial Court and the records.

On perusal of the evidence, it appears that the accused Mst. Sahanara Begum @ Bulu issued Cheque No. 4673461 on 12.12.2010 drawn on her Account No. 090811930 maintained with Dutch-Bangla Bank Limited, Rajshahi Branch in favour of the complainant Md. Ruhul Amin for payment of Tk. 70,000(seventy thousand). The said cheque was proved as exhibit 2. The

complainant presented the said cheque on 12.12.2010 and the same was dishonoured due to 'insufficient funds' and the bank issued the dishonour slip (exhibit 3). The complainant sent a legal notice on 06.01.2011 through registered post with AD and the accused received the legal notice on 10.01.2011. The legal notice was proved as exhibit 4, the postal receipt as exhibit 5 and the AD as exhibit 5/1. The cheque dated 12.12.2010 (exhibit 2) was dishonoured on 12.12.2010 and the legal notice was sent on 06.01.2011 in compliance with the provision of clauses (a) and (b) of the Negotiable Instruments Act, 1881 and the accused received the legal notice on 10.01.2011 but he did not pay the cheque amount. Consequently, the complainant filed the complaint petition on 28.02.2012 complying with the provision made in clause (a) to (c) of Section 138 and Section 141(b) of the Negotiable Instruments Act, 1881.

There is a presumption under Section 118(a) of the Negotiable Instruments Act, 1881 that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. The presumption under Section 118(a) of the said Act is rebuttable. The accused neither adduced evidence nor cross-examined P.W. 1 and 2 to rebut the presumption under Section 118(a) of the said Act. Thereby the accused committed an offence under Section 138 of the Negotiable Instruments Act, 1881 and the complainant filed the case following procedures of Section 138 and Section 141 (b) of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the accused beyond all reasonable doubt and the trial Court on proper assessment and evaluation of the evidence legally passed the impugned judgment and order.

Considering the gravity of the offence, I am of the view that the ends of justice would be best served if the sentence passed by the trial Court is modified as under;

The accused Mst. Sahanara Begum @ Bulu is found guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and she is sentenced to suffer imprisonment for 1(one) month and fine of Tk. 70,000(seventy thousand).

The complainant is entitled to get the fine amount.

The accused Mst. Sahanara Begum @ Bulu is directed to surrender before the trial Court forthwith and to pay the entire fine amount within the next 30(thirty) days failing which the trial Court shall do the needful.

In the result, the appeal is disposed of with a modification of the sentence.

Send down the lower Court's records at once.