

**Present**

**Mr. Justice Sheikh Abdul Awal**

**Criminal Appeal No. 6661 of 2015**

Md. Abdur Rouf Talukdar

.....Convict-appellant.

-Versus-

The State

.....Respondents.

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.

**Heard on 28.04.2024 and**

**Judgment on 30.04.2024**

**Sheikh Abdul Awal, J:**

This Appeal at the instance of convict appellant, Md. Abdur Rouf Talukdar is directed against the judgment and order of conviction and sentence dated 30.11.2011 passed by the learned Sessions Judge, Thakurgaon in Sessions Case No. 31 of 2011 arising out of C.R. Case No. 08 of 2011 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer rigorous

imprisonment for a period of 6 (six) months and to pay a fine of Tk. 1,97,400/- (One lakh ninety seven thousand four hundred).

The gist of the case is that one, Sree Biplob Kumar Roy, Manager of ASA, Jadurani Hat Branch, Horipur, Thakurgaon as complainant filed a petition of complaint being C.R Case No. 8 of 2011 in the Court of the learned Judicial Magistrate, Thakurgaon against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 stating, inter-alia, that to run the business of fish farm, tin, cement and paddy the accused-appellant took loan amounting to Taka 3,00,000/- on 12.04.2009 from the complainant-NGO (ASA). Thereafter, in order to pay the loan money the convict-appellant on 21.10.2010 issued a cheque of Tk 1,97,400/- (One lakh ninety seven thousand four hundred) of Rajshahi Krishi Unnayan Bank Ltd., Jadurani Branch, Thakurgaon in favour of complainant-NGO and thereafter, on 29.11.2010 the complainant presented the said cheque before the bank for encashment, which was returned unpaid for insufficient of fund and thereafter, the complainant sent a legal notice through its Advocate to the accused appellant on 09.12.2010 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 Judicial Magistrate, cognizance Court, Thakuragon 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 22.02.2011.

Thereafter, in usual course the case record was sent to the Court of the learned Sessions Judge, Thakurgaon, wherein the case was registered as Session Case No. 31 of 2011 before whom the accused-appellant was put on trial to answer a charge under section 138 of the Negotiable Instruments Act, 1881 to which the accused-appellant pleaded not guilty and prayed to be tried.

At the trial the complainant side examined 3 witnesses and also exhibited some documents to prove its case, while the defence examined none. The defence case is of innocence, the case is barred by limitation as the cheque in question was not presented before the bank within 6 months.

On conclusion of trial, the learned Sessions Judge, Thakurgaon by the impugned judgment and order dated 30.11.2011 convicted the accused appellant under Section 138 of the Negotiable Instrument Act, 1881 and sentenced him thereunder to suffer rigorous imprisonment for a period of 6 (six) months and to pay a fine of Tk. 1,97,400/- (One lakh ninety seven thousand four hundred).

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 30.11.2011, the convict-appellant preferred this criminal appeal.

No one found present to press the appeal on repeated calls despite of fact that this criminal appeal has been appearing in the list for hearing with the name of the learned Advocate for the convict appellant since long.

In view of the fact that this petty old case arising out of Negotiable Instruments Act, 1881, I am inclined to dispose of it on merit on the basis of the evidence and materials on record.

On scrutiny of the record, it appears that the complainant filed the petition of complaint being C.R Case No. 8 of 2011 in the Court of the learned Judicial

Magistrate, Thakurgaon against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 stating, inter-alia, that to run the business of fish farm, tin, cement and paddy the accused-appellant took loan amounting to Taka 3,00,000/- on 12.04.2009 from the complainant-NGO (ASA). Thereafter, in order to pay the loan money the convict-appellant on 21.10.2010 issued a cheque of Tk 1,97,400/- (One lakh ninety seven thousand four hundred) of Rajshahi Krishi Unnayan Bank Ltd. Jadurani Branch, Thakurgaon in favour of complainant-NGO and thereafter, on 29.11.2010 the complainant presented the said cheque before the bank for encashment which was returned unpaid for insufficient of fund and thereafter, the complainant sent a legal notice through its Advocate to the accused appellant on 09.12.2010 asking him to pay the cheque's amount within 30 days but the accused-appellant did not pay any heed to it. It further appears that during trial the complainant examined 3 witnesses to prove his case out of which complainant himself was examined as PW-1, who stated in his deposition that he is the manager of ASA, Jadurani Hat branch. Accused-appellant took loan of Taka 3,00,000/- for his business purpose on condition to pay monthly instalment of Taka 33,600/- and after making payment of few instalments he could not pay the

instalments regularly and thereafter the accused gave a cheque amounting to Taka 1,97,400/- in favour of ASA on 21.10.2010 and the complainant on 29.11.2010 presented the said cheque before the bank for encashment which was returned unpaid for insufficient of fund. This witness also stated that he sent legal notice through its Advocate to the accused appellant on 09.12.2010 asking him to pay the cheque's amount but the accused-appellant did not pay any heed to it. This witness also stated that after exhausting all legal formalities he filed the case. This witness also stated in his cross-examination that- “আসামী সর্বমোট তিনটি কিস্তি প্রদান করেন। আসামী সর্ব শেষ ১৯/১২/১০ খ্রিঃ তারিখে ৫০০০ টাকা কিস্তি পরিশোধ করেন। পাশ বই মোতাবেক। ০৯/১২/১০ খ্রিঃ তারিখে আসামীর প্রতি legal notice প্রেরণ করা হয়। ঋণ বিতরণকালে cheque নেওয়া হয় নাই। আসামীর সঞ্চয় বাবদ ৩৪,০০০ টাকা জমা আছে। ইহা সত্য নয় যে, আসামীকে অহেতুক হয়রানী করার জন্য মিথ্যা উক্তি অত্র মোকদ্দমা দায়ের করেছি।” PW-2 stated in his evidence that the cheque in question amounting to Taka 1,97,400/- was dishonoured on 21.10.2010. This witness in his cross-examination stated that- “ঐদিন নগদায়নের জন্য আসামীর হিসাবে পর্যাপ্ত অর্থ ছিল না। ইহা সত্য নহে কথিত তারিখে আসামীর হিসাবে কথিত চেকের অর্থ পরিশোধ করার মত পর্যাপ্ত অর্থ ছিল।” PW-3 stated in his deposition that he sent the legal notice on 09.12.2010 and the accused received the same on

15.12.2010. This witness proved the legal notice as “Ext-4” and his signature thereon as “Ext-4/1”.

On scrutiny of the petition of complaint together with the above quoted evidence, it appears that the complainant after exhausting all the legal formalities filed the case under section 138 of the Negotiable Instruments Act, 1881 against the convict appellant.

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 is 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 30.11.2011 passed by the learned Sessions Judge, Thakurgaon in Sessions Case No. 31 of 2011, 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, 1881 are exist in the case.

The learned trial Judge 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 6 (six) months and to pay a fine of Tk. 1,97,400/- (One lakh ninety seven thousand four hundred). No interference is therefore called for.

In the result the appeal is dismissed. The impugned judgment and order of conviction and sentence dated



30.11.2011 passed by the learned Sessions Judge, Thakurgaon in Sessions Case No. 31 of 2011 against the convict appellant arising out of C.R. Case No. 8 of 2011 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 by the convict-appellant for the purpose of preferring this Criminal Appeal.

Send down the lower Court records at once.