

Present

Mr. Justice Sheikh Abdul Awal

Criminal Appeal No. 7488 of 2015

Dr. Md. Shawkat Rashid

.....Convict-appellant.

-Versus-

The State and another

.....Respondents.

Ms. Mahfuza Akter, Advocate

.....For the convict-appellant.

None appears

.....For the Respondent No. 2.

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 20.5.2024, 05.06.2024 and

Judgment on 05.06.2024

Sheikh Abdul Awal, J:

This Appeal at the instance of convict appellant, Dr. Md. Shawkat Rashid is directed against the judgment and order of conviction and sentence dated 30.08.2015 passed by the learned Sessions Judge, Special Sessions Court No.2, Rajshahi in Metro. Sessions Case No. 41 of 2014 arising out of C.R. Case No. 311 of 2013

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. 8,00,000/- (Eight lakhs) in default to suffer imprisonment for a period of 2 (two) months more.

The gist of the case is that one, Dr. Md. Anowarul Haque as complainant filed a petition of complaint being C.R. Case No. 311 of 2013 in the Court of the learned Chief Metropolitan, Rajshahi against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 stating, inter-alia, that the accused-appellant took loan amounting to Taka 4,00,000/- from the complainant. Thereafter, in order to pay the loan money the convict-appellant on 03.10.2012 issued a cheque of Tk. 4,00,000/- (Four lakhs) of United Commercial Bank Ltd., Rajshahi Branch bearing No. 6335574 in favour of complainant and on 15.01.2013 the complainant presented the said cheque before the bank for encashment, which was returned unpaid for insufficient of fund and thereafter, 05.02.2013 the complainant published a legal notice in the daily newspaper namely, "Dainik Barta" 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 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 issued summon against the accused-appellant fixing next date on 27.06.2013.

Thereafter, in usual course the case record was sent to the Court of the learned Metropolitan Sessions Judge, Rajshahi, wherein the case was registered as Metro. Sessions Case No. 41 of 2014 which was subsequently transmitted to the Court of the learned Sessions Judge, Special Sessions Court No.2 for disposal in which the accused-appellant was put on trial to answer a charge under section 138 of the Negotiable Instruments Act, 1881.

At the trial the complainant examined in all 3 witnesses and also exhibited some documents to prove his case and the defence examined 2 witnesses.

On conclusion of trial, the learned Sessions Judge, Special Sessions Court No.2, Rajshahi by the impugned judgment and order dated 30.08.2015 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 1 (one) year and to pay a fine of Tk. 8,00,000/- (Eight lakhs) in default to suffer simple imprisonment for a period of 2 (two) months more.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 30.08.2015, the convict-appellant preferred this criminal appeal.

Ms. Mahfuza Akter, the learned Advocate for the appellant submits that she is not in a position to make argument for the appellant, who is fugitive from law and justice.

Having heard the learned Advocate for both the sides, perused the memo of appeal, deposition of witnesses and other materials on record including the impugned judgment and order of conviction and sentence dated 30.08.2015.

On scrutiny of the record, it appears that the complainant filed the petition of complaint being C.R Case No. 311 of 2013 in the Court of the learned Chief Metropolitan Magistrate, Rajshahi against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 and during trial the complainant

side examined 3 witnesses and the defence side examined 2 witnesses.

On perusal of record, it is found that the complainant-respondent No. 2 after exhausting all the legal formalities filed C.R. case No. 311 of 2013 under section 138 of the Negotiable Instruments Act against the convict appellant.

To constitute an offence under Section 138 of the N.I. 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. Besides, it appears from the record that a single bench of this Court at the time of admission of appeal by order dated 17.09.2015 granted bail to the convict-appellant for a period of 06(six) months and thereafter, no one took any step to extend the order of bail as a result of which, the said bail was expired long before on 17.03.2016. Therefore, in the attending facts and circumstances of the case, I find no difficulty whatever in holding that the convict-appellant is a fugitive from law and justice.

In the case of Anti-Corruption Commission Vs. Dr. HBM Iqbal Alamgir, reported in 15 BLC(AD) 44, it has been held that the Court would not act in aid of an accused person, who is a fugitive from law and justice.

On an analyses of impugned judgment and order of conviction and sentence dated 30.08.2015, passed by the learned Sessions Judge, Special Sessions Court No.2, Rajshahi, 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 Sessions Judge, Special Sessions Court No.2, Rajshahi appears to have considered all the material aspects of the case and justly passed the impugned judgment and order of conviction and sentence dated 30.08.2015.

On the above, 2 (two) counts, this appeal must fail.

In the result, the appeal is dismissed. The impugned judgment and order of conviction and sentence dated 30.04.2015 passed by the learned Sessions Judge, Special Sessions Court No.2, Rajshahi in Metro. Sessions Case No. 41 of 2014 arising out of C.R. Case No. 311 of 2013 against the accused appellant is hereby affirmed.

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

The complainant-respondent No.2 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.