

**Present**

**Mr. Justice Sheikh Abdul Awal**

**Criminal Appeal No. 132 of 2016**

A.Q. Ahamed Ali

.....Convict-appellant.

-Versus-

The State and another

.....Respondents.

No one 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 respondent No.1

No one appears

..... For the respondent No.2

**Judgment on 12.06.2024.**

**Sheikh Abdul Awal, J:**

This criminal appeal at the instance of convict appellant, A.Q. Ahamed Ali is directed against the impugned judgment and order of conviction and Sentence dated 07.05.2015 passed by the learned Additional Metropolitan Sessions Judge, Khulna in Metropolitan Sessions Case No. 3896 of 2013 arising out of C.R. Case No. 778 of 2010 (Khulna) convicting the accused appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him

thereunder to suffer simple imprisonment for a period of 01 (one) year and to pay a fine of Tk. 56,154/-(fifty six thousand one hundred and fifty four) only.

The gist of the case is that one, Mrs. Hosna Ara Begum, Commission Agent, C.L.S. Pubali Bank Limited, Sheikhpara Bazar Branch, khulna as complainant filed a petition of complaint being C.R. Case No. 663 of 2014 in the Court of the learned Chief Metropolitan Magistrate, Khulna against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 stating, inter-alia, that the convict-appellant took loan of Tk. 2,25,000/- (two Lac and twenty five thousand) from the complainant's Bank for business and thereafter to pay the instalment of the said loan the convict-appellant on 03.08.2010 issued 07 (seven) cheques being Nos. 9328303 9328304, 9328305, 9328306, 9328307, 9328308 and 9328309 amounting to Tk. 56,154/=(fifty six thousand one hundred and fifty four) of Pubali Bank Limited, Sheikh Para Bazar Branch, Khulna in favour of the complainant's Bank and thereafter, the complainant presented those cheques in bank on 04.08.2010 for encashment but the said cheques was dishonoured for insufficient of fund and thereafter, the complainant sent a legal notice through his Advocate to the accused appellant on 23.08.2010 asking him to pay the cheque's amount within 15 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 Chief Metropolitan Magistrate, Khulna examined the complainant under Section 200 of the Code of Criminal Procedure on 30.09.2010 and took cognizance against the accused-appellant under section 138 of the Negotiable Instrument Act, 1881 and issued summon against him fixing next date on 04.11.2010.

In usual course the case record was sent to the Court of the learned Metropolitan Sessions Judge, Khulna wherein the case was registered as Metropolitan Sessions Case No. 3896 of 2013. Ultimately the case was transmitted to the Court of the learned Additional Metropolitan Sessions Judge, Khulna for disposal in which the accused-appellant pleaded not guilty and prayed to be tried.

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 Additional Metropolitan Sessions Judge, Khulna by the impugned judgment and order dated 07.05.2015 found the accused appellant guilty under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer simple imprisonment for a period of 01 (one) year and to pay a fine of Tk. 56,154 /-(fifty six thousand one hundred fifty-four) only .

Aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 07.05.2015, the convict-appellant preferred this criminal appeal.

No one found present to press the appeal on repeated calls inspite of fact that this 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 the Negotiable Instruments Act, 1881 has been dragging before this Court for more than 7 years, I am inclined to dispose of it on merit as per evidence and materials on record.

On perusal of record, it is found that the complainant after exhausting all the legal formalities filed C.R. Case No. 778 of 2010 (Khulna) under section 138 of the Negotiable Instruments Act, 1881 against the convict appellant and during trial the complainant himself was examined as PW-1 and exhibited some documents to prove its case.

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. Besides, it appears from the record that a single bench of this Court at the time of admission of appeal by order dated 29.02.2016 granted bail to the convict-appellant for a period of 06(six) months and thereafter, no one took any steps to extend the order of bail as a result of which, the said bail was expired long before on 29.08.2016. 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 12.06.2024, passed by the learned Additional Metropolitan Sessions Judge, Khulna, 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 Additional Metropolitan Sessions Judge, Khulna appears to have considered all the material aspects of the case and justly found the accused appellant guilty under Section 138 of the Negotiable Instrument Act, 1881 and sentenced him thereunder to suffer simple imprisonment for a period of 01 (one) year and to pay a fine of Tk. 56,154/- (fifty six thousand one hundred fifty-four) only.

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 07.05.2015 passed by the learned Additional Metropolitan Sessions Judge, Khulna in Metropolitan Sessions Case No. 3896 of 2013 arising out of C.R. Case No. 778 of 2010 (Khulna) against the accused appellant is hereby affirmed.

Since the appeal is dismissed the convict appellant, A.Q. Ahamed Ali 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 bank 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.