

**Present**

**Mr. Justice Sheikh Abdul Awal**

**Criminal Appeal No. 5012 of 2016**

Tuhin Hossain

.....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 complainant-respondent No. 2

**Judgment on 18.03.2024.**

**Sheikh Abdul Awal, J:**

This criminal appeal at the instance of convict appellant, Tuhin Hossain is directed against the impugned judgment and order of conviction and Sentence dated 16.08.2015 passed by the learned Additional Sessions Judge, 1<sup>st</sup> Court, Kushtia in Sessions Case No. 504 of 2014 arising out of Khoksha C.R. Case No. 18 of 2014 convicting the accused appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer rigorous imprisonment for a period of 01 (one) year and to pay a fine of Tk. 10,00,000/-(ten Lacs).

The gist of the case is that one, Md. Galim Khan as complainant filed a petition of complaint being C.R. Case No. 18 of 2014 in the Court of the learned Senior Judicial Magistrate (Cognizance Court), Khoksha, Kushtia against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 stating, inter-alia, that to pay the loan amount the convict-appellant on 08.12.2013 issued a cheque being No. SB-10/FH 6484241 of Tk. 5,00,000/-(five Lac) in favour of the complainant-respondent No.2 and thereafter, the complainant presented the said cheque for encashment in bank but the said cheque was dishonoured for insufficient of fund on 10.12.2013. In this back ground the complainant sent a legal notice through his lawyer to the accused appellant on 11.12.2013 asking him to pay the cheque's amount within 30 days and the said notice was returned as undelivered and thereafter, the complainant published the legal notice in national daily newspaper namely " Daily Bangladesh Barta" on 09.01.2014 although 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 No. 5, Khoksha, Kushtia 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 Instrument Act, 1881 and issued summon against the accused-appellant by his order dated 11.02.2014 fixing next date on 11.03.2014. Thereafter, the accused-appellant

voluntarily surrendered on 24.07.2014 before the Court concerned and obtained bail.

In this backdrop the case record was sent to the Court of learned Sessions Judge, Kushtia, wherein the case was registered as Sessions Case No. 504 of 2014 which was subsequently transmitted to the Court of the learned Additional Sessions Judge, 1<sup>st</sup> Court, Kushtia for disposal in which the accused-appellant was put on trial to answer a charge under Section 138 of the Negotiable Instrument Act, 1881 to which the accused-appellant pleaded not guilty and prayed to be tried.

At the trial, the complainant himself was examined as PW-1, who in his deposition categorically stated his case, and accused himself was examined as DW-1.

On conclusion of trial, the learned Additional Sessions Judge, 1<sup>st</sup> Court, Kushtia by his judgment and order dated 16.08.2015 found the accused appellant guilty under Section 138 of the Negotiable Instrument Act, 1881 and sentenced him thereunder to suffer rigorous imprisonment for a period of 01 (one) year and to pay a fine of Tk. 10,00,000/-(ten Lacs).

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 16.08.2015, the convict-appellant preferred this criminal appeal.

No one found present to press the appeal on repeated calls inspite of fact that this old criminal appeal has been appearing in the list for hearing with the name of the learned Advocate for the appelliant 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 scrutiny of the record, it appears that to pay the loan amount the convict-appellant on 08.12.2013 issued a cheque being No. SB-10/FH 6484241 of Tk. 5,00,000/-(five Lac) in favour of the complainant-respondent No.2 and thereafter, the complainant presented the said cheque for encashment in bank but the said cheque was dishonoured for insufficient of fund on 10.12.2013 and in this back ground the complainant sent a legal notice through his lawyer to the accused appellant on 11.12.2013 asking him to pay the cheque's amount within 30 days and the said notice was returned as undelivered and thereafter, the complainant published the legal notice in national daily newspaper namely " Daily Bangladesh Barta" on 09.01.2014 although the accused did not pay any heed to it. The complainant after exhausting all the legal requirements filed the case under Section 138 of the Negotiable Instrument Act, 1881 claiming the cheque's amount of Tk. 5,00,000/-(five Lakhs) and thereafter, the learned Judicial Magistrate, Cognizance Court

No. 5, Khoksha, Kushtia examined the complainant under Section 200 of the Code of the Criminal Procedure and also took cognizance by his order dated 11.02.2014 against the accused appellant.

It further appears that at the time of trial the complainant party examined 1 witnesses namely PW-1 who in his deposition stated that he is complainant of the case. Accused took Tk. 5,00,000/-(five Lakhs) from him on 09.11.2013 and thereafter accused issued a cheque of Tk. 5,00,000/-(five Lakhs) on 08.12.2013 and the said cheque was returned unpaid for insufficient of fund on 10.12.2013 and thereafter, the complainant sent a legal notice through his lawyer to the accused appellant on 11.12.2013 asking him to pay the cheque's amount within 30 days and the said notice was returned as undelivered and thereafter, the complainant published the legal notice in national daily newspaper namely "Daily Bangladesh Barta" on 09.01.2014 although the accused appellant did not pay any heed to it. This witness proved the complaint petition as exhibit-1 and his signature thereon as exhibit-1/1 and also proved the disputed cheque as exhibit-2 and also proved dishonour slip as exhibit-3, legal notice as exhibit-7 and identified the accused on doc. This witness in his cross-examination stated that- "কোথায় এই টাকা লেনদেন হয় তা উল্লেখ নাই। টাকা নগদে না চেকে প্রকাশ করা হয়েছে তা আরজীতে উল্লেখ নাই।" It further appears that accused himself was examined as DW-1 who in his deposition stated that- "বাদী গালিম খান চাকুরী দেওয়ার কথা বলে ৩ লক্ষ টাকা চায়। চাকুরী হলে

টাকা দিবো কথা হয়। সে কথার নিশ্চয়তা স্বরূপ আমার নিকট অলিখিত একটা চেক নেয়। এই কেছের প্রদর্শিত চেকের স্বাক্ষরটা আমার নয়। ঐ স্বাক্ষর জাল। বাদী চাকুরী দেয় নাই-চেকও ফেরত দেয় নাই। আমি Legal Notice পাই নাই। পত্রিকার বিজ্ঞপ্তি আমি জানি না।” This witness in his cross-examination stated that-“ বাদী যে চেক নেয় তার জন্য আমি কোন মামলা করি নাই। অলিখিত তাং স্বাক্ষর বিহীন চেক দিয়াছিলাম। মর্মে থানায় কোন GD করি নাই।”

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 not paid 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 analysis of the impugned judgment, I find no flaw in the reasonings of the learned Additional Sessions Judge, 1<sup>st</sup> Court, Kushtia or any ground to assail the same. It is found that P.W 1 proved his case as to the time, place and manner of occurrence and accordingly the complaint proved the guilt of the accused appellant beyond reasonable doubts. The convict-appellant could not prove his plea of innocence by adducing reliable evidence.

In view of my discussions made in the foregoing paragraphs it is by now clear that the appeal must fail.

In the result, the appeal is dismissed. The impugned the judgment and order of conviction and Sentence dated 16.08.2015 passed by the learned Additional Sessions Judge, 1<sup>st</sup> Court, Kushtia in Sessions Case No. 504 of 2014 arising out of Khoksha C.R. Case No. 18 of 2014 convicting the accused appellant under section 138 of the Negotiable Instruments Act, 1881 is hereby maintained.

Since the appeal is dismissed the convict appellant, Tuhin Hossain is directed to surrender his bail bond within 03(three) months from today to suffer his sentence, failing

which the trial Court shall take necessary steps to secure arrest against him.

The complainant-opposite party 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.