

Present

Mr. Justice Sheikh Abdul Awal

Criminal Appeal No. 6656 of 2016

Md. Shafiqul Islam

.....Convict-appellant.

-Versus-

The State and another

.....Respondents.

Mr. Abdul Jahid Joarder, Advocate

.....For the convict-appellant.

Ms. Kamrunnahr Lipi, A.A.G with

Ms. Israt Jahan, A.A.G.

..... For the respondent No.1

Md. Azharul Islam Chowdhury, Advocate

..... For the respondent No.2

Judgment on 05.12.2024.

Sheikh Abdul Awal, J:

This criminal appeal at the instance of the convict appellant, Md. Shafiqul Islam is directed against the impugned judgment and order of conviction and Sentence dated 28.10.2015 passed by the learned Special Sessions Judge, Court No. 7, Dhaka in Special Sessions Case No. 10 of 2015 arising out of C.R. Case No. 706 of 2014 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 06 (six) months and to pay a fine of Tk. 5,00,000/-(five Lac) only.

The gist of the case is that one, Subod Kumar Saha on behalf of K.T.S Logistic Limited as complainant filed a petition of complaint being C.R. Case No. 706 of 2014 in the Court of the learned Chief Metropolitan Magistrate, Dhaka against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 stating, inter-alia, that out of business transaction the accused appellant fallen due amounting the Tk. 10,30,231/-(ten Lac thirty thousand two hundred and thirty one) and thereafter, on 30.01.2014 the accused to pay the outstanding dues issued a cheque being No. CB/SB 0482483 amounting to Tk. 4,00,000/-(four Lac) of City Bank Ltd. in favour of the complainant company and thereafter, the complainant presented the said cheque before bank for encashment but the said cheque was dishonoured on 05.03.2014 for insufficient of fund. Thereafter, the complainant company sent a legal notice through his Advocate to the accused appellant on 25.03.2014 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 Metropolitan Magistrate, Dhaka examined the complainant under Section 200 of the Code of Criminal Procedure on 08.05.2014 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 09.07.2014.

Ultimately, the case was sent to the Court of the learned Special Sessions Judge, Court No. 7, Dhaka for disposal, wherein the case was registered as Special Sessions Case No. 10 of 2015 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 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 Special Sessions Judge, Court No. 7, Dhaka by the impugned judgment and order dated 28.10.2015 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 06 (six) months and to pay a fine of Tk. 5,00,000/-(five Lac) only.

Aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 28.10.2015, the convict-appellant preferred this criminal appeal.

On perusal of record, it is found that the complainant after exhausting all the legal formalities filed C.R. Case No. 706 of 2014 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.

On an analyses of impugned judgment and order of conviction and sentence dated 28.10.2015, passed by the learned Special Sessions Judge, Court No. 7, Dhaka, 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 Special Sessions Judge, Court No. 7, Dhaka 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 06 (six) months and to pay a fine of Tk. 5,00,000/-(five Lac) only.

In the result, the appeal is dismissed. The impugned judgment and order of conviction and Sentence dated 28.10.2015 passed by the Special Sessions Judge, Court No. 7, Dhaka in Special Sessions Case No. 10 of 2015 arising out of C.R. Case No. 706 of 2014 against the accused appellant is hereby affirmed.

Since the appeal is dismissed the convict appellant, Md. Shafiqul Islam is directed to surrender his bail bond within 4(four) months from today to suffer his sentence, failing which the Trial Court concerned 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.