

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)**

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 7948 of 2016

Md. Nazrul Islam

...accused-appellant

-Versus-

The State and another

...respondents

Mr. Sarker Md. Tariqul Islam, Advocate

...For the appellant

Mr. Md. Atiqul Haque, Advocate

.....For the respondent No. 2

Mr. S.M Golam Mostofa Tara, DAG with

Mr A. Mannan, AAG with

.....for the State.

Heard on 19.07.2023, 18.10.2023 and
02.11.2023

Judgment delivered on 07.11.2023

This appeal under Section 410 of the Code of Criminal Procedure, 1898 is directed against the judgment and order of conviction and sentence dated 31.05.2016 passed by Additional Metropolitan Sessions Judge, Rajshahi in Metropolitan Session Case No. 564 of 2013 arising out of C.R. Case No. 163 of 2012 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple imprisonment for 06(six) months and to pay a fine of Tk. 6,42,000 (six lakh forty-two thousand).

The prosecution case, in short, is that the complainant Md. Shamsuddin is the proprietor of Mehedi Nur Taj Glass House and deals with the business of thai-aluminium and glasses. The accused Md. Nazrul Islam also deals with the business of thai-aluminium and glasses purchasing those from the shop of complainant. The accused

purchased thai-aluminium valued at Tk. 3,21,000. He issued cheque No. 1626311 drawn on his Account No. 01933005121 maintained with Standard Bank, Rajshahi Branch on 20.12.2011. The complainant presented the said cheque on the same date but the same was dishonoured with a remark “insufficient funds”. After that, he issued a legal notice on 10.01.2012. Despite the notice served upon the accused, he did not pay the cheque amount. Consequently, the complainant filed the complaint petition on 15.02.2012.

After filing the complaint petition, the complainant was examined under section 200 of the Code of Criminal Procedure, 1898 and the learned Magistrate was pleased to take cognizance of the offence under section 138 of the Negotiable Instruments Act, 1881 against the accused. The accused Md. Nazrul Islam voluntarily surrendered on 08.05.2012 and obtained bail.

After that, the case record was transmitted to the Metropolitan Sessions Judge, Rajshahi who transferred the case to the Additional Metropolitan Sessions Judge, Rajshahi for trial who by order dated 16.09.2012 took cognizance of the offence against the accused under section 138 of the Negotiable Instruments Act, 1881. The trial court by order dated 22.05.2014 framed charge against the accused under section 138 of the Negotiable Instruments Act, 1881 and the charge was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried following the law.

The prosecution examined one witness to prove the charge against the accused. After examination of the prosecution witness, the accused was examined under section 342 of the Code of Criminal Procedure, 1898 and he declined to adduce any DW. After concluding the trial, the trial court by impugned judgment and order convicted the accused and sentenced him as stated above against which he filed the instant appeal.

P.W. 1 Md. Samsuddin is the complainant. He stated that he deals with the business of thai-aluminium. The accused Md. Nazrul Islam issued a cheque dated 20.12.2011 for payment of Tk. 3,21,000. On 20.12.2011 the complainant presented the said cheque through his account maintained with Standard Bank, New Market Branch, which was dishonoured on the same date with the remark “insufficient funds”. On 10.01.2012 he issued the legal notice which was received by the accused on 12.01.2012. He proved the complaint petition as exhibit-1 and his signature as exhibit-1/1. He proved the cheque as exhibit 2 and the dishonour slip as exhibit 3. The legal notice and postal receipt as exhibit -4 and the AD as exhibit -5. During cross-examination, he stated that the accused occasionally purchased the goods from his shop. He is the owner of Sadman Electronics. The accused used to purchase the goods from his shop in 2009/ 2010 on credit. His employee filled up the cheque and his employee Jaber Ali presented the cheque to the bank. He denied the suggestion that the accused did not issue the cheque. He also denied the suggestion that he did not issue legal notice correctly.

None appears on behalf of the accused.

The learned Advocate Mr. Md. Atiqul Hoque appearing on behalf of respondent No. 2 submits that the accused used to purchase the goods from the shop of the complainant on credit and he issued a cheque on 20.12.2011 for payment of the dues amounting to Tk. 3,21,000 and he presented the cheque on the same date which was returned unpaid with the remark “insufficient funds”. Thereafter, the complainant issued legal notice which was served upon the accused but he did not pay the cheque amount. After complying with all the legal procedures following under section 138 of the Negotiable Instruments Act, 1881 the complainant filed the complaint petition. P.W.1 proved the charge against the accused beyond all reasonable doubt.

I have considered the submission of the learned Advocate Mr. Md. Atiqul Hoque who appeared on behalf of respondent No. 2, perused the evidence, impugned judgment and order passed by the trial court and the records.

On perusal of the records, it appears that the complainant issued a cheque on 20.12.2011 drawn on his account maintained with Standard Bank Ltd, Rajshahi Branch (exhibit-2) and the complainant presented the said cheque on the same date which was dishonoured on the same date with a remark “insufficient funds” and the bank issued the dishonour slip (exhibit-3). Thereafter, the complainant issued a legal notice registered with AD on 10.01.2012 which was proved as exhibit-4 and exhibit-5. Despite the service of notice upon the accused, he did not pay the cheque amount. By cross-examining P.W.1, the defence could not bring out any fact that he did not issue the cheque. The defence only suggested that the accused did not issue any cheque in favour of the complainant. No suggestion was given to P.W. 1 denying that the accused did not sign the cheque.

There is a presumption under section 118(a) of the Negotiable Instruments Act, 1881 that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. The presumption under Section 118 (a) is rebuttable. By cross-examining P.W. 1 the defence could not rebut the presumption under Section 118(a) of the said Act. Therefore, I am of the view that the accused issued the cheque in favour of the payee-complainant for consideration. After service of notice in writing the accused failed to pay the cheque amount. Thereby the accused committed an offence under Section 138 of the Negotiable Instruments Act, 1881 and the complainant filed the case following all procedures under Section 138 of the Negotiable Instruments Act, 1881. The prosecution proved the charge

against the accused beyond all reasonable doubt and the trial Court on correct assessment of evidence legally passed the impugned judgment and order.

Considering the gravity of the offence, I am of the view that the impugned sentence passed by the trial court is harsh. Therefore, I am inclined to modify the sentence passed by the trial court as under:

The accused Md. Nazrul Islam is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and he is sentenced thereunder to suffer simple imprisonment for 02(two) months and fine of Tk. 3,21,000.

In the result, the appeal is disposed of with modification of the sentence.

Send down the lower Court's records at once.