

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

**Present:**

**Mr. Justice Md. Shohrowardi**

**Criminal Appeal No. 9129 of 2016**

**Md. Bayezid Hossain**

...Accused-appellant

-Versus-

The State and another

...Respondents

None appears

...For the appellant

Mr. Mokim Uddin Khan Jahan Ali

.....For the respondent No. 2

Mr. S.M Golam Mostofa Tara, DAG with

Mr A. Mannan, AAG with

.....for the State.

Heard on 18.10.2023, 05.11.2023

**Judgment delivered on 06.11.2023**

This appeal under Section 410 of the Code of Criminal Procedure, 1898 is directed against the judgment and order of conviction and sentence dated 22.11.2015 passed by Additional Sessions Judge, Court No.1, Rangpur in Session Case No. 432 of 2014 arising out of C.R. Case No. 18 of 2014 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple imprisonment for 03 (three) months and to pay a fine of Tk. 7,50,000(seven lakh fifty thousand).

The prosecution case, in short, is that the accused Md. Bayezid Hossain obtained a loan of Tk. 3,00,000 from the complainant Brac Bank. After that, the accused issued cheque No. 02B 8995645 dated 19.01.2014 for payment of Tk. 2,78,721 drawn on his account maintained with Agrani Bank Ltd, Taragonj Branch, Rangpur. The complainant presented the cheque for encashment but the same was

dishonoured on 10.02.2014 with a remark “insufficient funds”. After that, the complainant issued a legal notice on 16.02.2014 which was received on 19.02.2014 by the accused but he did not pay the cheque amount. Consequently, the complainant filed the case on 03.04.2014.

After filling the complaint petition, the complainant was examined under section 200 of the Code of Criminal Procedure, 1898 and cognizance was taken against the accused under section 138 of the Negotiable Instruments Act, 1881. Thereafter, the case was sent to the Sessions Judge, Rangpur and the Sessions Judge, Rangpur was pleased to send the case to the Additional Sessions Judge, Court No.1, Rangpur for trial. During the trial, the prosecution examined two witnesses to prove the charge against the accused. After examination of the prosecution witnesses the accused was examined under section 342 of the Code of Criminal Procedure, 1898 and the defence declined to examine 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 the accused preferred this appeal.

P.W. 1 Md. Shafi Ullah is the Assistant Manager, Brac Bank Ltd, Kotwali SME Unit, Taragonj Branch, Rangpur. He stated that he is the complainant. The accused obtained a loan of Tk. 300,000 from the Brac Bank Ltd. He issued a cheque on 19.01.2014 for payment of Tk. 2,78,721. After presenting the said cheque, it was dishonoured on 10.02.2014 with the remark “insufficient funds”. After that, the bank issued a legal notice on 16.02.2014 upon the accused for payment of the cheque amount which was received by the accused on 19.02.2014 but he did not pay the cheque amount following the legal notice. Consequently, the bank filed the complaint petition. P.W. 1 proved the complaint petition and his signature as exhibit-I series. He proved the cheque as exhibit 2 and the dishonour slip as exhibit 3. He proved the postal receipt with AD as exhibit-4- 4 series and the legal notice as exhibit-5. During cross-examination on behalf of the accused, P.W.1 admitted that the

accused paid Tk. 1,48,990 and there was a debt of Tk. 1,52,500. He denied the suggestion that at the time of disbursement of the loan, the bank received a blank cheque. He also denied the suggestion that subsequently, the bank wrote the cheque amount and filed the case. He affirmed that no security document was received by the bank. He denied the suggestion that there is no debt equivalent to the cheque amount.

P.W. 2 Md. Foizar Rahman is the Senior Officer, Agrani Bank, Taragonj Branch. He stated that the cheque was presented on 10.02.2014 for encashment which was dishonoured with a remark “insufficient funds”. The bank officer Shahjahan Shamim issued the dishonour slip on 10.02.2014. His signature is known to him. He proved the signature of Officer Shahjahan Shamim as exhibit 2. During cross-examination, he stated that he did not know whether the accused himself had written the cheque amount.

No one appears on behalf of the accused.

The learned Advocate Mr. Chowdhury Makimuddin Khan Jahan Ali appearing on behalf of respondent No. 2 submits that the accused obtained a loan of Tk. 300,000 and subsequently, he issued a cheque on 19.01.2014 for payment of Tk. 2,78,721 which was dishonoured on 10.02.2014 and the complainant also issued a legal notice on 16.02.2014 for payment of the cheque amount. Despite the service of notice on 19.02.2014, the accused did not pay the cheque amount. Consequently, he filed the case complying with all the legal procedures provided in section 138 of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the accused beyond all reasonable doubt. Therefore, he prayed for the dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Chowdhury Makimuddin Khan Jahan Ali 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 evidence of P.W. 1 and the cheque (exhibit-2), it appears that the disputed cheque was issued for payment of Tk. 2,78,721. During cross-examination, P.W. 1 affirmed that the accused paid Tk. 1,48,990 and there was a debt of Tk. 1,58,510. Therefore, it is an admitted fact that there was no loan equivalent to the cheque amount and there was no reason for the accused to issue the disputed cheque for payment of Tk. 2,78,721. The defence case is that at the time of disbursement of the loan the bank received a blank cheque from the accused and subsequently writing the cheque amount on the blank cheque filed the case. The defence by cross-examining P.W. 1 rebutted the presumption under section 118(a) of the Negotiable Instruments Act, 1881 that the cheque was issued for consideration.

In view of the above evidence, observation, findings and reasoning, I am of the view that the prosecution failed to prove the charge under section 138 of the Negotiable Instruments Act, 1881.

In the result, the appeal is allowed.

Send down the lower Court's records at once.