

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

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 6682 of 2019

Md. Abu Saleque

-Vs-

The State and another

None appears

..For the appellant

Mr. Md. Ashrafuzzaman, Advocate

..... the respondent No. 2

Mr. S.M. Golam Mostofa Tara, DAG with

Mr. A. Monnan, AAG

.....for the respondents

Heard on 18.10.2023, 01.11.2023

Judgment on 05.11.2023

This appeal under Section 410 of the Code of Criminal Procedure, 1898 is directed against the impugned judgment and order dated 14.01.2019 passed by Additional Metropolitan Sessions Judge, Court No. 8, Dhaka in Metropolitan Session Case No. 2913 of 2018 arising out of C.R. Case No. 834 of 2017 convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him thereunder to suffer imprisonment for 6 (six) months and a fine of Tk. 6,00,000 (six lakh) only.

The prosecution case, in short, is that the accused Md. Abu Saleque issued cheques Nos. 2113665, 2113666 and 4989710 in favour of the complainant on 01.12.2016 drawn on his Account No. 0006933004676 maintained with National Bank Ltd, Mirpur Branch, Dhaka for payment of Tk. 100,000, 400,000 and 100,000 respectively. The complainant presented the said cheques for encashment which were dishonoured on 28.05.2017 with the remark "insufficient funds". After that, the complainant issued a legal notice on 21.06.2017 upon the accused through the registered post with AD for payment of the cheque amount. Despite the service of notice

upon the accused, he did not pay the cheque amount. Consequently, the complainant filed the complaint petition on 17.08.2017.

After filing the complaint petition, cognizance was taken against the accused under section 138 of the Negotiable Instruments Act, 1881. Subsequently, the case record was sent to the Metropolitan Sessions Judge, Dhaka for trial and the Metropolitan Sessions Judge, Dhaka sent the case to the Additional Metropolitan Sessions Judge, Court No. 8, Dhaka for disposal. During trial, by order dated 02.04.2018 charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881. Since the accused was absconding, the charge framed against the accused could not be read over and explained to him. During the trial, the complainant examined one P.W to prove the charge. Since the accused was absconding, P.W. 1 was not cross-examined by the defence. 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 Advocate Md. Nazmul Haque Talukder stated that the accused issued cheques Nos. 2113665, 2113666 and 4989710 dated 01.12.2016 for payment of total Tk. 600,000. He proved the cheque Nos. 2113665, 2113666 and 4989710 as exhibit-I series. The said cheques were dishonoured on 28.05.2017 with the remark “insufficient funds”. He proved the dishonour slip as exhibit 2. He proved the legal notice dated 21.06.2017 as exhibit 3. The legal notice sent to the accused was returned on 02.07.2017. He proved the AD as exhibit 4. P.W. 1 claimed that the accused did not pay the cheque amount. He proved the complaint petition as exhibit-5 and his signature as exhibit-5/1. The defence did not cross-examine P.W.1.

None appears on behalf of the accused.

The learned Advocate Mr Ashrafuzzaman appearing on behalf of respondent No. 2 submits that the accused issued cheque Nos. 2113665,

2113666 and 4989710 dated 01.12.2016 for payment of total Tk. 600,000 which was dishonoured on 28.05.2017 with a remark “insufficient funds” and after complying with all the legal procedures provided in section 138 of the Negotiable Instruments Act, 1881 filed the case and P.W. 1 proved the charge against the accused beyond all reasonable doubt.

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

On perusal of the records, it appears that the accused Md. Abu Saleque issued cheques Nos. 2113665, 2113666 and 4989710 dated 01.12.2016 drawn on his Account No. 0006933004676 maintained with National Bank Ltd, Mirpur Branch in favour of complainant for payment of total Tk. 600,000 and the said cheques were dishonoured on 28.05.2017. P.W. 1 proved the said cheques as exhibit-I series and the dishonour slips as exhibit-II series. After that, the complainant issued a legal notice on 28.06.2017(exhibit-3) which was served upon the complainant on 02.07.2017 (exhibit-4 series). The accused did not pay the cheque amount. Thereafter, the complaint petition was filed on 17.08.2017. After complying with all the legal procedures, the complainant filed the case under section 138 of the Negotiable Instruments Act, 1881. During the trial, the defence did not cross-examine P.W. 1. Therefore, the evidence of P.W. 1 as regards the issuance of three cheques by the accused remain uncontroverted.

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. The accused neither adduced evidence nor cross-examined P.W. 1 to 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.

In view of the above evidence, findings, observation and proposition, I am of the view that the complainant proved the charge against the accused under section 138 of the Negotiable Instruments Act, 1881 to the hilt beyond all reasonable doubt and the trial court on proper assessment of the evidence legally passed the impugned judgment and order of conviction.

As regards the sentence passed by the trial court, I am of the view that ends of justice would be best served, if the sentence passed by the trial court is modified as under:

The accused Md. Abu Saleque is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and he is sentenced thereunder to suffer imprisonment for one month and to pay a fine of Tk. 600,000.

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

The trial court is directed to do the needful following law.

Send down the lower Court's records at once.