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

Present:
Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 5697 of 2017

In the matter of:
An Appeal under section 410 of the Code of Criminal Procedure

-And-

In the matter of:
Md. Shamim Alom
... Convict-Appellant

-Versus-

The State and another
...Complainants-Respondents.

Mr. Md. Sultan Mahmud, Advocate
... For the Convict-Appellant

Mr. S.M. Aminul Islam Sanu, D.A.G with
Mr. Md. Nasimul Hasan, A.A.G with
Mr. Md. Golamun Nabi, A.A.G and
Mr. Md. Joynal Hossain Rubel, A.A.G
… For the State.

Mr. M. Mashiur Rahman, Advocate
... For the Complainant-Respondent no. 2

Heard on: 08.01.2026 and 11.01.2026
Judgment on: 13.01.2026

This appeal preferred under section 410 of the Code of Criminal Procedure, 1898 is directed against the judgment and order of conviction and sentence dated 14.02.2017 passed by the learned Additional Metropolitan Sessions Judge, Rajshahi in Sessions Case No. 190 of 2015 arising out of Complaint Register (C.R) Case No. 379-C of 2014 convicting the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 6(six) months and to pay a fine of Tk. 8,00,000/- (eight lac).

The prosecution case, in short, is that the accused Md. Shamim Alom took a loan of Taka 4,00,000/- from the complainant for business purposes and to adjust the loan he issued Cheque No. OBL/CD 7889753, drawn on One Bank Limited, Rajshahi Branch, Rajshahi in favour of the complainant, Md. Ayub Ali Talukder for payment of Tk. 4,00,000/- (four lac) on 23.03.2014. The complainant presented the cheque on 23.03.2014 for encashment, which was dishonoured with the endorsement of ‘insufficient funds’. On 30.03.2014, the complainant issued a legal notice through

registered post with AD demanding payment of the cheque amount. Although the accused received the said notice on 01.04.2014 but he failed to make payment within the stipulated time. Consequently, on 18.05.2014, the complainant filed the case.

On taking cognizance of offence alleged charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881. The accused pleaded not guilty and claimed to be tried when the charge was read out and explained to him. In course of trial, the prosecution examined 01(one) witness while the defence adduced no evidence. After the closure of prosecution evidence, the accused was examined under section 342 of the Code of Criminal Procedure. Upon conclusion of the trial, the learned Additional Metropolitan Sessions Judge, Rajshahi by judgment and order dated 14.02.2017 convicted the accused under section 138 of the Negotiable Instruments Act, 1881, and sentenced him there under to suffer imprisonment for 6(six) months and fine of Tk. 8,00,000/- (eight lac) against which the accused preferred the instant appeal.

Mr. Md. Sultan Mahmud, learned Advocate appearing on behalf of the appellant submits that although the accused issued the cheque, but due to hardship, he could not make payment the cheque amount after receipt of the notice sent by the complainant after dishonour of the cheque and in the meantime, the appellant paid 50% of the cheque amount to the complainant. He further submits that the appellant is making efforts to sell his property to pay the remaining Taka 2,00,000/- for which he requires 6 months time. He prays for setting aside the impugned judgment and order passed by the trial Court and for allowing the appeal.

Per contra, Mr. M. Mashiur Rahman, learned Advocate appearing on behalf of the complainant-respondent No. 2, submits that the accused issued the cheque on 23.03.2014 for Taka 4,00,000/- and the same was dishonoured on 23.03.2014 due to ‘insufficient funds’. The complainant sent a legal notice through registered post with AD and despite service of notice upon the accused, he failed to make payment of the cheque amount. During the trial, the prosecution successfully proved the charge beyond reasonable doubt, and the trial

Court legally passed the impugned judgment and order convicting and sentencing the accused.

I have considered the submission of the learned Advocates for both sides, perused the evidence on record, impugned judgment and order passed by the trial Court and the materials on records.

Upon careful scrutiny of the evidence, it appears that the complainant has duly complied with the procedure laid down in Section 138 of the Act, 1881 in filing the case. The case was filed within statutory period prescribed under clause (c) of the proviso to Section 138. The complainant has also proved the consideration for which the cheque was issued and that it is the holder of the cheque in due course. The Courts below righty found the petitioner guilty of the charge. I find the impugned judgment and order of conviction do not suffer from any illegality or infirmity.

However, as regards to the sentence, reference may be made to decision passed in ***Aman Ullah Vs. State***, reported in 73 DLR(2021) 541, wherein it has been held:

"There can be no dispute in so far as the sentence of imprisonment is concerned that it should commensurate with the gravity of the crime. Court has to deal with the offenders by imposing proper sentence by taking into consideration the facts and circumstances of each case. It is not only the rights of the offenders which are required to be looked into at the time of the imposition of sentence, but also of the victims of the crime and society at large, also by considering the object sought to be achieved by the particular legislation. Considering the facts and circumstances of the case and the object of the law, I am of the view that the sentence of imprisonment would be a harsh sentence having no penal objective to be achieved. Hence, the sentence of imprisonment is set aside."

I find no reason to take a different view from the *ratio* laid down in the decision passed by the High Court Division.

Considering the gravity of the offence and the facts and circumstances of the case and *ratio* laid down in the above-mentioned reported case passed by the High Court Division, I am of the view that the ends of justice would be best served if the sentence passed by the trial Court is modified.

It appears that the appellant has already deposited 50% of the cheque amount in the trial Court prior to filing the appeal. The complainant Md. Ayub Ali is entitled to receive the said 50% of the cheque amount forthwith.

In view of the foregoing discussions and the *ratio* laid down in the above-mentioned reported case, the order of the Court is as follows:

The conviction of the appellant under Section 138 of the Act, 1881 is affirmed, but the sentence is modified. The sentence of 06 months simple imprisonment is set aside. The sentence of fine is reduced from Tk. 8,00,000/=(eight lac) to Taka 4,00,000/-. The Court concerned is directed to disburse the said deposited amount to the complainant-respondent No.2 forthwith. The convict-appellant is directed to pay the remaining portion of the value of the dishonoured cheque that is Taka 2,00,000/- to the complainant-respondent No. 2 through trial Court within 3(three) months from the date of receipt of this order, in default he will suffer simple imprisonment for 03(three) months. If the convict-appellant does not pay the remaining portion of the fine as ordered or

opts to serve out the period of imprisonment in lieu of payment of fine, he is not exempted from paying the same. In that event, the Court concerned shall realize the fine under the provisions of Section 386 of the Code of Criminal Procedure.

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

The convict-appellant is released from the bail bond.

Send down the lower Court's records (LCR) at once. Communicate the judgment and order to the Court concerned forthwith.

Md. Ariful Islam Khan
Bench Officer