IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present:
Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 3400 of 2018

In the matter of:
An Appeal under section 410 of the Code of Criminal Procedure
-And-
In the matter of:
Md. Iqbal Hossein
... Convict-Appellant
-Versus-
The State and another
...Complainant-Respondents

No one appears
... For the Convict-Appellant

Mr. Md. Zishan Mahmud, Advocate with
Ms. Tasnuva Quiser, Advocate
... For the Complainant-Respondent No. 2

Mr. Md. Mizanur Rahman, D.A.G and
Mr. Md. Sirajul Karim (Rabi), A.A.G

Heard on: 24.08.2026 and 25.08.2026
Judgment on: 03.09.2026

This appeal, preferred under section 410 of the Code of Criminal Procedure, 1898 is directed against the judgment and order dated 04.03.2018 passed by the learned Sessions

Judge, Joypurhat in Sessions Case No. 33 of 2017 arising out of C.R Case No. 192(C) of 2016(Khet:), convicting the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer rigorous imprisonment for a period of 01(one) year and to pay a fine of Taka. 2,00,,000/- (two lac).

The prosecution case, in short, is that the accused-appellant obtained a loan of Taka 1,90,000/- from the complainant-BRAC,BDP, Fuldighi Branch, Khetlal, Joypurhat. The amount stood Taka 2,00,000/- after adding interest. In discharge of the said liability, the accused-appellant issued cheque No. OIB 4208839 dated 27.06.2016 for Taka 2,00,000/=, drawn on Agrani Bank Limited, Chamrul Bogra Branch. The complainant presented the said cheque to the concerned bank on 27.06.2016 but the same was dishonoured on 20.07.2016 with the endorsement “insufficiency of funds”. Thereafter, the complainant served a statutory legal notice on 27.07.2016 and it was received on 02.08.2016, however, the appellant failed to make payment within the stipulated period.

Consequently, the complainant filed C.R. Case No. 192(C) of 2016(Khet:) before the Judicial Magistrate, Cognizance Court, Ga Anchal, Jaypurhat. The learned Magistrate took cognizance of the offence and subsequently transmitted the case to the Court of the learned Sessions Judge, Joypurhat and was registered as Sessions Case No. 33 of 2017. Charge was framed under Section 138 of the Negotiable Instruments Act, 1881 against the accused-appellant on 21.06.2017. The accused pleaded not guilty and claimed to be tried when the charge was read over and explained to him.

In course of trial, the prosecution examined 01(one) witness. The accused was not examined under Section 342 of the Code of Criminal Procedure as he remained absconding.

Upon conclusion of the trial and hearing the parties, the learned Sessions Judge, Joypurhat convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer rigorous imprisonment for a period of 01(one) year and to pay a fine of Taka. 2,00,,000/- (two lac) by judgment and order dated 04.03.2018.

Being aggrieved by and dissatisfied with judgment and order dated 04.03.2018, the appellant preferred the instant Criminal Appeal before this Court having deposited Taka 1,00,000/-, whereupon the Court enlarged the appellant on bail for a period of 01(one) year on 09.04.2018.

No one appears on behalf of the appellant although the appeal has been appearing in the daily cause list for several days with the name of the learned Advocate for the appellant.

Per contra, Ms. Tasnuva Quiser, the learned Advocate appearing for the respondent No. 2 by filing an application for disposal of appeal on modification of sentence submits that the appellant deposited Taka 1,00,000/- (one lac) only before filing the appeal. Subsequently, during pendency of the appeal, the appellant paid Taka 1,00,000/- (one lac) directly to the complainant-BRAC Microfinance. In this regard, the parties signed a deed of compromise. She submits that since the appellant adjusted entire cheque amount, so she has no objection if the substantive sentence of imprisonment is set aside. She submits that she has received instruction from his client not to oppose the appeal.

I have heard the learned Advocate for respondent No.2 and perused the materials on record.

It appears from the petition of complaint, the deposition of PW1 (complainant) and the documentary evidence, it transpires that the accused-appellant obtained a loan of Taka 1,90,000/- from the complainant-BRAC BDP, Fuldighi Branch, Khetlal, Joypurhat. In discharge of the said liability, the accused-appellant issued cheque No. OIB 4208839 dated 27.06.2016 for Taka 2,00,000/=, drawn on Agrani Bank Limited, Chamrul Bogra Branch. The complainant presented the said cheque to the concerned bank on 27.06.2016 but the same was dishonoured with the endorsement "insufficiency of funds". Thereafter, the complainant served a statutory legal notice on 02.08.2016, however, the appellant failed to make payment within the stipulated period. Consequently, the complainant filed C.R. Case No. 192(C) of 2016(Khet:). P.W.1 duly proved the prosecution case.

The record shows that the complainant has successfully proved compliance of the procedure laid down in Section 138 of the Act, 1881 in filing the case. The case was filed within one month of the date on which the cause of action had arisen under clause (c) of the proviso to Section 138. The complainant also proved the consideration against which the cheque was drawn and that it is the holder of the cheque in due course. The trial Court upon proper assessment of evidence righty found the accused guilty of the charge. Hence, the impugned judgment and order of conviction does not suffer from any illegality or infirmity.

However, as regards to the sentence, reference may be made to the decision passed in ***Aman Ullah Vs. State***, reported in 73 DLR (2021) 541, wherein this Court observed that in cases instituted under section 138 of the Negotiable Instruments Act, imposition of a substantive imprisonment would be a harsh having no penal objective to be achieved.

The record shows that the accused deposited Taka 1,00,000/- prior to filing the appeal and during pendency of the appeal the appellant paid rest amount of the cheque to the respondent directly. Thus, he adjusted the entire liability to the complainant. In this regard, the respondent No.2 BRAC Microfinance signed a compromise deed dated 15.07.2026 (Annexure-I). Learned Advocate for the respondent no. 2 also admitted that the respondent no.2 BRAC Microfinance has received the entire amount of liabilities and that no outstanding dues remained.

Considering the financial hardship of the petitioner and the facts and circumstances of the case this Court is of the view that the ends of justice would be best served if the substantive sentence of imprisonment is modified and set aside while preserving the financial penalty.

In view of the foregoing discussions, together with the decision and the *ratio* laid down in the above-mentioned reported case, the appeal is disposed of with the following order:

The conviction of the appellant under Section 138 of the Act, 1881 is upheld, however, the sentence of 01(one) year simple imprisonment is set aside. The sentence of fine of Taka 2,00,000/- which is equivalent to the cheque amount is maintained. It appears that the convict-appellant has already deposited Tk. 1,00,000/- before the trial Court prior to filing the appeal and subsequently he deposited the rest amount to the complainant-BRAC Microfinance directly. The Court concerned is directed to disburse the deposited amount, Taka

1,00,000/- to the complainant-respondent No. 2 forthwith upon proper identification.

In the result, the Appeal is disposed of with modification of sentence of imprisonment and with directions as made above. The convict-appellant is released from her bail bond.

Let the judgment along with lower Court's records (LCR) be communicated to the Court concerned forthwith.

(Md. Bashir Ullah, J)

Md. Ariful Islam Khan
Bench Officer