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

<u>Present:</u>
Mr. Justice Md. Bashir Ullah

<u>Criminal Appeal No. 4696 of 2018</u>

<u>In the matter of:</u>
An Appeal under section 410 of the Code of Criminal Procedure

-And-

<u>In the matter of:</u>
Md. Abdul Hannan Master
... Convict-Appellant

-Versus-

The State and another
...Complainant-Respondents

None 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
... For the State

<u>Heard on: 24.08.2026 and 25.08.2026</u>
<u>Judgment on: 03.09.2026</u>

This appeal, preferred under section 410 of the Code of Criminal Procedure, 1898 is directed against the judgment and order dated 19.03.2013 passed by the learned Sessions

Judge, Sirajgonj in Sessions Case No. 429 of 2012, arising out of C.R Case No. 123(C) of 2009, 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. 84,375/- (eighty four thousand three hundred seventy five).

The prosecution case, in short, is that the accused-appellant obtained a loan of Taka 50,000/-. Subsequently, he repaid Taka 21,875/-. The rest unpaid amount was Taka 28,125/-. In discharge of the said liability, the accused-appellant issued cheque No. MSF 2272921 dated 19.01.2009 for Taka 28,125/=, drawn on Islami Bank Limited, Sirajganj Branch, Sirajganj. The complainant presented the said cheque to the concerned bank on 19.01.2009 but the same was dishonoured on 10.02.2009 with the endorsement "insufficiency of funds". Thereafter, the complainant served a statutory legal notice on 19.02.2009, however, the appellant failed to make payment within the stipulated period.

Consequently, the complainant filed C.R. Case No. 123(C) of 2009 2009 before the learned Chief Judicial Magistrate, Sirajgonj. The learned Magistrate took cognizance of the offence and subsequently transmitted the case to the Court of the learned Sessions Judge, Sirajganj and was registered as Sessions Case No. 429 of 2012. Charge was framed under Section 138 of the Negotiable Instruments Act, 1881 against the accused-appellant but the charge could not be read over and explained to the accused due to his absconsion.

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, Sirajganj convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 (the Act, 1881) and sentenced him to suffer rigorous imprisonment for a period of 01(one) year and to pay a fine of Taka. 84,375/- (eighty four thousand three hundred seventy five) by judgment and order dated 19.03.2013.

Being aggrieved by and dissatisfied with judgment and order dated 19.03.2013, the appellant preferred the instant Criminal Appeal before this Court, whereupon this Court enlarged the appellant on bail for a period of 01(one) year on 07.08.2018.

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.

Ms. Tasnuva Quiser, the learned Advocate appearing for the respondent No. 2 by filing an application for disposal of appeal on modification of sentence along with a deed of compromise submits that the appellant paid Taka 14,100/- on 03.07.2013 before filing the appeal. Subsequently, he paid the rest amount to the complainant directly. In this regard she submitted a deed of compromise signed by the appellant and respondent. She submits that she has no objection if the substantive sentence of imprisonment is set aside. Moreover, she has received instructions from her client not to oppose the appeal. She prays for disposal of 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

28,125/- from the complainant-bank. In discharge of the said liability, the accused-appellant issued cheque No. MSF 2272921 dated 19.01.2009 for Taka 28,125/=, drawn on Islami Bank Limited, Sirajganj Branch, Sirajganj. The complainant presented the said cheque to the concerned bank on 19.01.2009 but the same was dishonoured with the endorsement "insufficiency of funds". Thereafter, the complainant served a statutory legal notice on 19.02.2009, however, the appellant failed to make payment within the stipulated period. Consequently, the complainant filed C.R. Case No. 123(C) of 2009 before the learned Chief Judicial Magistrate, Sirajganj. 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 14,100/- prior to filing the appeal and during pendency of the appeal the appellant paid rest amount of the cheque to the respondent. Thus, he adjusted the entire liability to the complainant. In this regard, the respondent No.2 BRAC Microfinance signed a compromise deed dated 21.07.2026 (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 facts and circumstances of the case, the gravity of the offence, the entire cheque amount paid by the appellant, I am of the view that the justice would be best served if the substantive sentence of imprisonment is set aside and the sentence of fine of Taka 84,375/- is reduced to Taka 28,125/-.

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 is reduced from Taka 84,375/- to Taka 28,125/- which is equivalent to the cheque amount. It appears that the convict-appellant has already deposited Tk. 14,100/- 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 14,100/- 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 fine 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