

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Revision No. 2349 of 2019

Md. Jashijul Hoque

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

No one appears.

...For the convict-petitioner

Mr. Mahabub-Ule-Islam, Advocate with

Mr. Md. Ismail Hossain, Advocate

...For the complainant-opposite party No. 2

Heard on 13.01.2026

**Judgment delivered on 21.01.2026**

On an application under section 439 read with section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 31.05.2017 passed by Additional Metropolitan Sessions Judge, Court No. 6, Dhaka in Metro Criminal Appeal No. 76 of 2017 affirming the judgment and order of conviction and sentence dated 19.10.2015 passed by the Joint Metropolitan Sessions Judge, Court No. 6, Dhaka in Metropolitan Sessions Case No. 11667 of 2013, convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 1(one) year and fine of Tk. 7,00,000 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution's case, in short, is that the accused Md. Jashijul Hoque issued Cheque No. 5599243 on 26.02.2012 drawn on his Current Account No. 3099 maintained with Islami Bank Bangladesh Ltd, Rangpur Branch for payment of Tk. 6,20,000(six lakh and twenty thousand) in favour of the complainant Humayun Motors. The complainant is the Proprietor of Humayun Motors. The complainant presented the said cheque for encashment on 28.02.2012 and 25.07.2012, which was dishonoured on those dates with the

remark 'insufficient funds'. He sent a legal notice to the accused on 14.08.2012 through registered post with AD, and he received the notice on 27.08.2012, but he did not pay the cheque amount. Consequently, the complainant filed the case on 10.10.2012.

During the trial, the charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881, which was read over and explained to him, and he pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 1 witness to prove the charge against the accused. During the trial, the accused was absconding. After concluding the trial, the trial Court by judgment and order dated 19.10.2015 convicted the accused under section 138 of the Negotiable Instruments Act, 1881, and sentenced him thereunder to suffer simple imprisonment for 01(one year) and fine of Tk. 7,00,000(seven lakh) against which the convict-petitioner filed Criminal Appeal No. 76 of 2017 in the Metropolitan Sessions Judge, Dhaka, which was heard by the Additional Metropolitan Sessions Judge, Court No. 6, Dhaka, who, by impugned judgment and order, affirmed the judgment and order passed by the trial Court against which the convict-petitioner obtained the Rule.

P.W. 1 Kamran Akbar Mazid stated that he deposed on behalf of the complainant on the basis of the Power of Attorney. He proved the power of attorney as Exhibit 1. The accused Md. Jashijul Hoque issued a cheque on 26.02.2012 for payment of Tk. 6,20,000. He proved the cheque as exhibit 2. He presented the cheque on 25.07.2012, but it was dishonoured. He proved the dishonour slip as exhibit 3. He sent a legal notice and the accused received the notice on 27.08.2012, but he did not pay the cheque amount. Consequently, he filed the case on 10.10.2012. He proved the complaint petition as exhibit 5 and his signature on the complaint petition as exhibit 5/1. The accused was absconding.

No one appears on behalf of the convict-petitioner.

Learned Advocate Mr. Mahabub-Ule-Islam, appearing along with learned Advocate Mr. Md. Ismail Hossain on behalf of the complainant-opposite party No. 2, submits that the accused issued a cheque on 26.02.2012 for payment of Tk. 6,20,000 in favour of the complainant but it was dishonoured on 25.07.2012 with the remark 'insufficient funds' and the complainant sent a legal notice on 14.08.2012 through registered post with AD and accused received the notice on 27.08.2012 but he did not pay the cheque amount and thereafter, the complainant complying with the procedure under sections 138 and 141(b) of the Negotiable Instruments Act, 1881 filed the case on 10.10.2012. During the trial, the prosecution proved the charge against the accused beyond all reasonable doubt. He prayed for the discharging the Rule.

I have considered the submission of the learned Advocate Mr. Mahabub-Ule-Islam, who appeared along with learned Advocate Mr. Md. Ismail Hossain on behalf of the complainant-opposite party No. 2, perused the evidence, the impugned judgments and orders passed by the Courts below, and the records.

On perusal of the evidence, it reveals that the accused Md. Jashijul Hoque issued Cheque No. 5599243 on 26.02.2012 drawn on his Current Account No. 3099 maintained with Islami Bank Bangladesh Ltd, Rangpur Branch for payment of Tk. 6,20,000(six lakh and twenty thousand) in favour of the complainant. P.W. 1 proved the cheque as Exhibit 2. The complainant presented the said cheque on 25.07.2012, which was dishonoured with the remark 'insufficient funds'. P.W. 1 proved the dishonour slip as Exhibit 3. The complainant sent a legal notice on 14.08.2012 to the accused Md. Jashijul Hoque through registered post with AD, and the accused received the notice on 27.08.2012, but he did not pay the cheque amount. The complainant proved the postal receipt as exhibit 4/ka and AD as exhibit 4/kha. He proved the complaint petition as exhibit 5 and his signature on the complaint petition as exhibit 5/1. Despite the

service of notice upon the accused on 27.08.2012, he did not pay the cheque amount, and the complainant filed the case on 10.10.2012, complying with the procedures under section 138 of the Negotiable Instruments Act, 1881.

Until the contrary is proved, 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) of the said Act 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. The cheque was dishonoured, and after service of notice in writing in the manner stated in section 138(1)(b) and 138(1)(1A) of the said Act, the accused did not pay the cheque amount. The complainant filed the case following the procedures of section 138 and 141(b) of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the accused beyond all reasonable doubt, and the Courts below, on correct assessment and evaluation of the evidence, legally passed the impugned judgments and orders of conviction.

Considering the gravity of the offence and the facts and circumstances of the case, I am of the view that the ends of justice would be best served if the sentence passed by the Courts below is modified as under;

The convict-petitioner Md. Jashijul Hoque is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881, and he is sentenced thereunder to suffer imprisonment for 3(three) months and a fine of Tk. 7,00,000(seven lakh).

In the result, the Rule is disposed of with modification of the sentence.

The convict-petitioner Md. Jashijul Hoque is directed to surrender within fifteen days from date and pay the fine, failing which the trial Court shall do the needful.

Send down the lower Court's records at once.