

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 4901 of 2023

In the matter of:

An application under Section 439 of the
Code of Criminal Procedure

And

In the matter of:

Sobuj Sheikh

...**Convict- Petitioner.**

-Versus-

The State and another

..... **Opposite Parties.**

No one appears.

..... For the petitioner.

Mr. Md. Harun Or Rashid, Advocate

.....For Opposite Party No. 2.

Mr. Md. Mizanur Rahman, D.A.G with

Mr. Md. Sirajul Karim (Rabi), A.A.G

... For the State

Heard on: 18.08.2026, 19.08.2026

and 23.08.2026

Judgment on: 30.08.2026

This Rule was issued at the instance of the
petitioner calling upon the opposite party to show cause as to
why the judgment and order dated 02.05.2023 passed by the

learned Additional Sessions Judge, 5th Court, Mymensingh in Criminal Appeal No. 208 of 2022, dismissing the appeal and affirming the judgment and order dated 06.09.2021, passed by the learned Joint Sessions Judge, 2nd Court, Mymensingh, in Sessions Case No.434 of 2019, arising out of C.R. Case No. 109 of 2018, convicting the accused-petitioner under Section 138 of the Negotiable Instruments Act of 1881 and sentencing him to suffer simple imprisonment for 06 (six) months and to pay fine of Taka 5,00,000/-(five lac), should not be set aside and/or other or further order or orders be passed as to this Court may seem fit and proper.

The facts, relevant for disposal of the Rule, in brief, are that the accused obtained a loan of Taka 5,00,000/-(five lac) from the complainant. In discharge of the said liability, the accused-petitioner issued a cheque being No. 5716848 dated 24.12.2017 for the said amount drawn on Sonali Bank Limited, Bhaluka Branch, Mymensingh in favour of the complainant. The cheque was presented for encashment to the concerned bank on 24.12.2017 but the same was dishonoured with the endorsement “Account inoperative”. Thereafter, the

complainant served a legal notice on 28.12.2017 demanding payment of cheque which was duly received by the accused, however, the petitioner failed to make payment within the statutory period. Consequently, the complainant instituted C.R. Case No.109 of 2018 before the learned Senior Judicial Magistrate, Cognizance Court No. 3, Mymensingh on 20.02.2018.

The learned Magistrate took cognizance of the offence on 20.02.2018 and transmitted the case to the Court of the learned Sessions Judge, Mymensingh. Subsequently, the learned Sessions Judge, Mymensingh transferred the case to the learned Joint Sessions Judge, 2nd Court, Mymensingh and was registered as Sessions Case No.434 of 2019. Charge was framed on 11.06.2019, under Section 138 of the Negotiable Instruments Act, 1881 to which the accused pleaded not guilty and claimed to be tried.

In course of trial, the prosecution examined 01(one) witness and while the defence examined none. After taking evidence, the accused was examined under Section 342 of the

Code of Criminal Procedure wherein the accused-person reiterated innocence.

Upon conclusion of the trial and after hearing the parties, the learned Joint Sessions Judge, 2nd Court, Mymensing convicted the petitioner under Section 138 of the Negotiable Instruments Act of 1881 and sentenced him to suffer simple imprisonment for 06 (six) months and to pay fine of Taka 5,00,000/- (five lac) by judgment and order dated 06.09.2021.

Challenging the conviction and sentence, the petitioner filed Criminal Appeal No. 208 of 2022 before the learned Sessions Judge, Mymensingh upon depositing Taka 2,50,000/-(two lac fifty thousand). Subsequently, the appeal was transferred to the learned Additional Session Judge, 5th Court, Mymensingh, who upon hearing, dismissed the appeal by judgment and order dated 02.05.2023 affirming the judgment and order of conviction and sentence.

Being aggrieved by and dissatisfied with judgment and order dated 02.05.2023, the petitioner preferred the instant

Criminal Revision before this Court and obtained Rule along with an order of bail.

None appeared on behalf of the petitioner to press the Rule although the matter has been appearing in the daily cause list for several days with the name of the learned Advocate for the parties.

Mr. Md. Harun Or Rashid, the learned Advocate appearing on behalf of the opposite party No. 2, submits that the accused-petitioner obtained loan from the complainant-opposite party No. 2 and in discharge of the loan he issued the cheque in question. PW1 established the prosecution case. He further submits that there is no illegality, impropriety or infirmity in the impugned judgments and orders. The Courts below rightly convicted and sentenced the petitioner and as such the Rule is liable to be discharged.

I have heard the learned Advocate for opposite party No. 2, perused the revisional application and the impugned judgments and the materials on record.

It appears from the petition of complaint, the testimony of PW1 (complainant) and the documentary evidence that the accused-petitioner issued the cheque being No. 5716848 dated 24.12.2017 in favour of the complainant for Taka 5,00,000/-(five lac) for adjustment of debt. The complainant presented the cheque for encashment to the concerned bank on 24.12.2017 but it was dishonoured with the endorsement “Account Inoperative”. The complainant duly served legal notice on 28.12.2017, which was duly received by the accused but the petitioner failed to make payment within the stipulated period. Consequently, the case was filed on 20.02.2018. PW1 has successfully established the prosecution case.

The record shows that the complainant has duly complied with the procedures 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 consideration against which the cheque was drawn and that the complainant is the holder of

the cheque in due course. The Courts below rightly found the petitioner guilty of the charge. The findings of conviction are based on evidence and are neither perverse nor founded upon any misreading or non-consideration of material evidence. Hence, the impugned judgment and order of conviction does not suffer from any illegality, impropriety or infirmity.

However, with regard to the sentence, reliance may be placed upon the decision passed in *Aman Ullah Vs. State*, reported in 73 DLR (2021) 541, wherein this Court observed that in a case instituted under Section 138 of the Negotiable Instruments Act, the sentence of imprisonment would be a harsh sentence having no meaningful penal objective to be achieved. I find no reason to take a different view from the principle enunciated therein.

Considering the facts and circumstances of the case and partial payment made by the petitioner, this Court is of the view that the ends of justice would be best served if the sentence of imprisonment is set aside, subject to payment of the remaining amount of the dishonoured cheque.

In view of the foregoing discussions and *ratio* the order of the Court is as follows:

The conviction of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 is hereby affirmed. However, the sentence is modified. The sentence of 06(six) months simple imprisonment is hereby set aside. It appears that the convict-petitioner has already deposited Taka 2,50,000/- being 50% of the cheque amount before the trial Court prior to filing the appeal. The convict-petitioner is, therefore, directed to pay the remaining portion of the value of the dishonoured cheque amounting to Taka 2,50,000/- (two lacs fifty thousand) to the complainant-opposite party No. 2 through the trial Court within 03(three) months from the date of receipt of this order, in default he shall suffer simple imprisonment for 01(one) month. If the convict-petitioner 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 recover the fine under

the provisions of Section 386 of the Code of Criminal Procedure.

In the result, the Rule is discharged with modification of sentence and with the directions made above.

The convict-petitioner is released from his bail bond.

Let the Lower Court Records (LCR) be sent down at once. Communicate the judgment and order to the Court concerned forthwith.

(Md. Bashir Ullah, J)

Md. Sabuj Akan
Assistant Bench Officer