

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 3074 of 2024

Robiul Alom @ Robiul Hosen

...Appellant

-Versus-

Md. Abdur Rahim and another

...Respondents

Mr. Md. Arif Hossain Talukder, Advocate

...For the appellant

Mr. Md. Younus, Advocate

...For the complainant-respondent No. 1

Heard on 17.07.2025

Judgment delivered on 24.07.2025

This appeal under section 410 of the Code of Criminal Procedure, 1898 is directed against the impugned judgment and order of conviction and sentence dated 15.05.2019 passed by Metropolitan Additional Sessions Judge, Court No. 8, Dhaka in Metropolitan Sessions Case No. 4901 of 2018 arising out of C.R. Case No. 705 of 2017 convicting the accused Robiul Alom @ Robiul Hosen under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 1(one) year and fine of Tk. 11,00,000(eleven lakh).

The prosecution's case, in short, is that the accused Robiul Alom @ Robiul Hosen issued Cheque No. 7556898 on 28.05.2017 drawn on his Account No. 12864 maintained with Sonali Bank Ltd, Kallyanpur Branch, Dhaka in favour of the complainant Md. Abdur Rahim for payment of Tk. 11,00,000(eleven lakh). He presented the cheque on 31.05.2017 for encashment, which was dishonoured with the remark 'insufficient funds'. On 01.06.2017, the complainant sent a legal notice through registered post with AD to the accused requesting him to pay the cheque amount. Although the accused received the said notice but he did not pay the cheque amount. Consequently, on 09.07.2017, the complainant filed the case.

During the trial, charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881. At the time of framing charge the accused was absconding. The prosecution examined 1(one) witness to prove the charge against the accused. Since the accused was absconding, he was not examined under section 342 of the Code of Criminal Procedure, 1898. After concluding the trial, the Metropolitan Additional Sessions Judge, Court No. 8, Dhaka, by judgment and order dated 15.05.2019, convicted the accused under section 138 of the Negotiable Instruments Act, 1881, and sentenced him thereunder to suffer imprisonment for 1(one) year and fine of Tk. 11,00,000(eleven lakh) against which the accused filed the instant appeal.

P.W. 1 Md. Abdur Rahim is the complainant. He stated that the accused Robiul Alom issued Cheque No. 7556898 on 28.05.2017 in his favour for payment of Tk. 11,00,000. He proved the cheque as exhibit 1. The said cheque was dishonoured on 31.05.2017 due to 'insufficient funds'. He proved the dishonour slip as exhibit 2. He sent a legal notice on 01.06.2017. He proved the legal notice as exhibit 3. Since the accused refused to receive the notice, the notice sent with AD was returned unserved. He proved the AD as exhibit 4. The accused did not pay the cheque amount. Consequently, he filed the case. He proved the complaint petition as exhibit 5 and his signature on the complaint petition as exhibit 5/1. The defence did not cross-examine P.W. 1.

Learned Advocate Mr. Md. Arif Hossain Talukder, appearing on behalf of the appellant Robiul Alom @ Robiul Hosen, submits that the accused issued the cheque, but due to hardship, he could not pay the cheque amount after receipt of the notice sent by the complainant after dishonour of the cheque and in the meantime, the accused paid 50% of the cheque amount Tk. 5,50,000 to the complainant, and he has no objection if the complainant withdraw 50% of the remaining cheque amount deposited before filing the appeal by the accused in

the trial Court. He prayed for setting aside the impugned judgment and order passed by the trial Court on the ground of compromise.

Learned Advocate Mr. Md. Younus, appearing on behalf of the complainant-respondent No. 1, submits that the accused issued the cheque on 28.05.2017 for payment of Tk. 11,00,000, and the same was dishonoured on 31.05.2017 for 'insufficient funds'. The complainant sent a legal notice through registered post with AD and despite the service of notice upon the accused, he did not pay the cheque amount. Consequently, he filed the case. During the trial, the prosecution proved the charge against the accused beyond all reasonable doubt, and the trial Court legally passed the impugned judgment and order convicting the accused. However, he submits that in the meantime, the complainant-respondent received total Tk. 5,50,000 from the wife of the accused, who is now residing in Qatar, and he is willing to withdraw 50% of the remaining cheque amount deposited by the accused in the trial Court before filing the appeal. He also prayed for setting aside the impugned judgment and order passed by the trial Court if he is allowed to withdraw 50% of the remaining cheque amount.

I have considered the submission of the learned Advocates of both parties, perused the evidence, impugned judgment and order passed by the trial Court, and the records.

On perusal of the evidence it is found that the accused issued Cheque No. 7556898 on 28.05.2017 drawn on his Saving Account No. 12864 maintained with Sonali Bank Limited, Kallyanpur Branch, Dhaka in favour of the complainant Md. Abdur Rahim for payment of Tk. 11,00,000, and it was presented on 31.05.2017, which was dishonoured. The learned Advocate Mr. Md. Arif Hossain Talukder appearing on behalf of the accused Robiul Alom @ Robiul Hosen admitted that the accused got the notice, but he could not pay the cheque amount due to financial hardship. However, he admitted that the wife of the accused paid Tk. 5,50,000 to the complainant. The

complainant, having sworn an affidavit on 16.07.2025, admitted that he received Tk. 5,50,000 from the wife of the accused.

The Negotiable Instruments Act, 1881 is a special law, and the offence under section 138 of the said Act is not compoundable. After filing the complaint petition, the Court is not empowered to dispose of the case, considering the compromise made between the parties. The Court shall dispose of the case considering merit. Therefore, the appeal cannot be disposed of considering the compromise made between the parties.

On perusal of the evidence and the affidavit sworn in on 16.07.2025 by the complainant Md. Abdur Rahim, it reveals that the accused Robiul Alom @ Robiul Hosen issued the cheque (exhibit 1), and after dishonour of the cheque, the legal notice sent by the complainant was served upon the accused. Learned Advocate for the accused Robiul Alom @ Robiul Hosen, conceded that due to financial hardship, the accused could not pay the cheque amount despite the notice sent under clause (b) of the proviso to section 138 of the Negotiable Instruments Act, 1881 was served upon him. It is found that the complainant, complying with the procedures of clauses (a) to (c) of the proviso to sections 138, 138(1)(1A), and section 141(b) of the Negotiable Instruments Act, 1881 filed the complaint petition. During the trial, P.W. 1 proved the charge against the accused beyond all reasonable doubt. The trial Court, considering the evidence of the prosecution witness, legally passed the impugned judgment and order 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 trial Court is modified as under;

The accused Robiul Alom @ Robiul Hosen is found guilty of the offence under section 138 of the Negotiable Instruments Act,

1881, and he is sentenced thereunder to pay a fine of Tk. 11,00,000(eleven lakh).

The complainant Md. Abdur Rahim is entitled to receive the remaining 50% of the cheque amount deposited by the accused in the trial Court before filing the appeal.

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

Send down the lower Court's records at once.