

**Present:**

Mr. Justice Md. Shohrwardi

Criminal Revision No. 2792 of 2023

Md. Adnan Ahmed

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

Mr. Md. Shorab Hossain, Advocate

...For the convict-petitioner

Mr. Mohammad Mizanur Rahman, Advocate

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

Heard on 06.03.2025 and 08.05.2025

**Judgment delivered on 25.05.2025**

On an application filed under Section 439 read with Section 435 of the Code of Criminal Procedure Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 15.06.2023 passed by the Special Sessions Judge, Chattogram in Criminal Appeal No. 659 of 2017 affirming the judgment and order of conviction and sentence dated 08.08.2017 passed by the Joint Metropolitan Sessions Judge, Court No. 6, Chattogram in Sessions Case No. 2184 of 2016 arising out of C.R. Case No. 1287 of 2015 (Doublemooring) convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer imprisonment for 6(six) months and fine of Tk. 6.30,000 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The prosecution's case, in short, is that the complainant Jewel Mahmud and the convict-petitioner Md. Adnan Ahmed was previously known to each other. The convict-petitioner issued Cheque No. 8731791 on 02.09.2015 drawn on his Current Account No. 1911050004993 maintained with Prime Bank Ltd, Halishahar Branch, Chattogram in favour of the complainant for payment of Tk. 6,30,000(six lakh thirty thousand). The complainant presented the said cheque on 15.09.2015 for encashment, but it was dishonoured for

‘insufficient funds’. On 17.09.2015, he sent a legal notice, and the convict-petitioner received the notice on 20.09.2015. Despite the service of notice upon the accused, he did not pay the cheque amount. Consequently, the complainant filed the case on 15.11.2015.

After filing the complaint petition, cognizance was taken against the accused, and he obtained bail from the Court below. During the trial, the charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881, and at the time of framing charge was framed, he was absconding. On 28.03.2017, the prosecution examined 1(one) witness to prove the charge against the accused, and at that time, he was also absconding. On 19.04.2017, the convict-petitioner surrendered, and on the application of the accused, the trial Court recalled P.W. 1 for cross-examination, and on 01.06.2017, the defence cross-examined P.W. 1, and the case was fixed on 19.06.2017 for examination of the accused under Section 342 of the Code of Criminal Procedure, 1898. On 19.06.2017, he was absent from the Court and the bail of the accused Md. Adnan Ahmed was canceled by the trial Court.

After concluding the trial, the Joint Metropolitan Sessions Judge, Court No. 6, Chattogram, by judgment and order dated 08.08.2017, convicted the accused under Section 138 of the Negotiable Instruments Act, 1881, and sentenced him thereunder to suffer imprisonment for 6(six) months and fine of Tk. 6.30,000. Against the said judgment and order of conviction passed by the trial Court, the accused filed Criminal Appeal No. 659 of 2017 before the Sessions Judge, Chattogram which was heard by the Jananarapatta Bighnokari Aporadh Daman Tribunal and Special Sessions Judge, Chattogram who after hearing the appeal by impugned judgment and order affirmed the judgment and order of conviction and sentence passed by the trial Court against which the accused obtained the Rule.

Learned Advocate Mr. Md. Shorab Hossain, appearing on behalf of the convict-petitioner, submits that the convict-petitioner

Md. Adnan Ahmed and the complainant Jewel Mahmud are close friends, and after service of notice, due to financial hardship, the convict-petitioner could not pay the cheque amount in time, and during the pendency of the appeal, the convict-petitioner issued Tk. 3,15,000 pay order No. 2267163 on 24.02.2025 in favour of the complainant Jewel Mahmud. He also submits that he has no objection if this Court allows the complainant to withdraw the remaining 50% of the cheque amount deposited by the convict-petitioner before filing an appeal.

Learned Advocate Mr. Mohammad Mizanur Rahman appearing on behalf of the complainant-opposite party No. 2 submits that the convict-petitioner issued the cheque and admitted that he did not pay the cheque amount despite the service of notice upon him and the complainant filed the case following the procedure made in Section 138 and 141(b) of the Negotiable Instruments Act, 1881 and the Courts below considering the evidence legally passed the impugned judgment and order. He prayed for the discharging the Rule.

I have considered the submissions of the learned Advocate Mr. Md. Shorab Hossain, who appeared on behalf of the convict-petitioner, and the learned Advocate Mr. Mohammad Mizanur Rahman, who appeared 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.

It is admitted that the convict-petitioner issued the disputed cheque (exhibit 01) and after dishonour of the cheque, the accused received the notice sent under clause b of the proviso to Section 138 of the said Act, but the accused could not pay the cheque amount due to financial hardship. Therefore, the complainant filed the case complying with the provisions made in Section 138 and Section 141(b) of the Negotiable Instruments Act, 1881. I am of the view that the prosecution proved the charge against the convict-petitioner under

Section 138 of the Negotiable Instruments Act, 1881 beyond all reasonable doubt, and both the Courts below legally passed the impugned judgment and order of conviction against the convict-petitioner.

In awarding sentence, the Court shall consider the gravity of the offence and the facts and circumstances of the case. In the instant case, the convict-petitioner Md. Adnan Ahmed admitted that he issued the cheque, but due to his financial hardship, he could not pay the cheque amount in time.

Considering the submission of the learned Advocate for the convict-petitioner, facts and circumstances of the case, and the gravity of the offence, 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. Adnan Ahmed is found guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881, and he is sentenced to pay a fine of Tk. 7,00,000(seven lakh).

The complainant-opposite party No. 2 is entitled to get the cheque amount Tk. 6,30,000(six lakh thirty thousand).

The trial Court is directed to deposit the remaining fine amount Tk. 70,000(seventy thousand) in the public exchequer.

With the above findings, observation, and direction, the Rule is disposed of with modification of the sentence.

Send down the lower Court's records at once.