

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

**Present:**

**Mr. Justice Md. Bashir Ullah**

**Criminal Revision No. 1973 of 2024**

**In the matter of:**

An application under section 439 read with  
435 of the Code of Criminal Procedure

**-And-**

**In the matter of:**

Sayeda Zahanara Akter

... Convict-Appellant-Petitioner

**-Versus-**

The State and another

...Respondent-Opposite Parties

No one appears.

... For the Convict-Appellant- Petitioner

Mr. Md. Shofiul Aziz, Advocate

... For the Complainant-respondent-opposite party No. 2

Mr. S.M. Aminul Islam Sanu, D.A.G with

Mr. Md. Nasimul Hasan, A.A.G with

Mr. Md. Golamun Nabi, A.A.G and

Ms. Farhana Abedin, A.A.G

... For the State

**Heard on: 07.01.2026 and 08.01.2026**

**Judgment on: 12.01.2026**

This Rule was issued at the instance of the petitioner calling upon the opposite parties to show cause as to why the judgment and order dated 23.05.2022 passed by the learned Additional Metropolitan Sessions Judge, Sylhet in Criminal Appeal No. 490 of 2019, dismissing the appeal and affirming the judgment and order of conviction and sentence dated 17.07.2019 passed by the learned Joint Metropolitan Sessions Judge, 1<sup>st</sup> Court, Sylhet in Sessions Case No. 05 of 2019, arising out of C.R. Case No. 34 of 2018, convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing her to suffer simple imprisonment for 4(four) months and to pay a fine of Tk. 2,28,063/- (two lac twenty eight thousand and sixty three), should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

Facts relevant for disposal of the Rule, in brief, are that the opposite party no.02, Islami Bank Bangladesh PLC as complainant filed C.R Case no. 34 of 2018 before the Court of the Chief Metropolitan Magistrate, Sylhet against the present petitioner alleging *inter alia* that, the accused obtained a loan

of Taka 2,00,000/- from the complainant, Islami Bank PLC, Zindabazar Branch, Sylhet with an undertaking to repay the same by installments. However, the petitioner failed to repay the loan amount within stipulated time. The petitioner issued the cheque in question in favour of the complainant on 15.11.2017 to repay the outstanding loan amount with interest amounting to Taka 2,28,063/-. The said cheque was presented for encashment but was dishonoured by the bank concerned on 15.11.2017 due to insufficiency of fund. The complainant-opposite party sent a legal notice to the petitioner on 23.11.2017. Despite receipt of the notice, the petitioner failed to make payment, compelling the complainant to institute the case on 08.01.2018.

Subsequently, the case was transferred to the Court of Metropolitan Sessions Judge and renumbered as Sessions Case No. 5 of 2019. The Metropolitan Sessions Judge transferred the case to the learned Joint Metropolitan Sessions Judge, 1<sup>st</sup> Court, Sylhet. Thereafter, on taking cognizance of offence, charge was framed on 07.03.2019. Upon conclusion of trial the learned Joint Metropolitan Sessions Judge, 1<sup>st</sup> Court, Sylhet

found the petitioner guilty under Section 138 of the Negotiable Instruments Act, 1881 and sentenced simple imprisonment for 4 months with a fine of Taka 2,28,063/- by judgment and order dated 17.07.2019.

Against the said judgment and order the petitioner preferred Criminal Appeal No. 490 of 2019 before the learned Sessions Judge, Sylhet which on transfer, was heard by the learned Additional Metropolitan Sessions Judge, Sylhet and upon hearing both the parties dismissed the appeal by its Judgment and Order dated 23.05.2022 affirming the conviction and sentence.

Being aggrieved by and dissatisfied with the Judgment and Order dated 23.05.2022 passed by the learned Additional Metropolitan Sessions Judge, Sylhet, the petitioner preferred this instant Criminal Revision before this Court whereupon the Rule was issued and bail was granted.

When the revisional application was taken up for hearing none appeared for the petitioner to press the Rule,

although the matter had been appearing in the daily cause list on several days with the names of the learned counsels.

Mr. Md. Shofiul Aziz, the learned Advocate appearing for the opposite party no. 2 submits that the charge brought against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 has been proved beyond all reasonable doubt and therefore, the Rule is liable to be discharged.

I have heard the learned Advocate for the opposite party No. 2 and perused the materials on record.

On perusal of the petition of complaint, the deposition of PW1 (complainant) and the documentary evidence it transpires that the convict-petitioner issued the cheque in question in favour of the complainant-opposite party on 15.11.2017 for Taka 2,28,063/- to repay the outstanding loan amount. The cheque was dishonoured by the bank concerned on 15.11.2017 for insufficiency of funds. Statutory legal notice was duly served upon the convict-petitioner on 23.11.2017. The value of the cheque was not paid to the complainant. Consequently, the case was filed on 08.01.2018. P.W.1 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 consideration against which the cheque was drawn and that it is the holder of the cheque in due course. The Courts below upon proper assessment of evidence rightly found the petitioner guilty of the charge. Hence, the impugned judgment and order of conviction does not suffer from any illegality or infirmity.

However, as regards the sentence, reference may be made to the decision passed in *Aman Ullah Vs. State*, reported in 73 DLR (2021) 541 wherein it has been held:

“There can be no dispute in so far as the sentence of imprisonment is concerned that it should commensurate with the gravity of the crime. Court has to deal with the offenders by imposing proper sentence by taking into

consideration the facts and circumstances of each case. It is not only the rights of the offenders which are required to be looked into at the time of the imposition of sentence, but also of the victims of the crime and society at large, also by considering the object sought to be achieved by the particular legislation. Considering the facts and circumstances of the case and the object of the law, I am of the view that the sentence of imprisonment would be a harsh sentence having no penal objective to be achieved. Hence, the sentence of imprisonment is set aside.”

In view of the foregoing discussions, together with the decision and the *ratio* laid down in the above-mentioned reported case, the order of the Court is as follows:

The conviction of the petitioner under Section 138 of the Act, 1881 is affirmed, however the sentence is modified. The sentence of 04(four) months simple imprisonment is set aside. The sentence of fine of Tk. 2,28,063/- which is equivalent to the cheque amount is upheld. The convict-petitioner has already deposited Tk. 1,14,032/- before the trial Court prior to filing the appeal. The Court concerned is directed to disburse the said to the complainant-opposite party No.2 forthwith. The convict-petitioner is directed to deposit the remaining portion of the dishonoured cheque *i.e.* Tk.1,14,031/- to the complainant-opposite party No. 2 within 3(three) months from the date of receipt of this judgment, in default she will suffer simple imprisonment for 03(three) months. 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, she is not exempted from paying the same. In that event, the Court concerned shall realise 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 directions as made above. The convict-petitioner is released from the bail bond.

Let the lower Court's records (LCR) along with the judgment and order be communicated to the Court concerned forthwith.

Md. Ariful Islam Khan  
Bench Officer