

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 2677 of 2025

Md. Kabil Hossain Kazi

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

No one appears.

...For the convict-petitioner

Mr. Moazzem Hossain, Advocate

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

Heard on 14.01.2026 and 19.01.2026

Judgment delivered on 26.01.2026

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 03.06.2025 passed by the Additional Metropolitan Sessions Judge, Court No. 2, Dhaka in Criminal Appeal No. 2297 of 2024 affirming the judgment and order of conviction and sentence dated 05.06.2024 passed by the Joint Metropolitan Sessions Judge, Court No. 2, Dhaka in Metro Sessions Case No. 2465 of 2022 convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 06(six) months and fine of Tk. 13,00,000(thirteen lakh) 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. Kabil Hossain Kazi issued Cheque Nos. 0201375 and 0201376 on 25.01.2021 drawn on his Account No. 232044 maintained with Rupali Bank Ltd, Local Office, Motijheel, Dhaka, for payment of (Tk. 10,00,000+3,00,000)= Tk. 13,00,000(thirteen lakh) respectively in favour of the complainant. The complainant presented the said two cheques for encashment on 05.07.2021, which were dishonoured on the same date with the remark 'insufficient funds'. He sent a legal

notice to the accused on 11.07.2021 through registered post with AD, but he did not receive the notice, which was returned on 19.07.2021. He did not pay the cheque amount. Consequently, the complainant filed the case on 26.08.2021.

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 and at that time, the accused was absconding. After concluding the trial, the trial Court by judgment and order dated 05.06.2024 convicted the accused under section 138 of the Negotiable Instruments Act, 1881, and sentenced him thereunder to suffer imprisonment for 06(six) months and a fine of Tk. 13,00,000(thirteen lakh) against which the convict-petitioner filed Criminal Appeal No. 2297 of 2024 in the Metropolitan Sessions Judge, Dhaka, which was heard by the Additional Metropolitan Sessions Judge, Court No. 2, 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 Sultana Razia is the complainant. She stated that the accused Md. Kabil Hossain Kazi issued two cheques on 25.01.2021 for payment of Tk. 1000000+300000= Tk. 1300000. She presented the cheques on 05.07.2021, but those were dishonoured. She sent a legal notice to the accused on 11.07.2021. The accused did not pay the cheque amount. Consequently, she filed the case on 26.08.2021. She proved the complaint petition as exhibit 1 and her signature on the complaint petition as exhibit 1/1, cheques as exhibit 2 series, dishonour slip as exhibit 3 series, legal notice as exhibit 4, postal receipt as exhibit 5, and the returned envelope with AD as exhibit 6. The accused was absconding.

No one appears on behalf of the convict-petitioner.

Learned Advocate Mr. Moazzem Hossain, appearing on behalf of the complainant-opposite party No. 2, submits that the accused issued two cheques on 25.01.2021 for payment of Tk. 1000000+300000= Tk. 1300000 in favour of the complainant but those cheques were dishonoured on 05.07.2021 with the remark 'insufficient funds', and the complainant sent a legal notice on 11.07.2021 through registered post with AD but he did not pay the cheques amount and thereafter, the complainant complying with the procedures under sections 138 and 141(b) of the Negotiable Instruments Act, 1881 filed the case. During the trial, the prosecution proved the charge against the accused beyond all reasonable doubt. He prayed for the discharging of the Rule.

I have considered the submission of the learned Advocate Mr. Moazzem Hossain, 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.

On perusal of the evidence, it reveals that the accused Md. Kabil Hossain Kazi issued Cheque Nos. 0201375 and 0201376 on 25.01.2021 drawn on his Account No. 232044 maintained with Rupali Bank Ltd, Local Office, Motijheel, Dhaka, for payment of (Tk. 10,00,000+3,00,000)= Tk. 13,00,000(thirteen lakh) in favour of the complainant. P.W. 1 proved the complaint petition as Exhibit 1. She proved the cheques dated 25.01.2021 as exhibits 2 and 2/1. She presented the cheques for encashment on 05.07.2021, but those were dishonoured. She proved the dishonour slips as exhibits 3 and 3/1. The complainant sent a legal notice on 11.07.2021 (Exhibit 4) to the accused Md. Kabil Hossain Kazi by registered the post with AD, but he did not pay the cheque amount. The complainant proved the postal receipt as exhibit 5 and the returned envelope with AD as exhibit 6. From Exhibit 6, it is found that on 19.07.2021 the accused was not available at his address. No allegation has been made that notice was not sent to the correct address of the accused Md. Kabil Hossain Kazi. Therefore, it

is to be presumed that the notice was properly served upon the accused on 19.07.2021. Despite the service of notice upon the accused, he did not pay the cheque amount, and the complainant filed the case on 26.08.2021, complying with the procedures under sections 138 and 141(b) 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. I am of the view that the accused issued the cheque in favour of the payee-complainant for consideration. The cheques dated 25.01.2021 was presented and dishonoured on 05.07.2021, and notice dated 11.07.2021 was served on 19.07.2021 upon the accused. After service of notice under section 138(1)(b) of the said Act, the accused did not pay the cheque amount, and the complainant filed the case on 26.08.2021 following the procedures of sections 138(1), 138(1)(1A) and 141(b) of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the accused Md. Kabil Hossain Kazi 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. Kabil Hossain Kazi is found guilty of the offence under section 138 of the Negotiable Instruments Act,

1881, and he is sentenced thereunder to suffer imprisonment for 1(one) month and a fine of Tk. 13,00,000(thirteen lakh).

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

The convict-petitioner Md. Kabil Hossain Kazi is directed to surrender within 30(thirty) days from the date and deposit the fine, failing which the trial Court shall do the needful following the law.

Send down the lower Court's records at once.