

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 2838 of 2013

In the matter of:

An Appeal under section 410 of the Code of
Criminal Procedure

-And-

In the matter of:

Md. Kamrul Hassan

... Convict-Appellant

-Versus-

The State and another

...Complainant-Respondents

Mr. Md. Altaf Hossen Amani, Advocate

... For the Convict-Appellant

Mr. Md. Rois Uddin, Advocate

... For the Complainant-Respondent 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: 10.02.2026 and 18.02.2026

Judgment on: 01.03.2026

This appeal preferred under section 410 of the Code of
Criminal Procedure, 1898 is directed against the judgment

and order of conviction and sentence dated 18.02.2013 passed by the learned Metropolitan Additional Sessions Judge, 3rd Court, Dhaka in Metropolitan Sessions Case No. 9897 of 2011 arising out of C.R Case No. 178 of 2011 convicting the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer imprisonment for a period of 06 (six) months and to pay a fine of Taka 4,00,000/- (four lac).

The prosecution case, in short, is that the accused purchased various types of yarn from the complainant. The accused issued cheque No. 5807834 dated 20.10.2010 for Taka 4,00,000/- drawn on Dutch Bangla Bank Limited infavour of the complainant in order to adjust the price of the purchased yarn. The cheque was presented on 24.11.2010 but the same was dishonoured due to “insufficiency of fund”. The complainant sent statutory legal notice to the accused on 01.12.2010. Despite receipt of the notice, the accused failed to make payment. Consequently, the complainant filed C.R. Case No. 178 of 2011 before the learned Chief Metropolitan Magistrate, Dhaka on 16.01.2011. The cognizance Court took

cognizance and sent the case to the Court of Metropolitan Sessions Judge, Dhaka. The learned Metropolitan Sessions Judge, Dhaka transferred the case to the learned Metropolitan Additional Sessions Judge, 3rd Court, Dhaka and was registered as Metropolitan Sessions Case No. 9897 of 2011. Charge was framed on 14.02.2012 under Section 138 of the Negotiable Instruments Act, 1881. The accused pleaded not guilty and claimed to be tried when the charge was read out and explained to the accused. In course of trial, prosecution examined 01(one) witness to prove the indictment. Upon conclusion of trial the learned Additional Metropolitan Sessions Judge, 3rd Court, Dhaka found the accused guilty under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 06(six) months with a fine of Taka 4,00,000/- by judgment and order dated 18.02.2013.

Being aggrieved by and dissatisfied with the judgment and order dated 18.02.2013 passed by the learned Additional Metropolitan Sessions Judge, 3rd Court, Dhaka the convict preferred this instant Criminal Appeal before this Court.

Mr. Md. Altaf Hossen Amani, the learned Advocate appearing for the appellant submits that earlier he was appointed Assistant Attorney General and hence he could not appear before this Court on behalf of the accused-appellant and at present he is not engaged in that post, there is no bar to appear in this matter.

He further submits that the trial Court passed the impugned judgment and order very illegally which is liable to be set aside and the appeal will be allowed for the ends of justice.

Per contra, Mr. Md Rois Uddin, the learned Advocate appearing for the respondent No. 2 contends that there is no illegality, impropriety or infirmity in the impugned judgment and order. The trial Court rightly convicted the accused and sentenced him to suffer imprisonment. He prays for dismissal of the appeal.

I have heard the learned Advocates for both sides and perused the materials on record.

Upon perusal of the petition of complaint, the deposition of PW1 (complainant) and the documentary

evidence, it transpires that the convict-appellant issued the cheque in question in favour of the complainant-respondent no. 2 on 20.10.2010 for Taka 4,00,000/- to adjust the price of the purchased yarn. The cheque was dishonoured by the bank concerned on 24.11.2010 due to insufficiency of funds. Statutory legal notice was duly served upon the convict-appellant on 01.12.2010. The value of the cheque was not paid to the complainant. Consequently, the case was filed on 16.01.2011. P.W.1 proved the prosecution case.

The record shows that the complainant has successfully proved compliance with 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 accused guilty of the charge. Hence, the impugned judgment and order of conviction does not suffer from any illegality or infirmity.

However, as regards to the sentence, reference may be placed upon the decision passed in *Aman Ullah Vs. State*, reported in 73 DLR (2021) 541, wherein this Court observed that in cases instituted under section 138 of the Negotiable Instruments Act, the imposition of a sentence of imprisonment would be a harsh having no penal objective to be achieved.

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 appellant under Section 138 of the Act, 1881 is upheld, however the sentence is modified. The sentence of 06(six) months simple imprisonment is set aside. The sentence of fine of Taka 4,00,000/- which is equivalent to the cheque amount is maintained. The convict-appellant has already deposited Taka 2,00,000/- before the trial Court prior to filing the appeal. The Court concerned is directed to disburse the said amount to the complainant-respondent No.2 forthwith.

The convict-appellant is directed to pay the remaining portion of the value of the dishonoured cheque to the

complainant-respondent No. 2 through trial Court within 03(three) months from the date of receipt of this order, in default he will suffer simple imprisonment for 03(three) months. If the convict-appellant 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 realize the fine under the provisions of Section 386 of the Code of Criminal Procedure.

In the result, the Appeal is dismissed with modification of sentence of imprisonment and with directions as made above. The convict-appellant 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. Bashir Ullah, J)