

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 13950 of 2018

In the matter of:

An Appeal under section 410 of the Code of
Criminal Procedure

-And-

In the matter of:

Dr. Shaheda Begum

... Convict-Appellant

-Versus-

The State and another

...Complainant-Respondents

Mr. Md. Helal Uddin Mollah, Senior Advocate

... For the Convict-Appellant

Mr. Tushar Kanti Das, Advocate

... For the Complainant-Respondent No. 2

Mr. Md. Shafiquil Islam, D.A.G with

Ms. Farhana Abedin, A.A.G with

Mr. Hemayth Uddin, A.A.G and

Mr. K. M. Saiful Islam, A.A.G

... For the State

Heard on: 06.05.2026

Judgment on: 11.05.2026

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

and order dated 19.09.2017 passed by the learned Metropolitan Sessions Judge, Sylhet in Metropolitan Sessions Case No. 696 of 2017 arising out of Kotwali C.R Case No. 1048 of 2016, convicting the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentencing her to suffer simple imprisonment for a period of 02(two) months and to pay a fine of Taka. 1,73,101/-(one lac seventy three thousand one hundred one).

The prosecution case, in short, is that the accused-appellant obtained a loan of Taka 2,00,000/- from the complainant-bank on 30.04.2014. In discharge of the said liability, the accused-appellant issued cheque No. 8139722 dated 30.06.2016 for Taka 1,73,101/=, drawn on National Bank Limited, Sikder Tower Branch, Sylhet on 30.06.2016. The complainant presented the said cheque to the concerned bank on 30.06.2016 but the same was dishonoured with the endorsement “insufficiency of funds”. Thereafter, the complainant served a statutory legal notice on 12.07.2016, however, the appellant failed to make payment within the stipulated period.

Consequently, the complainant filed Kotwali C.R. Case No. 1048 of 2016 before the learned Chief Metropolitan Magistrate, Sylhet on 31.08.2016. The learned Magistrate took cognizance of the offence on 31.08.2016 and subsequently transmitted the case to the Court of the Metropolitan Sessions Judge, Sylhet and was registered as Metropolitan Sessions Case No. 696 of 2017. Charge was framed on 07.08.2017 under Section 138 of the Negotiable Instruments Act, 1881 against the accused-appellant.

In course of trial, the prosecution examined 01(one) witness. The accused was not examined under Section 342 of the Code of Criminal Procedure as she remained absconding.

Upon conclusion of the trial and hearing the parties, the learned Metropolitan Sessions Judge, Sylhet convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 (the Act, 1881) and sentenced her to suffer simple imprisonment for a period of 02(two) months and to pay a fine of Taka 1,73,101/-(one lac seventy three thousand one hundred one) by judgment and order dated 19.09.2017.

Being aggrieved by and dissatisfied with judgment and order dated 19.09.2017, the appellant preferred the instant

Criminal Appeal before this Court, whereupon the Court enlarged the appellant on bail till disposal of the appeal.

Mr. Md. Helal Uddin Mollah, the learned Senior Advocate appearing on behalf of the appellant submits that the appellant deposited Taka 86,551/- prior to filing the appeal on 15.05.2018. Subsequently, she paid Taka 1,73,101/- to the complainant-bank on 15.11.2021. Thus, she adjusted the entire outstanding liabilities. He prays for allowing the appeal by setting aside the impugned judgment and order of conviction and sentence.

Per contra, Mr. Tushar Kanti Das, the learned Advocate appearing for the respondent No. 2 submits that the certificate dated 15.11.2021 was issued by National Bank Limited, Sikder Tower Branch, Sylhet is genuine. He further submits that he has received instructions not to oppose the appeal and the application seeking direction for return of the deposited amount of Taka 86,551/-.

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

It appears from 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 30.06.2016 for Taka 1,73,101/- towards repayment of her liability. The cheque was dishonoured by the bank concerned on 30.06.2016 due to insufficiency of funds. Statutory legal notice was duly served upon the convict-appellant on 12.07.2016. The value of the cheque was not paid to the complainant. Consequently, the case was filed on 31.08.2016. P.W.1 duly 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 the consideration against which the cheque was drawn and that it is the holder of the cheque in due course. The trial Court 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 made to 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, imposition of a substantive imprisonment would be a harsh having no penal objective to be achieved.

The record shows that the accused deposited Taka 86,551/- prior to filing the appeal and during pendency of the appeal the appellant paid Taka 1,73,101/- to the bank on 15.11.2021. Thus she adjusted the entire liability due to the complainant-bank. In this regard, the bank issued a certificate dated 15.11.2021 (Annexure-X). Learned Advocate for the respondent no. 2 also admitted that the bank has received the full amount of liabilities and that no outstanding dues remained. Rather, the appellant is entitled to refund of Taka 86,551/- deposited before the trial Court.

In view of the foregoing discussions, together with the decision and the *ratio* laid down in the above-mentioned

reported case, the appeal is disposed of with the following order:

The conviction of the appellant under Section 138 of the Act, 1881 is upheld, however, the sentence of 02(two) months simple imprisonment is set aside. The sentence of fine of Tk. 1,73,101/- which is equivalent to the cheque amount is maintained. It appears that the convict-appellant has already deposited Tk. 86,551/- before the trial Court prior to filing the appeal and subsequently she deposited Taka 1,73,101/- to the complainant-bank on 15.11.2021 and in acknowledgment thereof, National Bank Limited, Sikder Tower Branch, Sylhet issued certificate being no. MMA/ NBL/ SIKDER TOWER/CERTIFICATE dated 15.11.2021. Accordingly, the appellant is entitled to refund of the deposited amount of Taka 86,551/- lying with the trial Court. So, the trial Court is directed to refund and disburse the deposited money to the accused-convict-appellant forthwith in accordance with law.

In the result, the Appeal is disposed of with modification of sentence of imprisonment and with directions as made above. The convict-appellant is released from her bail bond.

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

(Md. Bashir Ullah, J)

Md. Ariful Islam Khan
Bench Officer