

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 1153 of 2018

In the matter of:

An Appeal under Section 410 of the Code
of Criminal Procedure

-And-

In the matter of:

Md. Yousuf

... Appellant

-Versus-

The State, represented by the Deputy
Commissioner, Noakhali and another

... Respondents

Mr. A.K.M. Rezaul Karim Khandaker with
Ms. Arifa Khatun, Advocates

... For the Appellant

Ms. Nargis Tanjima, Advocate

... For the Respondent No. 2

Mr. Md. Shafiquil Islam, D.A.G with
Ms. Farhana Abedin, A.A.G with
Mr. Hemaith Uddin, A.A.G and
Mr. K. M. Saiful Islam, A.A.G

... For the State

Heard on: 29.07.2026

Judgment on: 30.07.2026

This criminal appeal, preferred under Section 410 of
the Code of Criminal Procedure, 1898 is directed against the
judgment and order dated 05.04.2016 passed by the learned

Additional Sessions Judge, 2nd Court, Noakhali in Sessions Case No. 378 of 2014 arising out of C.R. Case No. 472 of 2013, convicting the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 01(one) year and to pay a fine of Taka 3,00,000/- (three lac).

The prosecution case, in short, is that the accused obtained loan a sum of Taka 10,50,000/- from the complainant. Towards partial discharge of the said liability, the accused issued cheque No. 5993663 dated 18.09.2013 for an amount of Taka 2,00,000/- drawn on Dutch Bangla Bank Limited. The complainant presented the cheque to the concerned bank for encashment on 18.09.2013 but the same was dishonoured with the endorsement “signature differs”. Thereafter, the complainant served a legal notice upon the accused on 06.10.2013 and it was returned on 21.10.2013. Despite such notice, the accused failed to make payment within the statutory period. Consequently, the complainant instituted C.R. Case No. 472 of 2013 before the learned Senior Magistrate, Cognizance Court No. 3, Noakhali. The learned Magistrate took cognizance of the offence and

transmitted the case to the Court of learned Sessions Judge, Noakhali. Subsequently, the learned Sessions Judge, Noakhali transferred the case to the learned Additional Sessions Judge, 2nd Court, Noakhali where it was registered as Sessions Case No. 378 of 2014. The charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881. The accused remained absconding at the time of framing of charge.

In the course of the trial, the prosecution examined 01(one) witness and produced relevant documentary evidence and the defence examined none. The accused could not be examined under Section 342 of the Code of Criminal Procedure as he remained absconding.

Upon conclusion of the trial and hearing of the parties, the learned Additional Sessions Judge, 2nd Court, Noakhali convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 01(one) year with a fine of Taka 3,00,000/- (three lac) by judgment and order dated 05.04.2016.

Being aggrieved by and dissatisfied with the said judgment and order dated 05.04.2016, the appellant preferred the instant Criminal Appeal after depositing Taka 1,00,000/-, representing 50% of the cheque amount as required by law.

Mr. A.K.M. Rezaul Karim Khandaker, the learned Advocate appearing on behalf of the appellant submits that the appellant does not dispute the issuance of the cheque but owing to severe financial hardship, he could not make the payment of the cheque amount following receipt of the notice sent by the complainant after dishonour of the cheque. He highlights that the appellant has already deposited Taka 1,00,000/- before the trial Court through Treasury Chalan.

He further submits that the appellant is currently in financial hardship and hence he prays for an extension of 06(six) months to clear the remaining dues. He next submits that the fine is excessive, so it should be reduced for the ends of justice. Finally, he prays for the appeal to be allowed with necessary modification.

Per contra, Ms. Nargis Tanjima, the learned Advocate appearing on behalf of the respondent No. 2 submits that there is no illegality, impropriety or infirmity in the impugned judgment and order. She contends that the prosecution has successfully established all the legal ingredients required under Section 138 of the Negotiable Instruments Act, 1881. The trial Court rightly convicted the accused and sentenced him to suffer imprisonment. Finally, she prays for the dismissal of the appeal.

I have considered the submissions of the learned Advocates for the respective parties, perused the evidence, impugned judgment and order passed by the trial Court and the materials on record.

On perusal of the evidence, it is found that the accused issued cheque No. 5993663 dated 18.09.2013 in favour of the complainant for Taka 2,00,000/- which was dishonoured.

The record shows that the complainant has duly complied with the procedures 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. PW 1 produced the complaint petition as Exhibit 1, the dishonoured cheque as Exhibit 2, dishonour memo as Exhibit 3, legal notice as Exhibit 4, the postal receipts together with acknowledgement due card as Exhibit 5 series. The complainant as PW 1 proved consideration against which the cheque was drawn and that he is the holder of the cheque in due course. It reveals that the signature on the cheque in question belongs to the appellant. The Court below rightly found the appellant guilty of the charge. Hence, the impugned judgment and order of conviction does not suffer from any illegality, impropriety or infirmity.

However, with regard to the sentence, reliance may be placed upon the decision passed in *Aman Ullah Vs. State*, reported in 73 DLR (2021) 541, wherein it has been observed that in cases arising under Section 138 of the Negotiable Instruments Act, 1881 the primary object of the law is to ensure recovery of the cheque amount and maintenance of commercial credibility. Hence, the sentence of imprisonment would be a harsh sentence having no penal

objective to be achieved. I have no disagreement with the *ratio* passed in the above-mentioned case.

Considering the facts and circumstances of the case, this Court is of the view that the ends of justice would be best served if the sentence of imprisonment is modified by setting aside the term of imprisonment and reduce the amount of fine from Taka 3,00,000/- to Taka 2,00,000/- matching the exact value of the dishonoured cheque.

In view of the foregoing discussions and *ratio* the order of the Court is as follows:

The conviction of the appellant under Section 138 of the Negotiable Instruments Act, 1881 is hereby affirmed. However, the sentence of simple imprisonment for 01(one) year is set aside. The sentence of fine of Tk. 3,00,000/- is reduced to Taka 2,00,000/- which is the value of cheque amount. It appears that the convict-appellant has already deposited Taka 1,00,000/- before the trial Court prior to filing the appeal. The Court concerned is directed to disburse the said deposited Taka 1,00,000/- to the complainant-respondent no. 2 forthwith upon proper identification if the same has not already been disbursed. The convict-appellant

is directed to pay the remaining balance of the value of the dishonoured cheque amounting to Taka 1,00,000/- to the complainant-respondent No. 2 through the trial Court within 03 (three) months from the date of receipt of this order, in default he will suffer simple imprisonment for 01(one) month. If the convict-appellant does not pay the remaining portion of the fine as ordered or opts to serve out the period of imprisonment instead of payment of fine, he is not exempted from paying the same. In that event, the Court concerned shall recover 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 and with directions made above. The convict-appellant is released from his bail bond.

Send down the lower Court's records (LCR) at once. Communicate the judgment and order to the Court concerned forthwith.

(Md. Bashir Ullah, J)