

**In the Supreme Court of Bangladesh**  
**High Court Division**  
**(Criminal Appellate Jurisdiction)**

**Present:**

**Mr. Justice Md. Bashir Ullah**

**Criminal Appeal No. 11588 of 2019**

**In the matter of:**

An Appeal under section 410 of the Code of  
Criminal Procedure

**-And-**

**In the matter of:**

Md. Asraful Haque

... Convict-Appellant

**-Versus-**

The State and another

...Complainant-Respondent.

Mr. Md. Mojibur Rahman, Advocate

... For the Convict-Appellant

Mr. Md. Mahabubur Rashid, 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: 26.01.2026 and 03.02.2026**

**Judgment on: 16.02.2026**

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 29.07.2019 passed  
by the learned Sessions Judge, Dinajpur in Sessions Case No.

477 of 2017 arising out of C.R Case No. 492 of 2016 convicting the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 6 (six) months and to pay a fine of Tk. 4,35,000/- (four lac thirty seven thousand).

The prosecution case, in short, is that one, Sumona Aktar Nipa as complainant filed C.R. Case No. 492 of 2016 before the Senior Judicial Magistrate, Cognizance Court, No. 1, (Sadar), Dinajpur against Md. Asraful Haque alleging *inter alia* that the accused obtained a loan from the complainant amounting to Taka 4,35,000/- on 11.06.2016. In order to refund the loan the accused issued cheque No. SBLQ 3926519 dated 08.08.2016 for Taka 4,35,000/- drawn on Rupali Bank Ltd., Maldahapatti Branch, Dinajpur in favour of the complainant. The complainant presented the cheque on 08.08.2016 but it was dishonored with the endorsement of 'insufficient funds'. On 14.08.2016, the complainant sent a legal notice through registered post with AD to the accused demanding payment of the cheque amount. Although the accused received the said notice on 16.08.2016

but he failed to pay the cheque amount. Consequently, on 25.09.2016, the complainant filed C.R Case No. 492 of 2016.

Subsequently, the case was transferred to the Court of the learned Sessions Judge, Dinajpur and was registered as Sessions Case No. 477 of 2017. Upon taking cognizance of the offence, charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act') who was absconding at the time of framing of charge.

The prosecution examined 02 (two) witnesses in order to substantiate the charge brought against the accused while the defence adduced none. The accused was not examined under Section 342 of the Code of Criminal Procedure as he was absconding. Upon conclusion of trial and considering the evidence on record the learned Sessions Judge, Dinajpur by judgment and order dated 29.07.2019 convicted the accused under Section 138 of the Act, and sentenced him there under to suffer simple imprisonment for 6 (six) months and fine of Tk. 4,35,000/- (four lac thirty five thousand).

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 29.07.2019, the convict preferred instant appeal before this Court.

Mr. Md. Mojibur Rahman, learned Advocate appearing on behalf of the appellant submits that the appellant failed to refund the loan amount timely due to his illness. Nevertheless, the appellant has already deposited Taka 2,17,500/- prior to filing the appeal and is willing to pay the remaining amount for which he seeks 3 (three) months time. He finally prays for allowing the appeal.

*Per Contra*, Mr. Mahabubur Rashid, the learned Advocate appearing on behalf of the respondent No. 2 contends that the accused issued the cheque which was dishonoured for 'insufficient funds' and hence, she served a legal notice through registered post with AD and despite the service of notice upon the accused, he did not pay the cheque amount. During the trial, the prosecution proved the charge against the accused beyond all reasonable doubt, and the trial Court legally passed the impugned judgment and order convicting the accused.

He further contends that, there is no illegality, impropriety or infirmity in the impugned judgment and as such the appeal will be dismissed.

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

P.W. 1, Sumona Aktar Nipa, the complainant stated in her examination-in-chief that on 08.08.2016 the accused obtained a loan of Taka 4,35,000/- from her in presence of the witnesses. She also stated that on that day as security for that loan the accused issued her a cheque of Rupali Bank Limited, Maldohapatti branch, Dinajpur bearing cheque no. SBLQ 3926519 dated 08.08.2016. She further stated that she presented the cheque for encashment on 08.08.2016, but the same was dishonored due to insufficient of fund of the account. She also stated that on 14.08.2016, she served a legal notice upon the accused which he received on 16.08.2016 but he failed to make payment. She proved the complaint petition (exhibit-1), her signatures thereon (exhibit 1/1), the original

cheque (exhibit-2), the dishonor slip (exhibit-3), the legal notice (exhibit-4), registered postal receipt (exhibit-5) and the acknowledgement due receipt (exhibit-6).

On scrutiny of the evidence on record, it is found that the accused issued cheque No. SBLQ 3926519 dated 08.08.2016 in favour of the complainant, Sumona Aktar Nipa for payment of Tk. 4,35,000/- which was dishonoured. The record shows that the complainant has 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 of the Act. The complainant also proved consideration against which the cheque was drawn and that it is the holder of the cheque in due course. The trial Court rightly found the accused guilty of the offence. 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, the imposition of a sentence of imprisonment would be a harsh having no penal objective to be achieved.

I find no reason to take a different view from the *raito* laid down in the decision passed by this Court in the above-mentioned case.

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 of imprisonment passed by the trial Court is set aside.

The complainant Sumona Aktar Nipa is entitled to receive the 50% of the cheque amount already deposited by the convict before the trial Court prior to filing the appeal.

In view of the foregoing discussions, the appeal is disposed of with the following order:

The conviction of the appellant under Section 138 of the Act, 1881 is hereby affirmed. The sentence of 06 months simple imprisonment is set aside. The sentence of fine of Taka 4,35,000/= (four lac thirty five thousand), equivalent to

the value of the cheque, is maintained. The convict-appellant has already deposited 50% of the cheque amount before the trial Court prior to filing the appeal. The Court concerned is directed to disburse the said deposited 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 4(four) months from the date of receipt of this judgment, in default he shall 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 the sentence.

The convict-appellant is released from the 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.)**

Md. Ariful Islam Khan  
Bench Officer