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

Present:
Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 7330 of 2020

In the matter of:
An Appeal under Section 410 of the Code of Criminal Procedure

-And-

In the matter of:
Soyeb Rahman alias Jimmy
... Appellant

-Versus-

The State and another
... Respondents

Ms. Tasmiah Nuhiya Ahmed with
Mr. Md. Mahabub Alam, Advocates
... For the Appellant

Mr. Muhammad Hasibur Rahman with
Ms. Shahnaz Begum, Advocates
... 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: 14.07.2026 and 26.07.2026
Judgment on: 27.07.2026

This appeal, preferred under Section 410 of the Code of Criminal Procedure, 1898 is directed against the judgment and order dated 16.02.2020 passed by the learned Additional Metropolitan Sessions Judge, 8th Court, Dhaka in Metro. Sessions Case No. 4080 of 2017 arising out of C.R. Case No. 483 of 2016 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 15,30,000/- (fifteen lac thirty thousand).

The prosecution case, in short, is that the complainant purchased a motor vehicle from the accused upon payment of Taka 15,30,000/-. Subsequently, the vehicle was found to be defective and was accordingly returned to the accused. In refund of the purchase price, the accused issued cheque No. 4022660 dated 08.08.2016, drawn on Prime Bank Limited for an amount of Taka 15,30,000/-. The complainant presented the cheque to the concerned bank for encashment on 16.08.2016 but the same was dishonoured with the endorsement “insufficient funds”. Thereafter, the complainant served a legal notice upon the accused on 31.08.2016 and it was returned on 08.09.2016. Despite such notice, the accused failed to make payment within the statutory period.

Consequently, the complainant instituted C.R. Case No. 483 of 2016 before the learned Chief Metropolitan Magistrate, Dhaka on 04.10.2016. The learned Magistrate took cognizance of the offence and transmitted the case to the Court of Metropolitan Sessions Judge, Dhaka. Subsequently, the learned Metropolitan Sessions Judge, Dhaka transferred the case to the learned Additional Metropolitan Sessions Judge, 8th Court, Dhaka where it was registered as Metro. Sessions Case No. 4080 of 2017. The charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881 on 09.07.2017, to which the accused pleaded not guilty and claimed to be tried. In the course of the trial, the prosecution examined 01(one) witness and the defence examined none. The accused was examined under Section 342 of the Code of Criminal Procedure and reiterated his innocence.

Upon conclusion of the trial and hearing of the parties, the learned Additional Metropolitan Sessions Judge, 8th Court, Dhaka convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 01 (one) year and to pay a fine of Taka 15,30,000/- by judgment and order dated 16.02.2020.

Being aggrieved by and dissatisfied with the said judgment and order dated 16.02.2020, the appellant preferred the instant Criminal Appeal after depositing Taka 7,65,000/- representing 50% of the cheque amount as required by law.

Ms. Tasmiah Nuhiya Ahmed, 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. She highlights that the appellant has already deposited Taka 7,65,000/- before the trial Court through Treasury Chalan and had paid Taka 2,00,000/- directly to the complainant during the trial.

She further submits that the appellant is currently in financial hardship and hence she prays for an extension of 06(six) months to clear the remaining dues. Finally, she prays for the appeal to be allowed with necessary modification.

Per contra, Mr. Muhammad Hasibur Rahman, 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. He 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, he 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. 4022660 dated 08.08.2016 in favour of the complainant for Taka 15,30,000/- 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. The complainant as PW 1 established consideration against which the cheque was drawn and he was the holder of the cheque in due course. PW 1 also produced the impugned cheque as Exhibit 1, dishonour slip as Exhibit 2, legal notice as Exhibit 3 and postal receipt as Exhibit 4 before the trial Court. 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. The conviction, therefore, calls for no interference.

However, concerning the sentence, reliance may be placed upon the decision passed in ***Aman Ullah Vs. State***, reported in 73 DLR (2021) 541, wherein it was held that in the facts of that case, imposition of imprisonment in addition to payment of the cheque amount would be an unduly harsh sentence having no penal objective to be achieved. I do not disagree with the principle enunciated therein.

In the instant case, it appears from the record that the appellant has already deposited Taka 7,65,000/- before the trial Court and has further paid Taka 2,00,000/- directly to the complainant. Thus, a substantial portion of the cheque amount has already been paid.

Considering the facts and circumstances of the case, the nature of the offence and the substantial payment made by the accused-appellant, 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 while maintaining the sentence of fine.

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. 15,30,000/- is upheld. It appears that the convict-appellant has already deposited Taka 7,65,000/-, being 50% of the cheque amount before the trial Court prior to filing the appeal. The Court concerned is directed to disburse the said deposited money to the complainant-respondent No.2 forthwith. It further appears that the accused had paid Taka 2,00,000/- directly to the complainant. Thus, he already paid Taka 9,65,000/-, leaving a balance of Taka 5,65,000/-. The convict-appellant is therefore directed to pay the remaining amount of the value of the dishonoured cheque, amounting to Taka 5,65,000/- 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 realise 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*)

Md. Ariful Islam Khan
Bench Officer