

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

Present:
Mr. Justice Md. Bashir Ullah

Criminal Revision No. 350 of 2020

In the matter of:

An application under section 439 read with
435 of the Code of Criminal Procedure

-And-

In the matter of:

Md. Kutubuddin Ahmed

... Convict-Appellant-Petitioner

-Versus-

The State and another

...Complainant-Respondent-Opposite Parties

Mr. Khabir Uddin Bhuiya with

Mr. Md. Nizamul Islam, Advocates

... For the Convict-Appellant- Petitioner

Mr. Muhammad Shaifuddin Bhuiya, Advocate

... For the Complainant-respondent-opposite party 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: 11.01.2026 and 19.01.2026

Judgment on: 25.01.2026

This Rule was issued at the instance of the petitioner
calling upon the opposite parties to show cause as to why the

judgment and order dated 04.10.2015 passed by the learned Special Judge, Special Judge Court No. 6, Dhaka in Special Criminal Appeal No. 33 of 2013 dismissing the appeal in modifying form and confirming the judgment and order of conviction and sentence dated 02.08.2010 passed by the learned Joint Metropolitan Sessions Judge, 3rd Court, Dhaka in Metro Sessions Case No. 4408 of 2009 arising out of Complaint Register (C.R) Case No. 4198 of 2007 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer rigorous imprisonment for 1(one) year and also to pay a fine of Tk. 6,30,000/- (six lac thirty thousand) and in default 03(three) months rigorous imprisonment should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

Facts relevant for disposal of the Rule, in brief, are that, the accused-petitioner received Taka 4,00,000/- against sale of bricks and M.S. Rod but he failed to deliver the materials to the complainant. The accused issued cheque No. SB 10(M) NO. 8643565 dated 27.08.2007 drawn on Pubali Bank Limited, New Market Branch, Dhaka for Taka 2,10,000/- to

refund the dues in favour of complainant. The complainant presented the cheque to the concerned bank on 29.08.2007 but it was dishonoured endorsing “insufficiency of funds”. Then he served legal notice on 27.09.2007 but the petitioner failed to make payment. Consequently, the complainant filed C.R. Case No. 4198 of 2007 before the learned Metropolitan Cognizance Court, Dhaka, on 09.11.2007. The cognizance Court took cognizance and sent the case to the Court of Metropolitan Sessions Judge, Dhaka. The learned Sessions Judge, Dhaka transferred the case to the learned Metropolitan Joint Sessions Judge, 3rd Court, Dhaka and was registered as Sessions Case No. 4408 of 2009. Charge was framed on 02.02.2010 under Section 138 of the Negotiable Instruments Act, 1881. In course of trial, prosecution examined 01(one) witness and produced documentary evidence to prove the indictment.

Upon conclusion of the trial, the learned Joint Sessions Judge by judgment and order dated 02.08.2010 convicted the accused under Section 138 of the Negotiable Instruments Act and sentenced him to suffer rigorous imprisonment for 01(one) year and to pay a fine of Taka 6,30,000/- which is

thrice the amount of the cheque and in default 03(three) months rigorous imprisonment. Challenging the judgment and order of conviction and sentence the convict-accused filed Criminal Appeal No. 865 of 2012 before the Metropolitan Sessions Judge, Dhaka. The Sessions Judge transferred the appeal to Special Judge, Special Court No. 6, Dhaka who upon hearing, dismissed the appeal and setting aside the default sentence of 03(three) months on 04.10.2015.

Being aggrieved by and dissatisfied with the judgment and order the petitioner preferred this instant revisional application. This Court enlarged the petitioner on bail on 10.02.2020 for 01(one) year.

Mr. Khabir Uddin Bhuiya with Mr. Md. Nizamul Islam, the learned Advocates appearing on behalf of the petitioner submits that both the Courts below have failed to apply their judicial mind and committed error of law in passing the impugned judgments and orders of conviction and sentence and as such the same are liable to be set aside.

He further contends that the prosecution has miserably failed to prove his case beyond reasonable doubt against the petitioner.

He further submits that the petitioner is a practising Advocate of this Court; however, he is in financially distressed circumstances and is not in a position to pay the fine, which was illegally imposed at thrice the cheque amount. He, therefore, prays for modification of the amount of fine and for setting aside the sentence of imprisonment. He finally prays for making the Rule absolute.

Per contra, Mr. Muhammad Shaifuddin Bhuiyan, the learned Advocate appearing on behalf of the opposite party no. 2 submits that, there is no illegality, impropriety or infirmity in the impugned judgments and orders. The Courts below rightly convicted and sentenced the petitioner and as such the Rule is liable to be discharged.

I have heard the learned Advocate for both the parties, perused criminal revision and the materials on record.

It appears from the petition of complaint, the deposition of PW1 (complainant) and the documentary evidence that the convict-petitioner issued the cheque in question for Taka 2,10,000/- in favour of the complainant-opposite party on 27.08.2007 to repay the liabilities which was received by him. It was dishonoured by the bank concerned on 29.08.2007 due

to insufficiency of funds. The complainant-opposite party sent statutory legal notice to the convict-petitioner on 27.09.2007. Despite receipt of the notice, the petitioner failed to make the payment. Consequently, the case was filed on 09.11.2007. P.W.1 successfully proved the prosecution case.

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 also proved consideration against which the cheque was drawn and that it is the holder of the cheque in due course. The Courts below rightly found the petitioner guilty of the charge. Hence, the impugned judgment and order of conviction does not suffer from any illegality, impropriety or infirmity.

However, with regards 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 held:

“There can be no dispute in so far as the sentence of imprisonment is concerned

that it should commensurate with the gravity of the crime. Court has to deal with the offenders by imposing proper sentence by taking into consideration the facts and circumstances of each case. It is not only the rights of the offenders which are required to be looked into at the time of the imposition of sentence, but also of the victims of the crime and society at large, also by considering the object sought to be achieved by the particular legislation. Considering the facts and circumstances of the case and the object of the law, I am of the view that the sentence of imprisonment would be a harsh sentence having no penal objective to be achieved. Hence, the sentence of imprisonment is set aside.”

I have no disagreement with the *ratio* passed by High Court Division in the above-mentioned case.

Considering the financial hardship of the petitioner, this Court is of the view that the amount of fine warrants

modification and reduction, and that the sentence of imprisonment should be set aside in the interest of justice.

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

The conviction of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 is upheld, but the sentence is modified. The sentence of 01(one) year rigorous imprisonment is set aside. The sentence of fine of Tk. 6,30,000/- is reduced to equivalent to the value of the dishonoured cheque i.e. Taka 2,10,000/-. The convict-petitioner 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 money to the complainant-opposite party No. 1 forthwith. The convict-petitioner is directed to pay the remaining portion of the value of the dishonoured cheque to the complainant-opposite party No. 1 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-petitioner 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 realise the fine under the provisions of Section 386 of the Code of Criminal Procedure.

In the result, the Rule is discharged with modification of sentence and with directions made above. The convict-petitioner 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