

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

Present:

Mr. Justice Md. Shohrwardi

Criminal Appeal No. 6440 of 2021

Rina Pervin

..... appellant

-Vs-

The State and another

....respondents

Mr. Sk. Eusuf Rahman, Advocate

...For the appellant.

Mr. Md. Hanif Shaikh, Advocate

.....For the respondent No.2

Mr. Md. Anichur Rahman, DAG with

Mr. Mir Moniruzzaman, AAG with

Mr. Md. Sarwar Alam Khan, AAG

with

Ms. Nargis Parvin (Alija), AAG

..... For the respondent

Heard on 11.01.2026 and 12.01.2026

Judgment delivered on: 19.01.2026

This appeal under section 410 of the Code of Criminal Procedure, 1898 is directed challenging the legality and propriety of the impugned judgment and order dated 05.08.2019 passed by Sessions Judge, Bagerhat in S.C. No. 636 of 2018 arising out of C.R. Case No. 124 of 2016 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 01(one) year and fine of Tk. 1,50,000.

The prosecution's case, in short, is that the accused Rina Pervin issued cheque No. 4941312 dated 25.07.2016 drawn on Saving Account No.9323/5 maintained with Sonali Bank Ltd, Kalia Branch, Narail for payment of Tk. 1,50,000 in favour of the complainant Md. Ismail Sheikh. The complainant presented the cheque for encashment, but the same was dishonoured on 16.08.2016 with the remark "insufficient funds". He sent a legal notice on 30.08.2016 to the accused by registered post with AD for payment of the cheque amount within 30 days from the date of receipt of the notice, but he did not pay the cheque amount. Consequently, the complainant filed the case on 18.10.2016.

After filing the complaint petition, the complainant was examined under section 200 of the Code of Criminal Procedure, 1898, and the Additional Chief Judicial Magistrate, Bagerhat was pleased to take cognizance of the offence against the accused under section 138 of the Negotiable Instruments Act, 1881, and registered the case as C.R. No. 124 of 2016(Chitolmari). Thereafter, it was transferred to the Sessions Judge, Bagerhat for trial, and the case was renumbered as S.C. No. 636 of 2018.

During the trial, charge was framed against the accused under section 138 of the said Act. The prosecution examined 01(one) witness to prove the charge against the accused. The defence did not cross-examine P.W.1. Since the accused was absconding, he was not examined under section 342 of the Code of Criminal Procedure, 1898. After concluding the trial, the trial court by impugned judgment and order, convicted the accused and sentenced him as stated above, against which the accused filed the instant appeal.

P.W. 1 Md. Ismail Sheikh stated that the accused Rina Pervin issued cheque No. 4941312 dated 25.07.2016 drawn on her Saving Account No.9323/5 maintained with Sonali Bank Ltd, Kalia Branch, for payment of Tk. 1,50,000 in favour of the complainant Md. Ismail Shaikh. The complainant presented the cheque for encashment, but the same was dishonored on 16.08.2016 with the remark “insufficient funds”. He sent a legal notice on 30.08.2016 to the accused by registered post with AD for payment of the cheque amount within 30 days from the date of receipt of the notice, but she did not pay the cheque amount. Consequently, the complainant filed the case on 18.10.2016. P.W. 1 proved the complaint petition as exhibit-1 and his signature as exhibit-1/1, the disputed cheque as exhibit-2, dishonour slips as exhibit-3 series, legal notice as exhibit-4, and postal receipt as exhibit-5. The defence did not cross-examine P.W. 1.

The learned Advocate Mr. Mohammad Sk. Eusuf Rahman, appearing on behalf of the appellant, submits that the accused issued the cheque on 25.07.2026 in favour of the complainant for payment of Tk. 1,50,000, but it was dishonoured on 16.08.2016 for insufficient funds. After service of notice, the accused could not pay the cheque amount due to financial hardship. He further submits that the accused settled the dispute out of court with the complainant and deposited 50% of the cheque amount before filing the appeal, and 50% of the cheque amount was paid to the complainant in cash. He prayed for setting aside the impugned judgment and order.

The learned Advocate Mr. Md. Hanif Shaikh, appearing on behalf of the complainant, submits that the accused issued the cheque for payment of Tk. 1,50,000. The complainant presented the

said cheque for encashment, but the same was dishonoured with a remark “insufficient funds”. After complying with all the procedures under section 138 of the said Act filed the complaint petition. However, he submits that both the accused and the complainant settled the dispute between them out of court, and the complainant received 50% of the cheque amount Tk. 75,000 in cash, and he is willing to withdraw 50% of the remaining cheque amount deposited by the accused in the trial court. He prayed for acceptance of the compromise made between the accused and the complainant.

I have considered the submission of the learned Advocates of both parties, perused the evidence, impugned judgment and order passed by the court below, and the records.

On perusal of the records, it appears that a joint application sworn on 15.01.2026 has been filed by P.W.1 and the accused Rina Pervin, stating that the accused paid Tk. 75,000, i.e., 50% of the cheque amount, to the complainant in cash, and he also received the said amount. The Negotiable Instruments Act, 1881 is a special law, and the offence under section 138 of the said Act is not compoundable. Therefore, the appeal cannot be disposed of considering the compromise between the parties. After filing a case under section 138 of the said Act, the court shall dispose of the case, considering the merit only. There is no scope to accept the compromise made between the parties.

It is admitted that the accused issued the cheque (exhibit-2) in favour of the complainant, and the notice sent by the complainant on 30.08.2016 was served upon the accused before filing the case. By filing a joint application, the accused stated that she had settled the dispute with the complainant out of court. During the trial, the

accused was absconding and did not cross-examine P.W. 1. Therefore, the evidence of P.W.1 that the accused issued the cheque in favour of the complainant (exhibit-2) for consideration remains uncontroverted by the defence.

Until contrary is proved, there is a presumption under section 118(a) of the Negotiable Instruments Act, 1881 that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. The presumption under Section 118 (a) is rebuttable. The accused did not cross-examine P.W.1. Therefore, the evidence of P.W.1 as regards issuance of the cheque (exhibit-2) for payment of Tk. 1,50,000 remains uncontroverted by the defence. Furthermore, the accused admitted that he issued the cheque in favour of the complainant. The cheque was dishonoured for insufficient funds. After service of notice sent on 30.08.2016, the convict petitioner did not pay the cheque amount due to hardship. Thereby, she committed an offence under Section 138 of the Negotiable Instruments Act, 1881, and the complainant filed the case following the procedures of Section 138 of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the convict petitioner beyond all reasonable doubt, and the Courts below, on correct assessment and evaluation of evidence, legally passed the impugned judgment and order of conviction.

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 passed by the trial court is modified as under;

The accused Rina Pervin is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881, and she is sentenced to pay a fine of Tk. 1,50,000.

The complainant is entitled to get the fine amount.

The complainant admitted that he received 50% of the cheque amount from the accused Rina Pervin in cash. He is entitled to withdraw the remaining 50% of the cheque amount of Tk. 75,000 deposited by the accused before filing the appeal.

The trial court is directed to allow the complainant to withdraw 50% of the cheque amount, i.e., 75,000, deposited by the accused before filing the appeal.

With the above findings, observation and direction, the appeal is disposed of with modification of the sentence.

Send down the lower Court's records at once.

