

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 641 of 2021

In the matter of:

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

-And-

In the matter of:

Engineer Amin Ahmed Raja

... Convict-Petitioner.

-Versus-

The State and another

... Complainant-Opposite Parties.

Mr. Sakib Mabud, Advocate

... For the Petitioner

Mr. Md. Selim Hossen, Advocate

... For the Opposite party No. 2

Mr. Md. Shafiquil Islam, D.A.G with

Ms. Farhana Abedin, A.A.G with

Mr. Hemayth Uddin, A.A.G and

Mr. K. M. Saiful Islam, A.A.G

... For the State

Heard on 11.05.2026, 12.05.2026,

14.05.2026 and 19.05.2026

Judgment on 08.06.2026

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 25.03.2019 passed by the learned Additional Metropolitan Sessions Judge, 4th Court, Dhaka in Criminal Appeal No. 1267 of 2017 dismissing the appeal and thereby affirming the judgment and order dated 21.08.2017 passed by the Joint Metropolitan Sessions Judge, 5th Court, Dhaka in Metro Sessions Case No. 6492 of 2015 arising out of C.R. Case No. 01 of 2015 convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 06(six) months and to pay a fine of Taka 3,56,925/-, 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.

The facts relevant for disposal of the Rule, in brief, are that opposite party No. 2, Md. Saidur Rahman as complainant filed C.R case No. 01 of 2015 before the Court of the learned Chief Metropolitan Magistrate, Dhaka against three accused-persons including the present petitioner alleging *inter alia* that the accused-persons had engaged the complainant for printing on their fabrics. In consideration of the said services rendered,

the complainant raised a bill for Taka 3,56,925/- (three lac fifty-six thousand nine hundred twenty five). In discharged of the said legally enforceable liability the accused, Engineer Amin Ahmed Raja and Zahidur Rahman @ M. Rahman jointly signed and issued cheque No. $\frac{AIB}{CD}$ A 6166875 dated 11.05.2014 for an amount of Taka 3,56,925/- in favour of the complainant. The cheque was dishonoured by the bank concerned on 12.05.2014 and again on 03.11.2014 due to insufficiency of funds. The complainant served a statutory legal notice upon the petitioner on 13.11.2014. Despite receipt of the notice, the petitioner failed to make payment of the cheque amount within the stipulated time. Consequently, C.R case No. 01 of 2015 was filed on 01.01.2015. Subsequently, the case was transferred to the learned Joint Metro Sessions Judge, 5th Court, Dhaka and was registered as Metropolitan Sessions Case No. 6492 of 2015. The charge was framed under Sections 138 and 140 of the Negotiable Instruments Act, 1881 on 01.11.2015. The accused-persons

were absent at the time of framing of charge. During trial, the prosecution examined 01(one) witness while the defence examined 03(three) witnesses. After conclusion of trial and hearing of the parties, the learned Joint Metropolitan Sessions Judge, 5th Court, Dhaka convicted the accused-persons under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to suffer simple imprisonment for a period of 06(six) months and a fine of Taka 3,56,925/- (three lac fifty six thousand nine hundred twenty five) equivalent to the cheque amount by judgment and order dated 21.08.2017.

Against the said judgment and order the convict-petitioners preferred Criminal Appeal No. 1267 of 2017 before the learned Sessions Judge, Dhaka and upon transfer the learned Additional Sessions Judge, 4th Court, Dhaka heard the appeal and dismissed the same by judgment and order dated 25.03.2019.

Being aggrieved by and dissatisfied with the judgment and order dated 25.03.2019 passed by the learned Additional Sessions Judge, 4th Court, Dhaka, the petitioner preferred this

Criminal Revision before this Court and obtained Rule and bail.

Mr. Sakib Mabud, learned Advocate appearing on behalf of the petitioner submits that the petitioner is in financially distressed circumstances and is not in a position to pay the fine immediately. He prays for 03(three) months to pay the remaining amount by setting aside the judgments and orders. He finally prays for making the Rule absolute.

Per contra, Mr. Md. Selim Hossain, the learned Advocate appearing on behalf of the opposite party No. 2 submits that there is no illegality, impropriety or infirmity in the judgments and orders passed by the Courts below and the charge brought against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 has been proved beyond reasonable doubt and therefore, the Rule is liable to be discharged.

I have heard the learned Advocates for the respective parties and perused the revisional application along with the materials on record.

On scrutiny of the petition of complaint, the deposition of PW1 (complainant) and the documentary evidence, it appears that the accused-persons issued the cheque in question in favour of the complainant-opposite party on 11.05.2014 against dues. The cheque for Taka 3,56,925/- (three lac fifty six thousand nine hundred twenty five) was dishonoured by the bank concerned on 12.05.2014 and 03.11.2014 due to insufficiency of funds. The complainant-opposite party served statutory legal notice upon the convict-petitioner on 13.11.2014, despite service of notice payment was not made and the case was filed on 01.01.2015. PW1 has successfully proved the prosecution case.

The record shows that the complainant duly complied with all 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, as 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 principle of the decision passed in the above-mentioned case.

Considering the financial hardship of the petitioner, this Court is of the view that the petitioner can get 02(two) months for paying the balance amount and that the sentence of imprisonment should be set aside in the interest of justice.

In view of the foregoing discussions and the *ratio* laid down in the above-mentioned reported case, the order of this Court is as follows:

The conviction of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 is upheld, but the sentence of 06(six) months simple imprisonment is set aside. The sentence of fine of Taka 3,56,925/- (three lac fifty six

thousand nine hundred twenty five) is affirmed. The record reflects that the convict-petitioner has already deposited 50% of the cheque amount with the trial Court prior to filing the appeal. The Court concerned is hereby directed to disburse the said deposited amount to the complainant-opposite party No. 2 forthwith. The convict-petitioner is directed to pay the remaining balance of the value of the dishonoured cheque to the complainant-opposite party No. 2 within 02(two) months from the date of receipt of this judgment through trial Court in default he shall 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 directions as above. The convict-petitioner is discharged from his bail bond.

Let a copy of this judgment along with the lower Court's records (LCR) be transmitted to the Court concerned forthwith.

(Md. Bashir Ullah, J)

Md. Sabuj Akan
Assistant Bench Officer