

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

PRESENT:

MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN

CRIMINAL APPEAL NO. 13319 OF 2018

Md. Aminul Islam .....Convict-appellant

-Versus-

The State and another

..... ..Respondent

None appears .... For the convict-appellant

Mr. Md. Jahirul Momeneen, Advocate

.....For the respondent No. 2

Mr. Md. Anichur Rahman Khan, DAG with

Mrs. Tashrifa Sultana Jali, AAG and

Mr. Md. Emdadul Hoque, AAG

.....For the state

Heard on: 27.04.2026, 04.05.2026, 12.05.2026 and 23.06.2026

Judgment on: The 29<sup>th</sup> of June, 2026

ABU TAHER MD. SAIFUR RAHMAN, J.

This appeal, at the instance of the convict-appellant, is directed against the judgment and order dated 25.06.2018 passed by the learned Sessions Judge, Natore in Sessions Case No. 1016 of 2017, arising out of C.R. Case No. 344 of 2017, convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer rigorous imprisonment for 01 (one) year and to pay a fine of Tk. 2,10,000/- (Taka two lac ten thousand), in default, to suffer simple imprisonment for 02 (two) months. Out of the fine **Tk. 2,00,000/-** (Taka two lac) was directed to be paid to the complainant as compensation and the

remaining **Tk. 10,000/-** (Taka ten thousand) to be deposited in the State Treasury as costs.

The prosecution case, in brief, is that the accused, a businessman, used to purchase goods on credit from the complainant's business concern, Sadiq Agro Chemical Company. A sum of **Tk. 2,00,000/-** remained outstanding against him. In discharge of the said liability, the accused issued Cheque No. 3779975 dated 01.03.2017 for **Tk. 2,00,000/-** drawn on his account maintained with Social Islami Bank Ltd., Monirampur Branch.

The complainant presented the cheque through Sonali Bank Ltd., Natore Station Bazar Branch on 02.04.2017, but it was dishonored for "insufficient funds." The dishonoured cheque and return memo were received by the complainant on 12.04.2017. On the same day, a statutory legal notice demanding payment was served upon the accused through an Advocate. Although the accused received the notice on 29.04.2017, he failed to make payment within the statutory period. Consequently, the complainant instituted the present case under section 138 of the Negotiable Instruments Act, 1881.

The accused appeared before the trial Court and was enlarged on bail on 30.07.2017. Charge was framed on 29.09.2017 to which he pleaded not guilty and claimed to be tried. Upon conclusion of the trial, the learned Sessions Judge convicted and sentenced him as stated above, giving rise to this appeal.

When the appeal was taken up for hearing, none appeared on behalf of the appellant despite repeated appearances of the case in the cause list. Upon direction of the Court, the learned Deputy Attorney General contacted the learned Advocate originally engaged by the appellant, who informed the Court that he had long ago issued a no-objection certificate enabling the appellant to engage another lawyer and, therefore, no longer represented him. Since no fresh counsel was engaged and the appeal has remained pending for a considerable period, this Court proceeded to hear and dispose of the appeal on merits.

Mr. Md. Jahirul Momeneen, learned Advocate appearing for respondent No. 2, submits that the accused contested the case before the trial Court and that the impugned judgment was passed upon proper appreciation of the evidence and the law.

Mr. Md. Anichur Rahman Khan, learned Deputy Attorney General, adopts the said submissions.

I have heard the learned Advocate for the complainant-respondent and the learned Deputy Attorney General and have carefully perused the lower Court records.

The principal question for determination is whether the conviction of the appellant under section 138 of the Negotiable Instruments Act, 1881 and the sentence imposed thereunder are sustainable in law.

On scrutiny of the record, it appears that the complainant instituted the case after complying with all the mandatory requirements prescribed under section 138 of the Negotiable Instruments Act, 1881. The accused appeared before the trial Court, obtained bail and contested the proceeding. On 05.04.2018, the complainant was examined as P.W.1 and proved the relevant documents, which were admitted in evidence as Exhibits 1 and 1/1 to 6. Thereafter, the prosecution case was closed.

The record further discloses that owing to the abscondence of the accused, P.W.1 could not be cross-examined. After completion of the statutory formalities, the learned trial Court, by judgment and order dated 25.06.2018, convicted and sentenced the accused in his absence. The appellant did not prefer any appeal within the prescribed period. He was arrested in execution of the sentence on 11.10.2018 and thereafter filed the present appeal.

The materials on record unmistakably demonstrate that the appellant was afforded sufficient opportunity to defend himself throughout the trial. However, by remaining absent, he forfeited that opportunity. The evidence adduced by the complainant remains unshaken and fully establishes all the essential ingredients of the offence under section 138 of the Negotiable Instruments Act, 1881.

Upon an independent assessment of the evidence and the record, I find no illegality, impropriety or material irregularity in the impugned judgment warranting interference by this Court.

Accordingly, the appeal is dismissed.

The judgment and order dated 25.06.2018 passed by the learned Sessions Judge, Natore in Sessions Case No. 1016 of 2017, arising out of C.R. Case No. 344 of 2017, convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer rigorous imprisonment for 01 (one) year and to pay a fine of **Tk. 2,10,000/-** (Taka two lac ten thousand), in default, to suffer simple imprisonment for 02 (two) months, are hereby affirmed.

The order of stay, if any, relating to realization of the fine stands vacated. The complainant shall be at liberty to withdraw the compensation amount from the trial Court in accordance with law.

The convict-appellant is directed to surrender before the Court concerned within **30 (thirty)** days from the date of receipt of a copy of this judgment, failing which the Court below shall take necessary steps for execution of the sentence in accordance with law.

Let the Lower Court Records be sent down forthwith along with a copy of this judgment for information and necessary action.