

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 10200 of 2024

In the matter of:

An Appeal under Section 410 of the Code
of Criminal Procedure

-And-

In the matter of:

Md. Bokul Hossain

... **Convict-Appellant**

-Versus-

The State and another

... **Complainant-Respondents**

Mr. Md. Abdul Latif, Advocate

... For the Appellant

Mr. Moloy Kumar Roy, Advocate with

Mr. Md. Tanbir Ahmmed, Advocate

... For the Respondent 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: 16.06.2026, 17.06.2026,

18.06.2026 and 21.06.2026

Judgment on: 01.07.2026

This appeal, preferred under Section 410 of the Code of
Criminal Procedure, 1898 is directed against the judgment
and order dated 04.10.2020 passed by the learned Sessions

Judge, Meherpur in Sessions Case No. 206 of 2018 arising out of C.R Case No. 418 of 2018 convicting the appellant 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 Tk. 10,60,000/- (ten lac sixty thousand).

The prosecution case, in short, is that the complainant-respondent No. 2 filed a petition of complaint before the learned Senior Judicial Magistrate, 2nd Court, Meherpur against the convict-appellant alleging *inter alia*, that the accused purchased garments materials from the complainant. In discharge of his liability for the value of the said materials, he issued a cheque bearing No. 6506863 dated 02.07.2018 drawn on Bangladesh Krishi Bank, Baradi Branch for Taka 5,30,000/-(five lac thirty thousand) only in favour of the complainant. The complainant presented the said cheque for encashment at the Bangladesh Krishi Bank, Baradi Branch, Meherpur on 02.07.2018 which was dishonored due to “insufficient funds”. Thereafter, on 05.07.2018, the complainant served a legal notice upon the accused. The accused received the notice on 12.07.2018, but failed to pay

the money within 30(thirty) days. Consequently, the complainant instituted C.R. Case No. 418 of 2018 before the learned Senior Judicial Magistrate, 2nd Court, Meherpur. The learned Magistrate took cognizance of the offence and transmitted the case record to the Court of learned Sessions Judge, Meherpur where it was registered as Sessions Case No. 206 of 2018. The charge was framed under Section 138 of the Negotiable Instruments Act, 1881 against the accused on 24.09.2019 to which he pleaded not guilty and claimed to be tried.

In course of trial, the prosecution examined 02(two) witnesses to prove the indictment. The accused could not be examined under Section 342 of the Code of Criminal Procedure as he remained absconding.

Upon conclusion of the trial and hearing the parties, the learned Sessions Judge, Meherpur convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 (the Act, 1881) and sentenced him to suffer simple imprisonment for a period of 06(six) months and to pay a fine of Tk. 10,60,000/- (ten lac sixty thousand) by judgment and order dated 04.10.2020.

Being aggrieved by and dissatisfied with judgment and order dated 04.10.2020, the convict-appellant preferred this instant Criminal Appeal before this Court.

Mr. Md. Abdul Latif, the learned Advocate appearing on behalf of the appellant submits that the appellant has already deposited Taka 2,65,000/- (two lac sixty-five thousand) on 11.05.2022 through T.R. challan as a prerequisite for preferring the appeal.

He further submits that the sentence of fine imposed is excessive and the appellant is unable to pay residual amount due to his acute financial hardship, as such the fine merits reduction.

He next submits that the conviction and sentence under Section 138 of the Negotiable Instruments Act, is not legally sustainable under the prevailing judicial trends. He prays for allowing the appeal.

Per contra, Mr. Moloy Kumar Roy, Advocate appearing on behalf of respondent No. 2 submits that the prosecution witnesses proved the prosecution case beyond

reasonable doubt as such the trial Court rightly convicted and sentenced the appellant.

He further submits that there is no illegality, impropriety or infirmity in the judgment and order passed by the trial Court as such the appeal is liable to be dismissed.

I have heard the respective parties, perused the judgment and order and the evidence on record.

The record shows that the complainant has successfully proved compliance of the procedure 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 trial Court upon proper assessment of evidence rightly found the accused guilty of the charge. Hence, the impugned judgment and order of conviction does not suffer from any illegality or infirmity.

PW1 and PW2 proved the prosecution case beyond reasonable doubt.

The uncontroverted evidence unequivocally establish that the cheque was issued by the appellant and that it was supported by lawful consideration. The cheque having been returned unpaid by the drawee bank, the ingredients of dishonour contemplated under Section 138 stood fully satisfied.

With regard to sentence, reference may be placed to the decision passed in *Aman Ullah Vs. State*, reported in 73 DLR (2021) 541, wherein this Court observed that in cases instituted under Section 138 of the Negotiable Instruments Act, imposition of a sentence of imprisonment would be a harsh having no penal objective to be achieved. The sentence of fine imposed appears to be excessive.

The record shows that the accused-appellant has already deposited Taka 2,65,000/- (two lac sixty-five thousand) with the trial Court prior to filing this appeal.

Considering the compensatory nature of proceedings under Section 138 of the Negotiable Instruments Act, the partial deposit already made by the appellant and the facts and circumstances of the case, I am of the view that the ends of

justice would be sufficiently met if this Court reduce the fine equivalent to the cheque amount and setting aside the substantive sentence of imprisonment.

In view of the foregoing discussions, together with the decision and the *ratio* laid down in the above-mentioned reported case, the appeal is dismissed with the following order:

The conviction of the appellant under Section 138 of the Act, 1881 is upheld, however, the sentence of 06(six) months simple imprisonment is set aside. The sentence of fine of Taka 10,60,000/- (ten lac sixty thousand) is reduced to Taka 5,30,000/- (five lac thirty thousand) which is equivalent to the dishonoured cheque. It appears that the convict-appellant has already deposited Taka 2,65,000/- (two lac sixty-five thousand) before the trial Court prior to filing the appeal. So, the trial Court is directed to disburse the deposited money to the complainant-respondent No. 2 forthwith upon proper identification. The convict-appellant is directed to pay the remaining balance of the dishonoured cheque amounting to Taka 2,65,000/- (two lac sixty-five thousand) to the complainant-respondent No. 2 through the trial Court within

03(three) months from the date of receipt of this judgment, in default he shall 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 in lieu of payment of fine, he is not exempted from paying the same. In that event, the Court concerned shall realize 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 of imprisonment and reduction of fine with directions as made above. The convict-appellant is released from his bail bond.

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

(Md. Bashir Ullah, J)