

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 2288 of 2025

In the matter of:

An Appeal under Section 410 of the Code
of Criminal Procedure

-And-

In the matter of:

Md. Enamul Haque

... Convict-Appellant

-Versus-

The State and another

... Complainant-Respondents

Mr. Md. Tarik Alam, Advocate

... For the Appellant

Mr. Md. Khayrul Bashar, 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: 17.06.2026 and 21.06.2026

Judgment on: 23.06.2026

This appeal, preferred under Section 410 of the Code of
Criminal Procedure, 1898 is directed against the judgment
and order dated 03.10.2018 passed by the learned Additional

Sessions Judge, 1st Court, Magura in Sessions Case No. 381 of 2016 arising out of C.R Case No. 245 of 2016 convicting the appellant under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 09(nine) months and to pay a fine equivalent to twice the amount of the dishonoured cheque amounting to Tk. 9,00,000/- (nine lac).

The facts relevant for disposal of the appeal, in short, are that the accused obtained a loan of Taka 9,00,000/- (nine lac) from the complainant. In discharge of his liability, the accused issued cheque No. 2808377 dated 10.07.2016 for Taka 9,00,000/- (nine lac) drawn on Islami Bank Bangladesh Limited in favour of the complainant. The cheque was presented but the same was dishonoured on 20.07.2016 due to “insufficiency of fund”. The complainant served statutory legal notice upon the accused on 21.07.2016; however, service upon the accused could not be effectuated. Consequently, the complainant caused the notice to be published in 02(two) daily newspapers namely, ‘*The Daily Arthanitir Kagaz*’ and ‘*The Daily Dhaka Protidin*’ on

05.08.2016. Despite service of the notice, the accused failed to make payment within the stipulated period. Consequently, the complainant instituted C.R. Case No. 245 of 2016 before the learned Senior Judicial Magistrate, 2nd Court, Magura. The learned Magistrate took cognizance of the offence and transmitted the case to the Court of learned Sessions Judge, Magura. The learned Sessions Judge, Magura transferred the case to the learned Additional Sessions Judge, Magura where it was registered as Sessions Case No. 381 of 2016. Charge was framed on 30.05.2017 against the accused under Section 138 of the Negotiable Instruments Act, 1881. The accused pleaded not guilty and claimed to be tried when the charge was read out and explained to him. In course of trial, the prosecution examined 01(one) witness to prove the indictment. The accused was examined under Section 342 of the Code of Criminal Procedure and he repeated his innocence.

Upon conclusion of the trial and hearing the parties, the learned Additional Sessions Judge, Magura 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 09(nine) months and to pay a fine twice of cheque amount of Tk. 9,00,000/- (nine lac) by judgment and order dated 03.10.2018.

Being aggrieved by and dissatisfied with judgment and order dated 03.10.2018, the convict-appellant preferred this instant Criminal Appeal before this Court whereupon this Court enlarged the appellant on bail till disposal of the appeal.

Mr. Md. Tarik Alam, the learned Advocate appearing on behalf of the appellant by filing an application for the disposal of the appeal on the basis of a compromise deed dated 03.03.2026 submits that the appellant had already deposited Taka 4,50,000/- before filing the appeal on 27.11.2024 through challan and during pendency of the appeal, he paid directly the remaining balance amount to the complainant on 03.03.2026 and both parties amicably resolved their disputes. Accordingly, he prays for setting aside the impugned judgment and order of conviction and sentence.

Per contra, Mr. Md. Khayrul Bashar, the learned Advocate appearing on behalf of respondent No. 2 confirms

that the complainant had received the remaining balance of the dishonoured cheque and executed the deed of compromise voluntarily and he has no objection if the appellant is acquitted by setting aside the sentence of imprisonment.

I have heard the respective parties, perused the judgment and order, application for disposal of the appeal on the basis of compromise agreement and the evidence on record.

When the matter has been taken for hearing both parties appeared in person before this Court. They were duly identified by their respective learned Advocates. They voluntarily admitted that the deed of compromise was executed without any coercion and undue influence. Respondent No. 2, Md. Mafizur Rahman acknowledged that he has received Taka 4,50,000/- (four lac fifty thousand) in cash, the balance amount of the cheque from the accused-appellant and he has no grievance against the appellant.

Although the offence under Section 138 of the Negotiable Instruments Act is not compoundable, the parties have jointly prayed for recording the compromise and for disposal of the appeal in terms of the compromise by setting

aside the judgment and order of conviction and sentence passed against the appellant. In this regard, reliance may be placed on the decisions passed in the cases of ***Subash Chandra Sarker Vs. The State and another*** reported in 26 BLT (AD) 28 and ***Haroon-or-Rashid Vs. The State***, reported in 76 DLR (2024) 23.

The record demonstrates that the accused-appellant has already deposited Taka 4,50,000/- (four lac fifty thousand) with the trial Court prior to filing this appeal and the rest amount of the cheque has been directly received by the complainant.

Considering the submissions advanced by the learned Advocates for both the parties and the facts and circumstances of the case and the deed of compromise, this Court is inclined to allow the application for disposal of the appeal on the basis of compromise agreement dated 03.03.2026.

Accordingly, the application for disposal of the appeal on the basis of compromise agreement executed between the parties is allowed.

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

The conviction of the appellant under Section 138 of the Act, 1881 is upheld, however, the sentence of 09(nine) months simple imprisonment is set aside. The sentence of fine equivalent to twice the amount of the cheque imposed by the Court is reduced to the principal amount of the dishonoured cheque that is Taka 9,00,000/-(nine lac). It appears that the convict-appellant has already deposited Taka 4,50,000/- (four lac fifty thousand) before the trial Court prior to filing the appeal. The remaining balance of the cheque amount has been directly received by the complainant, as confirmed by him in person before this Court. Therefore, the trial Court is directed to disburse the deposited sum of Taka 4,50,000/-(four lac fifty thousand) to the complainant-respondent No. 2 forthwith upon proper identification.

In the result, the Criminal Appeal is disposed of with modification of sentence of imprisonment and 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)

Md. Sabuj Akan
Assistant Bench Officer