

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 6094 of 2018

In the matter of:

An Appeal under Section 410 of the Code
of Criminal Procedure

-And-

In the matter of:

Md. Saiful Rahman Mondol @ Bablu

... Appellant

-Versus-

The State and another

... Respondents

Mr. Md. Sultan Mahmud, Advocate

... For the Appellant

Mr. Md. Ziaur Rahman, Advocate

... For the Respondent No. 2

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

Ms. Farhana Abedin, A.A.G with

Mr. Hemaith Uddin, A.A.G and

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

... For the State

Heard on: 08.07.2026, 09.07.2026

and 13.07.2026

Judgment on: 14.07.2026

This appeal, preferred under Section 410 of the Code of
Criminal Procedure, 1898 is directed against the judgment
and order dated 08.08.2017 passed by the learned Additional

Sessions Judge, 4th Court, Khulna in Sessions Case No. 320 of 2016 arising out of C.R. Case No. 86(C)(Dighaliya) of 2015 convicting the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 03(three) months and to pay a fine of Taka 2,50,000/- (two lac fifty thousand).

The prosecution case, in short, is that the accused obtained a loan of Taka 2,50,000/- from the complainant. In discharge of the said debt, the accused issued cheque No. 1903417 on 30.07.2015, drawn on Agrani Bank Limited, Clay Road Corporate Branch, Khulna. The complainant presented the cheque to the concerned bank for encashment on 02.08.2015 but the same was dishonoured with the endorsement “insufficient funds”. Thereafter, the complainant served a statutory legal notice upon the accused on 10.08.2015 demanding payment. The accused received the legal notice on 25.08.2015 but failed to make the payment within the statutory period. Consequently, the complainant instituted C.R. Case No. 86(C) of 2015 (Dighaliya) before the learned Judicial Magistrate, Khulna on 18.10.2015. The learned Magistrate took cognizance of the offence and

transmitted the case record to the Court of learned Sessions Judge, Khulna. Subsequently, the learned Sessions Judge, Khulna transferred the case to the learned Additional Sessions Judge, 4th Court, Khulna which was registered as Sessions Case No.320 of 2016. The charge was framed under Section 138 of the Negotiable Instruments Act, 1881 against the accused on 16.02.2017 to which, the accused pleaded not guilty of the offence and claimed to be tried. In course of trial, the prosecution examined 03(three) witnesses to prove the indictment whereas the defence examined none. The accused was thereafter examined under Section 342 of the Code of Criminal Procedure wherein he reiterated his innocence.

Upon conclusion of the trial and hearing of the parties, the learned Additional Sessions Judge, 4th Court, Khulna convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 03(three) months and to pay a fine of Taka 2,50,000/- (two lac fifty thousand) by judgment and order dated 08.08.2017.

Being aggrieved by and dissatisfied with the judgment and order dated 08.08.2017, the appellant preferred the instant

Criminal Appeal having deposited 50% of the cheque amounting to Taka 1,25,000/- before the Court below in compliance with the statutory pre-requisite for filing an appeal.

Mr. Md. Sultan Mahmud, the learned Advocate appearing on behalf of the appellant submits that the appellant does not dispute the execution or issuance of the cheque by the appellant but owing to financial hardship, he could not make the payment of the cheque amount following receipt of the notice sent by the complainant after dishonour of the cheque. He emphasizes that the appellant has already deposited Taka 1,25,000/- to the trial Court through T.R. Chalan.

He prays that the substantive sentence of imprisonment be set aside and the appellant be granted an extension of 06(six) months to clear the remaining dues. He finally prays for the appeal to be allowed.

Per contra, Mr. Md. Ziaur Rahman, the learned Advocate appearing on behalf of the respondent no. 2 submits that there is no illegality, impropriety or infirmity in the

impugned judgment and order. He contends that the prosecution successfully proved all the legal ingredients required under Section 138 of the Negotiable Instruments Act, 1881. The trial Court rightly convicted the accused and sentenced him to suffer imprisonment. Finally, he prays for the dismissal of the appeal.

I have considered the submissions of the learned Advocates for both parties, perused the evidence, impugned judgment and order passed by the trial Court and the materials on record.

On perusal of the evidence it is found that the accused issued cheque No. 1903417 dated 30.07.2015 in favour of the complainant for Taka 2,50,000/- which was dishonoured.

The record shows that the complainant has duly complied with 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 as PW 1 proved consideration against which the cheque was drawn and that it is the holder of the cheque in

due course. The Court below rightly found the appellant guilty of the charge. Hence, the impugned judgment and order of conviction does not suffer from any illegality, impropriety or infirmity.

However, with regard to the sentence, reliance may be placed upon the decision passed in *Aman Ullah Vs. State*, reported in 73 DLR (2021) 541, wherein this Court observed that in offences of this nature, the sentence of imprisonment would be a harsh sentence having no penal objective to be achieved. I have no disagreement with the *ratio* passed in the above-mentioned case.

Considering the facts and circumstances of the case, this Court is of the view that the ends of justice would be best served if the substantive sentence of imprisonment is modified and set aside.

In view of the foregoing discussions and *ratio* the order of the Court is as follows:

The conviction of the appellant under Section 138 of the Negotiable Instruments Act, 1881 is hereby affirmed. However, the sentence of 04(four) months simple imprisonment is set aside. The sentence of fine to the extent

of Tk. 2,50,000/- is upheld. It appears that the convict-appellant has already deposited 50% of the cheque amount before the trial Court prior to filing the appeal. The Court concerned is directed to disburse the said deposited money to the complainant-respondent no. 2 forthwith. The convict-appellant is directed to pay the remaining portion of the value of the dishonoured cheque to the complainant-respondent No. 2 through the trial Court within 04 (four) months from the date of receipt of this order, in default he will 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 realise the fine under the provisions of Section 386 of the Code of Criminal Procedure.

In the result, the Criminal Appeal is dismissed with modification of sentence and with directions made above. The convict-appellant is released from his bail bond.

Send down the lower Court's records (LCR) at once.
Communicate the judgment and order to the Court concerned
forthwith.

(Md. Bashir Ullah, J)

Md. Ariful Islam Khan
Bench Officer