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

PRESENT:
MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN

CRIMINAL REVISION NO.2903 OF 2022

Md. Dulal Hosen.................... Convict-petitioner

-Versus-

The State and another
...............Opposite parties

Mr. Md. Yousub Ali with
Mr. Md. Rasel Mia, Advocates
.......For the convict-petitioner

Mr. Md. Jasim Sarker, Advocate
......For the opposite party 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: 09.06.2026, 11.06.2026, 16.06.2026, 17.06.2026, 30.06.2026, 02.07.2026 and 08.07.2026.

Judgment on: **The 30th of July, 2026**

ABU TAHER MD. SAIFUR RAHMAN, J.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 09.06.2022 passed by the learned Additional Sessions Judge, 2nd Court, Naogaon in Criminal Appeal No. 118 of 2020 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 01.03.2020 passed by the learned Joint Sessions Judge, 3rd Court, Naogaon in Sessions Case No.1068 of 2018, arising out of C.R. Case No. 436 of 2017 (Manda) convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 01 (one) year and to pay a fine of **Tk. 5,70,000**/-- (Taka five lac and seventy thousand) should not be set aside and/or such other or further order or orders be passed as to this Court may deem fit and proper.

At the time of issuance of the Rule, this Court granted the convict-petitioner ad-interim bail for a period of **6 (six**) months and the said order of bail was not extended thereafter.

For disposal of the Rule, the relevant facts, in brief, are as follows:

The opposite party No. 2 as complainant, instituted the instant case alleging that,the complainantand the accused belong to the same locality and enjoyed a cordial relationship. Owing to such relationship, the accused approached the complainant and on 31.01.2017, borrowed a sum of **Tk. 5,70,000**/- (Taka five lac and seventy thousand) as a loan with a promise to repay the same on demand.

In discharge of the said liability, the accused issued Cheque No. 050535 dated 30.04.2017 for **Tk. 5,70,000**/- drawn on his savings account No. 10775 maintained with Sonali Bank

Limited, K.D More Branch, Naogaon in favour of the complainant. The complainant presented the cheque through his account maintained with Janata Bank Limited, Chaumashia Branch, for collection. The cheque was, however, returned unpaid on 16.05.2017 with the endorsement, "Account Inoperative."

Thereafter, the complainant, through his engaged Advocate, served a legal demand notice upon the accused by registered post on 02.07.2017, which was received by the accused on 27.07.2017. Despite receipt of the notice, the accused failed to pay the cheque amount within the statutory period of **30 (thirty**) days, thereby committing an offence punishable under section 138 of the Negotiable Instruments Act, 1881. Hence, the instant case was filed against the accused-petitioner.

Thereafter, the accused-petitioner appeared before the trial Court, obtained bail and, upon framing of charge, pleaded not guilty and claimed to be tried. Upon conclusion of the trial, the learned Joint Sessions Judge, 3rd Court, Naogaon, by judgment and order dated 01.03.2020, convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him as stated above. Aggrieved thereby, the petitioner preferred Criminal Appeal No. 118 of 2020 before the learned Sessions Judge, Naogaon, which was heard and disposed of by the learned Additional Sessions Judge, 2nd Court, Naogaon, by the impugned judgment and order dated 09.06.2022 dismissing the appeal and affirming the conviction and sentence. Being further aggrieved, the petitioner has preferred the instant Criminal Revision before this Court and obtained the Rule.

Mr. Md. Yousub Ali, the learned Advocate for the petitioner submits that the prosecution is vitiated by non-compliance with the mandatory requirement of section 138(1)(b) of the Negotiable Instruments Act, 1881. He contends that although the cheque was dishonored on 16.05.2017, the statutory notice of demand was served upon the petitioner on 02.07.2017, i.e. after 47 (forty-seven) days from the date of receipt of information regarding dishonor, instead of within the prescribed period of 30 days. As such, the complaint was not maintainable in law. He further submits that both the Courts below failed to appreciate this fundamental legal infirmity and thereby committed an error of law in convicting the petitioner. In support of his contention, he has also relied upon the decision in *Aleya vs. State and another*, reported in 70 DLR (2018) 307.

As against this, Mr. Md Jasim Sarker, the learned Advocate for the complainant-opposite party No. 2 submits that the complainant, after complying with all legal formalities, instituted the instant case, and the learned trial Court, upon meticulous and judicious appraisal of the evidence on record, rightly found the accused-convict-petitioner guilty of the offence charged and convicted him accordinglywhich does not call for any interference by this Court.

Mr. Md. Anichur Rahman Khan, the learned Deputy Attorney General concurs with the submissions made by the learned Advocate for the complainant opposite party No 2.

Heard the learned Advocates for the respective parties and perused the evidence and materials on record.

The sole question for determination in this Rule is whether the impugned judgment and order dated 09.06.2022 passed by the learned Additional Sessions Judge, 2nd Court, Naogaon in Criminal Appeal No. 118 of 2020 affirming the judgment and order dated 01.03.2020 passed by the learned Joint Sessions Judge, 3rd Court, Naogaon in Sessions Case No. 1068 of 2018, arising out of C.R. Case No. 436 of 2017 (Manda) convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to simple imprisonment for one year and a fine of **Tk. 5,70,000**/- (Taka five lac and seventy thousand), calls for any interference by this Court.

The principal contention advanced on behalf of the petitioner is that the complaint was instituted without complying with the mandatory requirement of section 138(1)(b) of the Negotiable Instruments Act, 1881. The learned Advocate for the petitioner submits that the cheque dated 30.04.2017 was dishonored on 16.05.2017 whereas the statutory demand notice was served upon the petitioner only on 02.07.2017, i.e. after 47 (forty seven) days from the date of dishonor, instead of within **30 (thirty**) days as required by law. Accordingly, it is contended that the prosecution is vitiated for non-compliance with the mandatory provision of section 138(1)(b) of the Act.

To appreciate the above contention, it is necessary to examine section 138(1)(b) of the Negotiable Instruments Act, 1881, which provides that:

> "...the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid."

A plain reading of the above provision makes it evident that compliance with section 138(1)(b)is a mandatory condition precedent for maintaining a complaint under section 138. The provision requires that: (i) the cheque must have been returned unpaid; (ii) the payee or holder in due course must receive information from the bank regarding such dishonor and (iii) within thirty days from the receipt of such information, the payee or holder in due course must issue a written demand notice to the drawer. Failure to satisfy any of these statutory requirements is fatal to the prosecution.

Significantly, the Legislature has employed the expression "within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid" and not "within 30 (thirty) days from the date of dishonor." Thus, the limitation commences not from the date on which the cheque is dishonored by the bank, but from the date on which the payee or holder in due course receives information from the bank regarding such dishonor.

The expression "receipt of information from the bank" refers to the communication by the bank informing the payee that the cheque has been returned unpaid, such as the delivery of the cheque return memo or any other official communication conveying the dishonor. Mere hearsay or informal knowledge of the dishonor does not satisfy the statutory requirement. Consequently, the thirty-day period prescribed under section 138(1)(b) begins to run from the date on which the payee receives the bank's communication regarding the dishonour and not necessarily from the date on which the cheque was internally dishonored by the bank.

Upon examination of the record, it appears that at the time of taking cognizance on 21.09.2017, the complainant produced a certificate issued by the concerned bank dated

31.08.2017, wherein it was certified that the complainant collected the dishonored cheque from the bank on 18.06.2017. It further appears that the statutory demand notice was served upon the petitioner on 02.07.2017. If the complainant in fact received information regarding the dishonor on 18.06.2017, the notice served on 02.07.2017 would prima facie be within the statutory period prescribed under section 138(1)(b) of the Act.

In the instant case, neither the learned Trial Court nor the learned Appellate Court adverted to or recorded any finding with regard to the bank certificate dated 31.08.2017 produced by the complainant at the time of taking cognizance, wherein it was certified that the complainant collected the dishonored cheque from the bank on 18.06.2017. The said document is directly relevant to the determination of the commencement of limitation under section 138(1)(b) of the Negotiable Instruments Act, 1881, since the statutory period is to be computed from the date on which the payee receives information from the bank regarding the dishonor of the cheque.

The omission of the Courts below to consider this material document has resulted in a failure to determine a material fact which goes to the very maintainability of the prosecution. In the absence of a finding on this issue, the legality of the conviction cannot be satisfactorily examined in revisional jurisdiction.

Accordingly, the impugned judgment and order dated 09.06.2022 passed by the learned Additional Sessions Judge, 2nd Court, Naogaon in Criminal Appeal No. 118 of 2020 and the judgment and order dated 01.03.2020 passed by the learned Joint Sessions Judge, 3rd Court, Naogaon in Sessions Case No. 1068 of 2018, arising out of C.R. Case No. 436 of 2017 (Manda) under section 138 of the Negotiable Instruments Act, 1881 are set aside.

The case is remanded to the learned Joint Sessions Judge, 3rd Court, Naogaon with a direction to consider the evidentiary value and legal effect of the bank certificate dated 31.08.2017, together with the other evidence already on record, and to record a specific finding as to whether the statutory notice was issued within the period prescribed under section 138(1)(b) of the Negotiable Instruments Act, 1881. Upon recording such finding, the learned Trial Court shall dispose of the case afresh in accordance with law, on the basis of the evidence already on record, without holding a fresh trial unless the Court considers that the interests of justice imperatively require the recall of any witness for the limited purpose of clarifying the aforesaid issue.

The convict-petitioner is directed to surrender before the learned trial Court within **30 (thirty**) days from the date of receipt of a copy of this judgment and order. If he surrenders and files an application for bail, the learned trial Court shall consider the same in accordance with law.

The learned Trial Court is directed to dispose of the case expeditiously, preferably within **90 (ninety**) days from the date of receipt of a copy of this judgment.

Send down the Lower Court Records (LCR).

With the aforesaid observation and direction, the Rule is disposed of.

Let a copy of this judgment be communicated to the Court below forthwith.