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

PRESENT:

MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN

CRIMINAL REVISION NO. 1452 OF 2021

Abdur Rahman.................… Convict-petitioner

-Versus-

The State and another ....…///Opposite parties

Mr. Ujjal Paul, Advocate

.........For the convict-petitioner

Mr. Md. Rezaul Islam with

Mr. Khayrul Bashar, Advocates

......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: 28.04.2026, 05.05.2026, 14.05.2026, 11.06.2026 and 22.06.2026

Judgment on: The 9th 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 25.02.2021 passed by the learned Additional District and Sessions Judge, 1st Court, Kishoreganj in Criminal Appeal No. 151 of 2019 dismissing the appeal and thereby affirming the judgment and order dated 18.03.2019 passed by the learned Joint District and Sessions Judge, 2nd Court, Kishoreganj in Sessions Case No. 77 of 2012, arising out of C.R. Case No. 380(1) of 2011 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer rigorous imprisonment for 01 (one) year and also to pay a fine of **Tk. 6,00,000**/- (Taka Six lac) 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 1 (one) year 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, owing to their long-standing acquaintance, the accused-petitioner borrowed **Tk. 6,00,000**/- (Taka Six lac) from her on 15.05.2011 to meet his urgent financial need, promising to repay the same within the stipulated period. Upon his failure to repay the loan despite repeated demands, the accused, on 20.07.2011, issued Cheque No. CA-0631391 drawn on his account maintained with Pubali

Bank Ltd., Kishoreganj Branch for **Tk. 6,00,000/-** in discharge of the said liability.

The cheque was presented for encashment on 08.08.2011 but was dishonored due to "Insufficient Funds." Thereafter, on 11.08.2011, the complainant served a statutory demand notice upon the accused through her learned Advocate. Despite receipt of the notice, the accused failed to pay the cheque amount within the statutory period. Consequently, the complainant instituted the instant case under section 138 of the Negotiable Instruments Act, 1881.

The accused-petitioner appeared before the trial Court, obtained bail and upon framing of charge, pleaded not guilty and claimed to be tried. After conclusion of the trial, the learned Joint District and Sessions Judge, 2nd Court, Kishoreganj by the judgment and order dated 18.03.2019 convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him as stated above.

Being aggrieved by the judgment and order of conviction and sentence passed by the trial Court, the petitioner preferred Criminal Appeal No. 151 of 2019 before the learned Sessions Judge, Kishoreganj. The appeal was heard by the learned Additional District and Sessions Judge, 1st Court, Kishoreganj, who, by judgment and order dated 25.02.2021, dismissed the appeal and thereby affirmed the conviction and sentence. Being further aggrieved, the petitioner has preferred the present Criminal Revision before this Court, in which Rule was issued and realization of the fine was stayed pending disposal of the Rule.

Mr. Ujjal Paul, the learned Advocate for the petitioner submits that the petitioner is a petty businessman, borrowed only **Tk. 2,00,000**/- (Taka two lac) from the complainant on interest and not **Tk. 6,00,000**/- (Taka six lac) as alleged. He further submits that the petitioner had delivered a blank signed cheque as security for the loan and subsequently repaid the entire amount. In support of this defence, the petitioner examined three witnesses (D.Ws.1 to 3). However, both the Courts below failed to properly appreciate the defence evidence and its legal effect and thereby arriving at erroneous findings which have occasioned a miscarriage of justice.

As against this, Mr. Md. Khayrul Bashar, the learned Advocate for the opposite party No. 2 submits that the learned trial Court upon a thorough, meticulous and judicious appraisal of the evidence on record correctly found the accused convict-appellant guilty of the offence charged and lawfully convicted him which 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 submissions of the learned Advocates for the respective parties and perused the evidence and materials on record.

To sustain a conviction under section 138 of the Negotiable Instruments Act, 1881, the complainant is required to prove the following foundational facts:

(a) The cheque was drawn by the accused for the discharge, in whole or in part, of a legally enforceable debt or other liability. By virtue of sections 118 and 139 of the Act, a statutory presumption arises in favour of the holder that the cheque was issued for consideration and in discharge of a debt or other liability, unless the accused successfully rebuts such presumption.

(b) The cheque was drawn by the accused on an account maintained by him, and it bears his signature or was otherwise issued by him.

(c) The cheque was presented to the bank within its period of validity, or within such period as prescribed by law at the relevant time.

(d) The cheque was returned unpaid by the bank due to insufficiency of funds, because the amount exceeded the arrangement made with the bank, or for any other reason attracting the provisions of section 138 of the Act.

(e) Within the statutory period from the date of receipt of information regarding the dishonor of the cheque, the payee or the holder in due course issued a written demand notice to the drawer demanding payment of the cheque amount.

(f) The complainant must prove that the demand notice was duly dispatched to the correct address of the accused. Actual receipt of the notice is not invariably necessary if the complainant establishes that it was properly addressed, prepaid, and duly dispatched, thereby giving rise to a presumption of due service. However, such presumption is rebuttable, particularly where it is shown that the notice was deliberately sent to an incorrect or outdated address despite the complainant having knowledge of the accused's correct address.

(g) The accused failed to make payment of the cheque amount within the statutory period after receipt, or deemed receipt, of the demand notice.

(h) The complaint was instituted within the period prescribed by law after the cause of action accrued, namely, upon the expiry of the statutory period allowed for payment following the service or deemed service of the demand notice.

If any one of the aforesaid essential ingredients is not established, the prosecution under section 138 of the Negotiable Instruments Act, 1881 must fail. Conversely, once the complainant proves the foundational facts giving rise to the statutory presumptions under sections 118 of the Act, the burden shifts to the accused to rebut those presumptions. Such rebuttal is required to be established only on the touchstone of the preponderance of probabilities and not by proof beyond reasonable doubt.

On a careful scrutiny of the evidence on record it appears that the complainant failed to prove one of the essential ingredients of an offence under section 138 of the Negotiable Instruments Act, namely, that the cheque in question was issued by the accused in discharge, wholly or in part, of a legally enforceable debt or liability. In her examination-in-chief, P.W.1 merely stated that the accused issued the cheque, that it was dishonored, and that a legal notice was served. Significantly, she did not depose as to the circumstances under which the cheque was issued or that it represented repayment of any legally enforceable debt or liability.

Although the complaint alleges that the accused borrowed **Tk. 6,00,000**/- from her, no written agreement, receipt, promissory note or any other contemporaneous document was produced in support of the alleged loan transaction. Admittedly, the accused was neither a relative nor a person having any special fiduciary relationship with the complainant. In the absence of any documentary evidence or convincing explanation regarding the alleged advancement of such a substantial amount, the prosecution version becomes inherently doubtful.

On the other hand, the defence examined three witnesses (D.W.1 to D.W.3), whose evidence consistently indicates that the complainant was engaged in advancing money on interest; that the accused had borrowed a much smaller amount; that a signed blank cheque had been delivered as security at the time of obtaining the loan; and that the accused had already repaid the entire amount together with the agreed interest. Significantly, D.W.1 and D.W.3 were not cross-examined at all, while the cross-examination of D.W.2 did not discredit his testimony on any material aspect. Their evidence, therefore, substantially remained unchallenged.

It is a settled principle of criminal jurisprudence that where defence evidence remains uncontroverted and is capable of creating a probable defence, the statutory presumptions under sections 118 of the Negotiable Instruments Act stands rebutted on the touchstone of the preponderance of probabilities. Once such rebuttal is established, the burden shifts back to the complainant to prove the existence of a legally enforceable debt beyond reasonable doubt. In the present case, the complainant failed to discharge that burden.

Furthermore, although P.W.1 denied the suggestion that she was carrying on the business of money-lending on interest, she admitted in cross-examination that she had instituted several cheque dishonor cases against different persons. While such admission, by itself, does not conclusively establish that she was an unlicensed money-lender, it nevertheless lends support to the defence case and assumes significance when read together with the unchallenged testimony of the defence witnesses.

In the facts and circumstances of the case, this Court is of the view that the defence has successfully rebutted the statutory presumptions arising under sections 118 of the Negotiable Instruments Act. The prosecution has failed to establish beyond reasonable doubt that the cheque was issued in discharge of a legally enforceable debt or liability. Both the Courts below failed to properly appreciate the evidence on record and the legal effect of the unchallenged defence evidence, thereby arriving at findings which cannot be sustained in law.

As a result, the Rule is made absolute.

Accordingly, the judgment and order dated 25.02.2021 passed by the Additional District and Sessions Judge, 1st Court Kishorgonj in Criminal Appeal No. 151 of 2019 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 18.03.2019 passed by the trial Court is hereby set aside.

Consequently, the Judgment and order of conviction dated 18.03.2019 passed by the learned Joint District and Sessions Judge, 2nd Court, Kishorganj in Sessions Case No. 77 of 2012, arising out of C.R. Case No. 380 (1) of 2011 convicting the petitioner 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. 6,00,000/**- (Taka six lac) are hereby set aside.

Accordingly, the trial Court is directed to refund to the convict-appellant the sum of **Tk. 3,00,000**/- (Taka three lac) which was deposited by him towards part satisfaction of the cheque amount.

Send down the Lower Court Records (LCR).

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