

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 3339 of 2023

In the matter of:

An application under Section 439 read with
Section 435 of the Code of Criminal
Procedure

And

In the matter of:

Sayem Ahmod

...**Convict-Petitioner.**

-Versus-

Islami Bank Bangladesh Limited and
another

..... **Opposite Parties.**

Mst. Ismath Ara, Advocate

..... For the petitioner.

Mr. Md. Shofiul Aziz, Advocate

.....For Opposite Party No. 1.

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

Ms. Farhana Abedin, A.A.G with

Mr. Hedayth Uddin, A.A.G and

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

... For the State

Heard on 09.06.2026 and 10.06.2026

Judgment on 17.06.2026

This Rule was issued at the instance of the petitioner
calling upon the opposite parties to show cause as to why the

judgment and order dated 04.04.2017 passed by the learned Additional Metropolitan Sessions Judge, Sylhet in Criminal Appeal No. 47 of 2014, dismissing the appeal and affirming the judgment and order dated 27.02.2013 passed by the learned Joint Sessions Judge, 3rd Court, Sylhet in Sessions Case No. 88 of 2011 arising out of C.R Case No. 556 of 2008 (Sadar) convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 01 (one) year and to pay a fine of Tk. 4,00,000/- (four lac) should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The facts, relevant for disposal of the Rule, in brief, are that the opposite party No. 1, Islami Bank Bangladesh Limited, Amberkhana Branch as complainant instituted C.R Case No. 556 of 2008 before the Court of the Senior Judicial Magistrate, Sylhet against the present petitioner alleging *inter alia* that the accused obtained a Bi Muazzel/ Bi Muraba credit facility amounting to Taka 3,00,000/- (three lac) but failed to liquidate the liability within the stipulated period, as a result

of which the outstanding dues stood at Taka 4,32,986/- (four lac thirty-two thousand nine hundred eighty six). In partial discharge of the said liability the accused issued cheque No. 1789915 dated 23.01.2008 in favour of the complainant for an amount of Taka 2,00,000/- (two lac). Upon representation, the cheque was dishonoured by the concerned bank on 23.01.2008 and again on 28.01.2008 on the ground of insufficiency of funds. Thereafter, a statutory legal notice was served on 11.02.2008 upon the petitioner demanding payment of the cheque amount. Despite receipt of the notice, the accused failed to comply with the same. Consequently, the complainant instituted the case on 30.03.2008.

Upon receipt of the complaint petition, the learned Magistrate took cognisance and thereafter transmitted the case record to the learned Sessions Judge, Sylhet. Subsequently, the same was transferred to the learned Joint Sessions Judge, 3rd Court, Sylhet and the case was registered as Sessions Case No. 88 of 2011. The charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881. During trial, the prosecution examined

01 witness to prove the indictment. The accused was not examined under Section 342 of the Code of Criminal Procedure as he remained absconding.

Upon conclusion of the trial and after hearing the parties, the learned Joint Sessions Judge, 3rd Court, Sylhet convicted the petitioner under Section 138 of the Negotiable Instruments Act of 1881 and sentenced him to suffer simple imprisonment for a period of 01 (one) year and to pay a fine of Tk. 4,00,000/- (four lac) only by judgment and order dated 27.02.2013.

Challenging the conviction and sentence, the petitioner filed Criminal Appeal No. 47 of 2014 before the learned Sessions Judge, Sylhet. Subsequently, the learned Sessions Judge transferred the appeal to the learned Additional Metropolitan Sessions Judge, Sylhet, who upon hearing the parties dismissed the same by judgment and order dated 04.04.2017, affirming the judgment and order of conviction and sentence.

Being aggrieved by and dissatisfied with the judgment and order dated 04.04.2017, the petitioner preferred the instant Criminal Revision before this Court.

Ms. Ismath Ara, the learned Advocate appearing on behalf of the petitioner, submits that the petitioner has been suffering chronic kidney disease and is passing through severe financial hardship and unable to pay the fine within a short period and as such he requires at least 06(six) months time for payment.

She further submits that having regard to the petitioner's precarious financial condition, the amount of fine imposed by the Courts below is excessive and warrants reduction. Accordingly, she prays for reduction of the fine and modification of the sentence. Finally, she prays for making the Rule absolute.

Per contra, Mr. Md. Shofiul Aziz, the learned Advocate appearing on behalf of the opposite party No. 1 submits that both the Courts below rightly passed the judgment and orders and there is no illegality, impropriety or infirmity in the

impugned judgment. Finally, he prays for discharging the Rule.

I have considered the submissions of the learned Advocates for the respective parties, perused the impugned judgments and orders, and materials on record.

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 also proved consideration against which the cheque was drawn and that it is the holder of the cheque in due course. The Courts below rightly found the petitioner 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 prosecutions under Section 138 of the Negotiable Instruments Act, the primary object is recovery of the cheque amount and that, in appropriate cases, imposition of imprisonment may not advance any meaningful penal objective. I am in respectful agreement with the *ratio* laid down therein.

Considering the facts and circumstances of the case, the nature of the offence and financial condition of the petitioner this Court is of the view that the ends of justice would be best served if the sentence is modified by setting aside the substantive sentence of imprisonment and reduced the fine from Taka 4,00,000/- to Taka 2,00,000/-, which is the amount of the dishonoured cheque.

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

The conviction of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 is hereby affirmed. However, the sentence is modified. The sentence of simple imprisonment for 01(one) year is set aside. The fine of Taka

4, 00,000/- is reduced to Taka 2, 00,000/- being the amount of the dishonoured cheque. It appears from the record that the convict-petitioner has already deposited 50% of the cheque amount before the trial Court at the time of preferring the appeal. The Court concerned is directed to disburse the said deposited money to the complainant-opposite party No. 1 forthwith. The convict-petitioner is directed to pay the remaining amount of the dishonoured cheque Taka 1,00,000/- to the complainant-opposite party No. 1 through the trial Court within 03(three) months from the date of receipt of this order, failing which he shall suffer simple imprisonment for 01(one) month. If the convict-petitioner 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 Rule is discharged with modification of the sentence and with directions stated above. The convict-petitioner is released from his bail bond.

Let a copy of the 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