

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

PRESENT:

MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN
CRIMINAL REVISION NO. 3388 OF 2022

Md. Abdus Sobhan..... Convict-petitioner

-Versus-

The State and anotherOpposite parties

None appears.....For the convict-petitioner

Mr. Mohiuddin Ahmed, Advocate

.....For the opposite party No. 2

Mrs. Tashrifa Sultana Jali, AAG with

Mr. Md. Emdadul Hanif, AAG and

Mr. Md. Hemayet Uddin, AAG

.....For the state

Heard on: 18.01.2026, 19.01.2026 and 22.01.2026

Judgment on: The 3rd of March, 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 24.08.2022 passed by the learned District and Sessions Judge, Gazipur in Criminal Appeal No. 311 of 2022, dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 13.05.2019 passed by the learned Joint Sessions Judge, Additional Court, Gazipur in Sessions Case No. 1441 of

2017 arising out of C.R. Case No. 161 of 2017 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 06 (six) months and to pay a fine of **Tk. 8,00,000/-** (Taka eight 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.

At the time of issuance of the Rule, the convict-petitioner was granted ad-interim bail for a period of 6 (six) months, which was extended from time to time by this Court and was finally further extended for a period of 1 (one) year from 25.03.2024.

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

Respondent No. 2, as complainant, instituted C.R. Case No. 161 of 2017 against the accused-petitioner under section 138 of the Negotiable Instruments Act, 1881, alleging that, taking advantage of their prior acquaintance, the accused induced the complainant to mortgage his property and secure a bank loan in the name of the accused's business concern, M/s Bhai Enterprises. In discharge of the said liability, the accused issued a cheque bearing No. 2392437 dated 30.11.2016 for **Tk. 4,00,000/-**, drawn on Sonali Bank Ltd. with assurance of encashment after 90 days. The cheque, when presented on 01.12.2016 through Islami Bank Ltd. Gazipur Sadar Branch, was dishonored for insufficiency of funds. Despite receipt of a

statutory legal notice dated 08.12.2016, the accused failed to make payment within the prescribed time.

Subsequently, the accused appeared and was enlarged on bail but later absconded, and charge was framed in his absence. Upon conclusion of trial, the learned Court, by judgment and order dated 13.05.2019, convicted and sentenced the accused. The appeal being Criminal Appeal No. 311 of 2022 was dismissed by the learned District and Sessions Judge, Gazipur, by judgment and order dated 24.08.2022, affirming the conviction and sentence.

Being aggrieved, the accused-petitioner has preferred the present revisional application before this Court, wherein Rule has been issued and realization of fine has been stayed.

No one appears on behalf of the accused-petitioner to press the Rule. The matter has been appearing in the cause list for a considerable period; yet none has taken steps to proceed. At one stage, this Court ask the learned Advocate for the opposite party to inform the learned Advocate for the petitioner to appear. Although such communication was duly made, he failed to turn up which is indeed unfortunate.

As against this, Mr. Mohiuddin Ahmed, the learned Advocate for the opposite party No. 2 mainly 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 them which does not call for any interference by this Court.

Heard the learned Advocates for both sides and perused the entire materials on record.

The only issue for determination of this Rule is to see whether the impugned judgment and order of conviction and sentence are sustainable in law in light of the evidence adduced, the facts and circumstances of the case, and the settled principles governing criminal jurisprudence.

This is a proceeding under section 138 of the Negotiable Instruments Act, 1881. From the materials on record, it appears that the complainant-opposite party complied with all statutory requirements contemplated under section 138 of the Act, including issuance of demand notice within the prescribed time and institution of the complaint upon failure of payment within the statutory period. No procedural irregularity or legal infirmity has been demonstrated in respect of the initiation of the case.

It further transpires that the accused-petitioner duly entered appearance before the trial Court and obtained bail later on he was remained absconding. So he was afforded full and adequate opportunity to contest the proceeding but failed to adduce any defence evidence or take any substantive step to rebut the statutory presumption arising under sections 118(a) and 139 of the Act, which mandate a presumption in favour of

the holder of the cheque that it was issued for consideration and in discharge of a legally enforceable debt or liability.

It further appears from the record that, after his arrest, the accused-petitioner preferred Criminal Appeal No. 311 of 2022 with a delay of 1164 days. No reasonable explanation was offered, nor was any evidence adduced in support of such inordinate delay. The learned appellate Court, therefore, rightly rejected the appeal summarily.

In the absence of any credible rebuttal evidence or legal ground capable of dislodging the statutory presumption, the contentions raised by the accused-petitioner are devoid of merit and do not warrant interference.

Considering the facts and circumstances of the case, the evidence on record, and the settled principles governing proceedings under section 138 of the Negotiable Instruments Act, 1881, I find no substance in this Rule.

Accordingly, the Rule is discharged.

The impugned judgment and order dated 24.08.2022 passed by the learned District and Sessions Judge, Gazipur, in Criminal Appeal No. 311 of 2022, dismissing the appeal and affirming the judgment and order of conviction and sentence dated 13.05.2019 passed by the learned Joint Sessions Judge, Additional Court, Gazipur, in Sessions Case No. 1441 of 2017 arising out of C.R. Case No. 161 of 2017, convicting the

petitioner under section 138 of the Negotiable Instruments Act, 1881, and sentencing him to simple imprisonment for 06 (six) months and to pay a fine of **Tk. 8,00,000/-** (Taka eight lac), is hereby affirmed.

The order of stay regarding realization of the fine is hereby vacated. The complainant is at liberty to withdraw the same in accordance with law.

The convict-petitioner is directed to surrender before the concerned Court within **30 (thirty)** days from the date of receipt of this judgment, failing which the Court below shall take necessary steps to execute the sentence in accordance with law.

Send down the Lower Court Records (LCR).

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