

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 3513 of 2024

In the matter of:

An application under Section 439 of the
Code of Criminal Procedure

And

In the matter of:

Partho Khaskel

...**Convict- Petitioner.**

-Versus-

The State and another

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

Mr. Matilal Bepari, Advocate

..... For the petitioner.

Mr. Kazi Akbar Ali, Advocate

.....For Opposite Party No. 2.

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

Ms. Farhana Abedin, A.A.G with

Mr. Hemayth Uddin, A.A.G and

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

... For the State

Heard on 21.04.2026, 03.05.2026

Judgment on 06.05.2026

This Rule was issued at the instance of the
petitioner calling upon the opposite party to show cause as to
why the judgment and order dated 03.03.2024 passed by the

learned Additional Sessions Judge, 2nd Court, Barishal in Criminal Appeal No. 608 of 2022 dismissing the appeal and affirming the judgment and order dated 17.08.2022, passed by the learned Joint Sessions Judge, 3rd Court, Barishal, in Sessions Case No.73 of 2022, arising out of C.R. Case No. 145 of 2021 (Kownia) convicting the accused-petitioner under Section 138 of the Negotiable Instruments Act of 1881 and sentencing him to suffer simple imprisonment for 07 (seven) months and to pay fine of cheque amount of Taka 7,00,000/-, should not be set aside and/or 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 accused obtained a loan of Taka 7,00,000/-(seven lac) from the complainant. In discharge of the said liability, the accused-petitioner issued a cheque being No. 5512285 dated 30.04.2021 for the said amount drawn on United Commercial Bank Limited, in favour of the complainant. The cheque was presented to the concerned bank on 08.09.2021 but the same was dishonoured with the endorsement “Account

closed/Dormant/Blocked”. Thereafter, the complainant served a legal notice on 21.09.2021 which was received by the accused, however, the petitioner failed to make payment within the statutory period. Consequently, the complainant filed C.R. Case No.145 of 2021 (Kownia) before the learned Metropolitan Magistrate, Cognizance Court, Barishal on 24.10.2021. The learned Magistrate took cognizance and subsequently transmitted the case to the Court of Sessions Judge, Barishal. The learned Sessions Judge, Barishal transferred the case to the learned Joint Session Judge, 3rd Court, Barishal and was registered as Sessions Case No.73 of 2022. Charge was framed under Section 138 of the Negotiable Instruments Act, 1881 to which the accused pleaded not guilty and claimed to be tried. In course of trial, the prosecution examined 01(one) witness while the defence examined 02(two) witnesses.

Upon conclusion of trial and hearing, the learned Joint Sessions Judge, 3rd Court, Barishal convicted the petitioner under Section 138 of the Negotiable Instruments Act of 1881 and sentenced him to suffer simple imprisonment for 07

(seven) months and to pay fine of Taka 7,00,000/- (seven lac) by judgment and order dated 17.08.2022.

Challenging the conviction and sentence, the petitioner filed Criminal Appeal No. 608 of 2022 before the learned Sessions Judge, Barishal. Subsequently, the appeal was transferred to the learned Additional Session Judge, 2nd Court, Barishal, who upon hearing, dismissed the appeal by judgment and order dated 03.03.2024 affirming the judgment and order of conviction and sentence.

Being aggrieved by and dissatisfied with judgment and order dated 03.03.2024, the petitioner preferred the instant Criminal Revision before this Court and obtained Rule along with an order of bail.

Mr. Matilal Bepari, the learned Advocate appearing on behalf of the petitioner submits that the defence witnesses (DW1 and DW2) had established the prosecution case yet the Courts below failed to appreciate the evidence on record in its proper perspective properly and did not apply their judicial mind while passing the impugned judgments and orders of

conviction and sentence and as such the same are liable to be set aside.

He further contends that the petitioner did not issue any cheque in favour of the complainant-opposite party No. 2, and there is no written agreement evidencing the loan. Moreover, the cheque had been lost and in respect of which the accused lodged G.D. Entry and subsequently, he instituted Miscellaneous Petition No. 156 of 2021. However, the Courts below failed to consider such material aspects and as such the Rule may be made absolute.

Per contra, Mr. Kazi Akbar Ali, the learned Advocate appearing on behalf of the opposite party No. 2, submits that the accused-petitioner lodged a General Diary Entry on 09.09.2021 that is after dishonour of the cheque and subsequently upon receipt of the legal notice dated 21.09.2021 the accused instituted Petition Case No. 156 of 2021 which was rejected. He further submits that there is no illegality, impropriety or infirmity in the impugned judgments

and orders. The Courts below rightly convicted and sentenced the petitioner and as such the Rule is liable to be discharged.

I have heard the learned Advocates for both the parties, perused criminal revision the impugned judgments and the materials on record.

It appears from the petition of complaint, the testimony of PW1 (complainant) and the documentary evidence that the accused-petitioner issued the cheque in favour of the complainant being No. 5512285 dated 30.04.2021 for Taka 7,00,000/-(seven lac) for adjustment of debt. The complainant presented the cheque to the concerned bank on 08.09.2021 but it was dishonoured with endorsement “Account closed/ Dormant/Blocked”. The complainant duly served legal notice on 21.09.2021, which was received by the accused but the petitioner failed to make payment within the stipulated period. Consequently, the case was filed on 25.10.2021. PW1 has successfully proved the prosecution case.

The defence case is that the cheque in question had been lost, and in that regard, the accused lodged a General

Diary Entry and subsequently initiated a criminal case against the complainant. However, it transpires from the record that the accused lodged the General Diary Entry on 09.09.2021 that is on the following day after the cheque was dishonoured on 08.09.2021. It further appears that the criminal case against the complainant was instituted only after receipt of the legal notice. Such belated and reactive conduct militates against the veracity of the defence version.

The trial Court, upon proper appreciation of the evidence on record, disbelieved the defence case. The trial Court rightly observed that the conduct of the accused in lodging the General Diary Entry subsequent to the dishonour of the cheque, and in initiating criminal proceedings only after receipt of the legal notice, renders the defence version doubtful and unworthy of credence.

Similarly, the appellate Court below concurred with the findings of the trial Court and disbelieved the defence case. The learned Additional Sessions Judge, while dismissing the appeal, rightly held that the accused failed to mention

specifically the date on which the cheque was allegedly lost and further failed to explain the circumstances under which his signature came to be affixed on the cheque in question.

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 set aside the sentence of imprisonment holding that 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 sentence is modified by setting aside the term of imprisonment.

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 07(seven) months simple imprisonment is set aside. It appears that the convict-petitioner 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-opposite party No. 2 forthwith. The convict-petitioner is further directed to pay the remaining portion of the value of the dishonoured cheque amounting to Taka 3,50,000/- (three lacs fifty thousand) to the complainant-

opposite party No. 2 through the trial Court within 06(six) months from the date of receipt of this order, in default 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 sentence and with directions made above. The convict-petitioner is released from the bail bond.

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

(Md. Bashir Ullah, J)

Md. Sabuj Akan
Assistant Bench Officer

