

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

PRESENT:

MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN

CRIMINAL REVISION NO. 4403 OF 2025

Md. Mojibur Rahman..... Convict-petitioner

-Versus-

The State and another.....Opposite parties

Mr. Md. Muslem Uddin Bhuiyan, Advocate

.....For the convict-petitioner

Mr. A.K.M. Fakhrul Islam with

Mrs. Saida Yesmin, 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: 12.11.2025, 18.11.2025. 11.12.2025
 and 15.12.2025**

Judgment on: The 5th of May, 2026

ABU TAHER MD. SAIFUR RAHMAN, J.

This Rule was issued at the instance of the convict-petitioner calling upon the opposite party to show cause as to why the judgment and order dated 12.05.2025 passed by the

learned Additional Sessions Judge, 2nd Court, Tangail in Criminal Appeal No. 68 of 2024 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 05.11.2023 passed by the learned Joint Sessions Judge 3rd Court, Tangail in Session case No. 2002 of 2022, arising out of C.R case No. 1053 of 2021 convicting the appellant petitioner and sentencing him under section 138 of the Negotiable Instrument Act, 1881 and convicting him to suffer imprisonment for a period of 1 (one) year with a fine of **Tk. 51,20,000/-** (Taka fifty one lac and twenty thousand) should not be set aside and/or why such other or further order or orders 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 till disposal of the Rule.

For disposal of the Rule, the relevant facts, in brief, are that the complainant and the accused were previously acquainted. At the request of the accused for purchasing a piece of land, the complainant, in good faith, paid him **Tk. 51,20,000/-** on 10.05.2021 at about 11:30 a.m. at the complainant's residence in the presence of witnesses. As the accused failed to purchase the land as promised and avoided repayment despite repeated demands, he issued cheque No. 9554512 dated 11.07.2021 for **Tk. 51,20,000/-** drawn on Agrani Bank Limited, Mechua Bazar Branch, Mymensingh, in favour of the complainant. Upon presentation at Agrani Bank Limited, Tangail Branch, the cheque was dishonoured for insufficiency

of funds. Despite service of a legal notice, the accused neither replied thereto nor paid the cheque amount, compelling the complainant to institute the instant case.

The accused was arrested and subsequently enlarged on bail on 19.09.2022. The case was thereafter transferred to the Court of the learned Joint District Judge, 3rd Court, Tangail, where charge was framed in his absence. Upon conclusion of the trial, the learned trial Court by judgment and order dated 05.11.2023 convicted and sentenced him as stated above. Being aggrieved, he preferred Criminal Appeal No.68 of 2024 before the learned District and Sessions Judge, Tangail. Upon transfer, the appeal was heard by the learned Additional District and Sessions Judge, 2nd Court Tangail, who dismissed the appeal and affirmed the conviction and sentence. Being further aggrieved, the convict-petitioner has preferred the instant revisional application before this Court and obtained the Rule, along with bail and stay of realization of the fine till disposal of the Rule

Mr. Md. Muslem Uddin Bhuiyan, the learned Advocate for the accused-petitioner submits that the petitioner appeared before the trial Court to contest the case, but was denied a reasonable opportunity to defend himself. Consequently, the impugned judgment, having been passed without affording him such opportunity, is liable to be set aside. In support of his

contention he submits that on 04.04.2023, upon rejection of the petitioner's prayer for adjournment, the learned trial Court, on the same day, cancelled his bail, examined P.W.1 closed the prosecution evidence, and fixed the case for examination of the accused under section 342 of the Code of Criminal Procedure all in a Single day.

As against this, Mr. A.K.M. Fakhurul Islam, 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 materials on record.

The sole issue for determination in this Rule is whether the impugned judgments and orders of conviction and sentence are sustainable in law in view of the evidence on record, the facts and circumstances of the case, and the settled principles of criminal jurisprudence.

Upon meticulous examination of the record, it appears that although the petitioner entered appearance and participated in the proceedings, the trial suffered from material procedural irregularities. The chronology shows that on 04.04.2023, upon rejection of the petitioner's prayer for adjournment, the learned

trial Court simultaneously cancelled his bail, examined P.W.1, closed the prosecution evidence, and fixed the case for examination of the accused under section 342 of the Code of Criminal Procedure, all in single a single day.

Such a course of action effectively curtailed the petitioner's valuable right to cross-examine P.W.1, which is an essential component of a fair trial. Although an opportunity for cross-examination was subsequently afforded on 25.04.2023, the record does not demonstrate that effective and complete cross-examination was ensured.

It is well settled that cross-examination is not a mere procedural formality but a substantive right of the accused, and denial of a reasonable opportunity to cross-examine a material witness may vitiate the trial where prejudice is caused. In the present case, the repeated cancellation of bail and abrupt closure of the prosecution evidence, despite the petitioner's presence on most dates and the prosecution's failure to take necessary steps on several occasions, indicate that the discretion of the learned trial Court was not exercised in a manner consistent with the requirements of a fair trial.

A criminal trial must be conducted fairly and in accordance with the principles of natural justice, and any procedure causing substantial prejudice to the accused cannot be sustained.

At the appellate stage also, it appears that although the petitioner complied with the statutory requirement of depositing 50% of the cheque amount, his appeal was dismissed in his absence without effective consideration of his applications stating illness and unavoidable circumstances. Such disposal, in the facts and circumstances of the case, cannot be regarded as conducive to the ends of justice.

It may further be observed that proceedings under section 138 of the Negotiable Instruments Act, though criminal in form, involve substantial financial consequences and require due observance of procedural fairness.

The fundamental principle that “justice must not only be done but must manifestly be seen to be done” has not been sufficiently adhered to in the present case.

In view of the foregoing discussion, we are of the view that the petitioner was not afforded a fair and reasonable opportunity to defend himself. Consequently, the impugned judgments and orders are vitiated by failure of justice. Without entering into the merits of the case, we consider it just and proper to remit the matter for fresh adjudication from the stage where the petitioner’s right of effective cross-examination was curtailed.

Accordingly, the case is remanded to the learned trial Court for fresh adjudication from the stage of cross-examination of P.W.1 in accordance with law.

The learned trial Court is directed to proceed with the case expeditiously and, preferably, conclude the same within **3 (three)** months from the date of receipt of this judgment, ensuring full and effective opportunity of hearing to both parties.

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

With the aforesaid observations and directions, the Rule is made absolute.

The judgment and order dated 12.05.2025 passed by the learned Additional Sessions Judge, 2nd Court, Tangail in Criminal Appeal No. 68 of 2024 and the judgment and order of conviction and sentence dated 05.11.2023 passed by the learned Joint Sessions Judge, 3rd Court, Tangail in Session Case No. 2002 of 2022, arising out of C.R case No. 1053 of 2021 are hereby set aside.

Let the Lower Court Records (LCR) be sent down forthwith.

Let a copy of this judgment be communicated to the concerned trial Court below at once.