

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 4604 of 2023

In the matter of:

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

-And-

In the matter of:

Md. Rafiqul Islam

... **Convict-Petitioner.**

-Versus-

The State and another

... **Opposite Parties.**

Mr. Md. Mamunor Rashid, Advocate

... For the Petitioner

Mr. Mohammad Jahangir Alam, Advocate

... For the 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: 07.06.2026 and 08.06.2026

Judgment on: 22.06.2026

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 18.07.2023, passed by the learned Senior Sessions Judge, Jamalpur in Criminal Appeal No. 276 of 2022, dismissing the appeal and affirming the judgment and order dated 02.06.2022, passed by the learned Joint Sessions Judge and Artha Rin Adalat, Jamalpur, in Sessions Case No. 269 of 2020, arising out of C.R. Case No. 393(1)2019 (Bakshiganj), convicting the petitioner under Section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer simple imprisonment for a period of 06(six) months with a fine of Tk. 20,50,000/- (Twenty lac fifty thousand) 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 opposite party No. 2, Md. Mostafijur Rahman alias Masum as complainant filed C.R. Case No. 393(1)2019 (Bakshiganj) before the Court of the learned Senior Judicial Magistrate, Bakshigonj, Jamalpur against the present

petitioner alleging *inter alia* that the accused obtained loan amounting to Taka 20,50,000/- (Twenty lac fifty thousand) from the complainant. Upon failure to repay the said amount in time, the accused issued cheque No. 2651723 dated 03.09.2019 in favour of the complainant, towards repayment of the outstanding liabilities amounting to Taka 20,50,000/- (Twenty lac fifty thousand). It was dishonoured by the bank concerned on 04.09.2019 due to insufficiency of funds. The complainant served statutory legal notice upon the petitioner on 22.09.2019, which was duly received. Despite receipt of the notice, the petitioner failed to make payment of the cheque amount within the stipulated time. Consequently, C.R. Case No. 393(1)2019 (Bakshiganj) was instituted on 23.10.2019.

Subsequently, the case was transmitted to the learned Senior Sessions Judge, Jamalpur who transferred the same to the learned Joint Sessions Judge and Artha Rin Adalat, Jamalpur, and the case was registered as Sessions Case No.

269 of 2020. On taking cognizance of offence, the charge was framed on 11.11.2021 under Section 138 of the Negotiable Instruments Act, 1881. At the time of charge framing the accused remained absconding. During trial the prosecution examined one witness while defence examined none. Upon conclusion of trial and hearing of the parties, the learned Joint Sessions Judge and Artha Rin Adalat, Jamalpur convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 06(six) months and to pay a fine of Tk. 20,50,000/- (Twenty lac fifty thousand) by judgment and order on 02.06.2022.

Challenging the judgment and order dated 02.06.2022 the convict filed Criminal Appeal No. 276 of 2022 before the learned Senior Sessions Judge, Jamalpur who upon hearing the parties, dismissed the appeal on 18.07.2023.

Being aggrieved by and dissatisfied with the judgment and order dated 18.07.2023 passed by the learned Senior

Sessions Judge, Jamalpur, the petitioner preferred this Criminal Revision before this Court and obtained Rule and bail.

Mr. Md. Mamunor Rashid, the learned Advocate appearing on behalf of the petitioner submits that since the petitioner was absent during the trial, he was precluded from producing the necessary documents to dispute the cheque amount. The petitioner is presently in financial distressed circumstance and hence 06(six) months time is required to pay the rest amount.

Per contra, Mr. Mohammad Jahangir Alam, the learned Advocate appearing on behalf of the opposite party No. 2 submits that there is no illegality, impropriety or infirmity in the judgments and orders passed by the Courts below and the charge brought against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 has been proved beyond reasonable doubt and therefore, the Rule is liable to be discharged.

I have heard the learned Advocates for the respective parties and perused the revisional application along with the materials on record.

On scrutiny of the petition of complaint, the deposition of PW1 (complainant) and the documentary evidence, it appears that the convict-petitioner issued cheque in question in favour of the complainant-opposite party to refund the loan. The cheque for Taka 20,50,000/- (Twenty lac fifty thousand) was dishonoured by the bank concerned due to insufficiency of funds. The complainant-opposite party served statutory legal notice upon the convict-petitioner on 22.09.2019, despite service of notice payment was not made and consequently the case was instituted on 23.10.2019. PW1 has successfully proved the prosecution case.

The record shows that the complainant duly complied with all 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, regarding the sentence of imprisonment 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 cases instituted under Section 138 of the Negotiable Instruments Act, imposition of imprisonment would be a harsh, having no penal objective to be achieved and the primary purpose is the recovery of money. I have no disagreement with the principle of the decision passed in the above-mentioned case.

Considering the financial hardship of the petitioner, and the compensatory nature of proceedings under Section

138 of the Negotiable Instruments Act, the partial deposit already made by the appellant-petitioner, this Court is of the view that that the substantive sentence of imprisonment should be set aside in the interest of justice.

In view of the foregoing discussions and the *ratio* laid down in the above-mentioned reported case, the order of this Court is as follows:

The conviction of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 is upheld, but the sentence of imprisonment is modified. The sentence of 06(six) months simple imprisonment is set aside. The sentence of fine of Taka 20,50,000/- (Twenty lac fifty thousand) which is equivalent to the value of the cheque is maintained. It appears from the record 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 amount to the complainant-opposite party No. 2 forthwith. The

convict-petitioner is directed to pay the remaining portion of the value of the dishonoured cheque to the complainant-opposite party No. 2 within 04(four) months from the date of receipt of this judgment through trial Court 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 directions as above. The convict-petitioner is discharged from the bail bond.

Let a copy of this judgment along with the lower Court's records (LCR) be transmitted to the Court concerned forthwith.

(Md. Bashir Ullah, J.)