

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 522 of 2025

In the matter of:

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

And

In the matter of:

Md. Masud Rana

...**Convict- Petitioner.**

-Versus-

The State and another

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

Mr. Khan Mahamudul Hasan with

Mr. Md. Anichur Rahman, Advocates

..... For the petitioner.

Mr. Md. Akhtaruzzaman, Advocate

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

Mr. S. M. Aminul Islam Sanu, DAG with

Mr. Md. Nasimul Hasan, AAG with

Mr. Md. Golamun Nabi, AAG and

Ms. Farhana Abedin, AAG

..... For the State.

Heard on 01.03.2026, 02.03.2026,
04.03.2026 and 08.03.2026
Judgment on 12.03.2026.

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

why the impugned judgment and order of conviction and sentence dated 20.10.2024 passed by the learned Additional Metropolitan Sessions Judge, 6th Court, Chattogram in Criminal Appeal No. 186 of 2023 dismissing the appeal and thereby affirming the judgment and order dated 04.01.2023 passed by the learned Joint Metropolitan Session Judge, 6th Court, Chattogram in Sessions Case No. 4018 of 2021 arising out of C.R. Case No. 186 of 2021 (Chalkbazar) convicting the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 05 (five) months and also to pay a fine of Taka 5,00,000/- (five lac) should not be set aside and/or other or further order or orders be passed as to this Court may seem fit and proper.

Facts relevant for disposal of the Rule, in brief, are that the opposite party No. 2, as complainant filed C.R case No. 186 of 2021 before the learned Metropolitan Magistrate, 4th Court, Chattogram against the present petitioner alleging *inter alia* that, the accused obtained loan of Taka 5,00,000/- (five lac) from the complainant. Subsequently, in order to refund

the said loan the petitioner issued cheque No. 1292836 in favour of the complainant on 21.03.2021 for Taka 5,00,000/- (five lac) drawn on United Commercial Bank Limited. It was dishonoured by the bank concerned on 22.03.2021 due to insufficiency of funds. The complainant issued statutory legal notice to the petitioner on 29.03.2021, which was received by the accused. Despite receipt of the notice, the petitioner failed to make payment of the cheque amount within the stipulated time. Consequently, C.R. Case No. 186 of 2021 was filed on 25.05.2021.

Subsequently, the case was transferred to the learned Joint Metropolitan Session Judge, 6th Court, Chattogram and was registered as Sessions Case No. 4018 of 2021. Upon taking cognizance of the offence charge was framed on 16.05.2022 under Section 138 of the Negotiable Instruments Act, 1881, wherein the accused pleaded not guilty and claimed to be tried when the charge was readout and explained to him. The prosecution examined 01 witness while the defence examined none.

Upon conclusion of trial and hearing of the parties, the learned Joint Metropolitan Session Judge, 6th Court, Chattogram found the petitioner guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and convicted and sentenced to suffer imprisonment for 05(five) months and fine of Taka 5,00,000/- (five lac) by judgment and order dated 04.01.2023.

Against the said judgment and order, the petitioner preferred Criminal Appeal No. 186 of 2023 before the Sessions Judge, Chattogram. On transfer, the appeal was heard by the learned Additional Metropolitan Sessions Judge, 6th Court, Chattogram who dismissed the appeal by its judgment and order dated 20.10.2024 affirming the conviction and sentence.

Being aggrieved by and dissatisfied with the judgment and order dated 20.10.2024 passed by the learned Additional Metropolitan Sessions Judge, 6th Court, Chattogram the petitioner preferred this Criminal Revision before this Court and obtained Rule and bail.

Mr. Khan Mahamudul Hanan, appearing on behalf of the petitioner submits that the petitioner has already paid 50% of the cheque amount and is willing to pay the rest amount within two months and he prays for making the Rule absolute.

Per contra Mr. Akhtaruzzaman, the learned Advocate appearing on behalf of the opposite party No. 2 contends that there is no illegality, impropriety or infirmity in the impugned judgments and orders and the Courts below rightly convicted and sentenced the petitioner and as such the Rule is liable to be discharged.

I have heard the learned Advocate 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 petitioner issued a cheque amounting to Taka 5,00,000/- (five lac) but the same was dishonoured. Hence, the complaint filed C.R. Case No. 186 of 2021. PW1 proved the case.

The record shows that the complainant duly complied with all the procedures laid down in Section 138 of the Negotiable Instruments 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 or infirmity.

It appears that the petitioner deposited 50% of fine prior to filing of the appeal and the rest will be paid within 02(two) months. At this stage, ends of Justice will be best served if this Court set aside the sentence. Earlier in several cases, the sentences have been set aside. With regards 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 observing 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 by this Court in the cited case.

In view of the foregoing discussions and the *ratio* laid down in the above-mentioned reported case the conviction of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 is upheld, but the sentence of 05(five) months simple imprisonment is set aside. The sentence of fine of Taka 5,00,000/- (five lac) which is equivalent to the cheque amount is upheld.

It is admitted that the petitioner has already deposited Taka 2,50,000/- (two lac and fifty thousand) prior to filing the appeal and hence the petitioner is directed to pay the rest of the cheque amount that is Taka 2,50,000/- (two lac and fifty thousand) only to the complainant-opposite party No. 2 through trial Court within 02(two) months from the date of receipt of this judgment, in default he shall suffer simple imprisonment for 03(three) months. 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, however, the sentence of imprisonment is set aside. The convict-petitioner is released from the bail bond.

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

(Md. Bashir Ullah, J:)

Md. Sabuj Akan
Assistant Bench Officer