

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

**Present:**  
**Mr. Justice Md. Bashir Ullah**

**Criminal Revision No. 887 of 2021**

**In the matter of:**

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

**-And-**

**In the matter of:**

Abdul Wahid

... Convict-Appellant-Petitioner

**-Versus-**

The State and another

... Respondent-Opposite Parties

No one appears.

... For the Petitioner

Mr. Md. Shofiqul Aziz, Advocate

... For opposite party No. 2

Mr. S.M. Aminul Islam Sanu, D.A.G with

Mr. Md. Nasimul Hasan, A.A.G with

Mr. Md. Golamun Nabi, A.A.G and

Ms. Farhana Abedin, A.A.G

... For the State

**Heard on: 13.01.2026 and 14.01.2026**  
**Judgment on: 20.01.2026**

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 05.10.2020 passed by the learned

Additional District and Sessions Judge, 5<sup>th</sup> Court, Sylhet in Criminal Appeal No. 220 of 2018 dismissing the appeal and thereby upholding the judgment and order of conviction and sentence dated 28.08.2017 passed by the Joint Sessions Judge, 3<sup>rd</sup> Court, Sylhet in Sessions Case No. 503 of 2017 corresponding to C.R. Case No. 178 of 2016 convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 2 (two) months and to pay a fine of Taka 96,000/- (ninety six thousand), 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, Islami Bank Bangladesh PLC as complainant filed C.R case No. 178 of 2016 before the learned Senior Judicial Magistrate, 1<sup>st</sup> Court, Sylhet against the present petitioner alleging *inter alia* that, the accused obtained loan of Taka 80,000/- (Eighty thousand) from the complainant, Islami Bank Bangladesh PLC. Subsequently, in order to refund the said liabilities with interest the petitioner issued cheque No. 2675450 in favour of the complainant on 03.03.2016 for Taka 96,000/-

(ninety six thousand). It was dishonoured by the bank concerned on 15.03.2016 due to insufficiency of funds. The complainant issued statutory legal notice to the petitioner on 04.04.2016, 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. 178 of 2016 was filed on 01.06.2016.

Subsequently, the case was transferred to the learned Joint Sessions Judge, 3<sup>rd</sup> Court, Sylhet and was registered as Sessions Case No. 503 of 2017. Upon taking cognizance of offence charge was framed on 02.07.2017 under Section 138 of the Negotiable Instruments Act, 1811, wherein the accused pleaded not guilty and claimed to be tried when the charge was readout and explained to him. Upon conclusion of trial and hearing of the parties, the learned Joint Sessions Judge, 3<sup>rd</sup> Court, Sylhet found the petitioner guilty of the offence under Section 138 of the Negotiable Instruments Act, 1811 and convicted and sentenced to suffer imprisonment for 02(two) months and fine of Taka 96,000/- (ninety six thousand) by judgment and order dated 28.08.2017.

Against the said judgment and order the petitioner preferred Criminal Appeal No. 220 of 2018 before the Sessions Judge, Sylhet. On transfer, the appeal was heard by the learned Additional District and Sessions Judge, 5<sup>th</sup> Court, Sylhet who dismissed the appeal by its judgment and order dated 05.10.2020 affirming the conviction and sentence.

Being aggrieved by and dissatisfied with the judgment and order dated 05.10.2020 passed by the learned Additional District and Sessions Judge, 5<sup>th</sup> Court, Sylhet the petitioner preferred this Criminal Revision before this Court and obtained Rule and bail.

When the revisional application was taken up for hearing none appeared for the petitioner to support the Rule although the matter had been appearing in the daily cause list on several days with the name of the learned Advocate.

Mr. Md. Shofiqul Aziz, the learned Advocate appearing on behalf of the opposite party No. 2 by filing an affidavit submits that since the loanee deposited entire amount of the loan to the Bank by 2 (two) installments, one by depositing 50% of the loan amount of Taka 48,000/- (forty eight thousand) to the Bank

through the Court and also Bank has already withdrawn the money through the Court and remaining amount has been deposited by the loanee during pendency of the instant Criminal Revision to the Bank directly and as such Bank has no objection if the Rule is made absolute.

I have heard the learned Advocate for the opposite party No. 2 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 the cheque in question in favour of the complainant-opposite party on 03.03.2016 to refund the outstanding liability. The cheque for Taka 96,000/- (ninety six thousand) was dishonoured by the bank concerned on 15.03.2016 due to insufficiency of funds. The complainant-opposite party served statutory legal notice upon the convict-petitioner on 04.04.2016, yet payment was not made and the case was filed on 01.06.2016. 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 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 appeal and during pendency of this criminal revision, he deposited remaining 50% of fine. Thus, he adjusted full amount of dues and the opposite party no. 2 admitted about such adjustment by filing affidavit. 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.

As regards setting aside the sentence, reliance may be placed upon the decision passed in *Aman Ullah Vs. State*, reported in 73 DLR (2021)541, wherein it has been held:

“There can be no dispute in so far as the sentence of imprisonment is concerned that it should commensurate with the gravity of the crime. Court has to deal with the offenders by imposing proper sentence by taking into consideration the facts and circumstances of each case. It is not only the rights of the offenders which are required to be looked into at the time of the imposition of sentence, but also of the victims of the crime and society at large, also by considering the object sought to be achieved by the particular legislation. Considering the facts and circumstances of the case and the object of the law, I am of the view that the sentence of imprisonment would be a harsh sentence having no penal objective to be achieved. Hence, the sentence of imprisonment is set aside.”

In the case of ***Subash Chandra Sarker Vs. The State and another*** reported in 26 BLT(AD) 28, the Apex Court reduced

the sentence of the petitioner to the period already undergone for adjustment of liabilities of the petitioner though Section 138 of the Negotiable Instruments Act, 1881 is not a compoundable one.

In view of the foregoing discussions and the *ratio* laid down in the above-mentioned reported cases the conviction of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 is upheld, but the sentence of imprisonment is set aside.

In the result, the Rule is disposed of and 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**