

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Rule No. 48 (Con-A) of 2025

In the matter of:

An application under section 5 of the
Limitation Act, 1908

-And-

In the matter of:

Md. Ashraful Islam

... Convict-Appellant-Petitioner

-Versus-

The State and another

... Respondent-Opposite Parties

Mr. Md. Kawser Ali, Advocate

... For the Convict-Appellant-Petitioner

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

None represented

... For the complainant-respondent no. 2

Heard on: 27.01.2026 and 29.01.2026

Judgment on: 03.02.2026

This Rule was issued calling upon the respondents-
opposite parties to show cause as to why the delay of 2,596

days in filing the criminal appeal against the judgment and order dated 01.11.2017 passed by the learned Additional Sessions Judge, 2nd Court, Sirajgonj in Sessions Case No. 251 of 2016 arising out of C.R. Case No. 442 of 2015 convicting the appellant under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer rigorous imprisonment for 06(six) months and to pay a fine of Taka 2,80,000/- should not be condoned and/or such 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 convict-appellant issued a cheque in favour of the complainant for an amount of Taka 2,80,000/-. The cheque was dishonoured due to “insufficiency of fund”. Thereafter the complainant sent a legal notice on 27.08.2015 but the accused failed to make payment, so the complainant filed C.R. Case No. 442 of 2015.

Upon completion of trial, considering the evidence on record and hearing the parties the learned Additional Sessions Judge, 2nd Court, Sirajgonj found the convict-appellant guilty

under Section 138 of the Negotiable Instruments Act, 1881, convicted and sentenced him to suffer rigorous imprisonment for 06(six) months and also to pay a fine of Taka 2,80,000/- by judgment and order dated 01.11.2017.

Thereafter, the convict-petitioner deposited 50% cheque amount of money to the Government Treasury on 02.01.2020 and being aggrieved by and dissatisfied with the judgment and order of conviction and sentence preferred appeal before this Court with a delay of 2,596 days.

An application under section 5 of the Limitation Act has been filed seeking condonation of delay of 2,596 days.

Mr. Md. Kawser Ali, learned Advocate appearing for the petitioner submits that the convict appellant is a rickshaw puller and had been residing in Dhaka with his family for livelihood. He was unaware of the judgment and order of conviction and sentence dated 01.11.2017 as his engaged lawyer failed to inform him of the same. Subsequently, on 31.12.2019, when the convict-appellant went to his native village, he came to know about the judgment and order of conviction and sentence. Thereafter, he managed to arrange

50% cheque amount of money and on 02.01.2020 deposited 50% cheque amount of money to the Government Treasury. Thereafter on 05.01.2020 he voluntarily surrendered before the trial Court for the purpose of preferring appeal before the High Court Division and prayed for bail and after hearing the trial Court enlarged him on bail. On 06.01.2020 the convict-appellant-petitioner applied for certified copies of the judgment and order which were supplied on 09.01.2020. Thereafter, he handed over the certified copies and other documents to the learned lawyer of the lower court for preferring appeal. Subsequently, on 18.09.2024 he came to know that no appeal had been filed before the High Court Division. Thereafter, on 19.09.2024 he arranged necessary funds and consulted a learned lawyer of the High Court Division on 03.12.2024 and ultimately the appeal was filed on 11.02.2025. In the meantime, a delay of 2,596 days occurred beyond the prescribed period of limitation.

He further submits that the delay was neither wilful nor deliberate, rather occurred due to circumstances beyond the control of the appellant-petitioner and if the delay is not

condoned the appellant-petitioner shall suffer irreparable loss and injury.

Ms. Farhana Abedin, the learned Assistant Attorney General appearing for the State opposes the Rule.

None represented on behalf of opposite party no. 2.

Heard the learned Advocates for the respective parties, perused the application for condonation of delay and the materials on record.

Reliance may be placed upon the decision passed in the case of *Mohammad Ullah (Driver) Vs. The State*, reported in 59 DLR(2007) 281 wherein it has been observed that appeal is the legitimate right of a convict, such right should not be defeated merely on the ground of limitation.

Upon consideration of the submissions advanced by the learned counsel for the petitioner as well as the statements made in the application and explanation furnished for the delay, this Court finds sufficient to condone the delay in filing the appeal before this Court. Reasonable grounds having been established, this Court is inclined to condone the delay.

Accordingly, the Rule is made absolute.

The delay of 2,596 days in preferring the instant appeal is hereby condoned.

The office is directed to register the appeal forthwith.

(Md. Bashir Ullah, J)

Md. Ariful Islam Khan
Bench Officer