

**Present:**

**Mr. Justice Md. Salim**

**Criminal Revision No. 3921 of 2025**

Md. Delwar Hossain(Titu)

..... Convict-Petitioner.

-Versus-

The State and another

..... Opposite parties.

Mr. Md. Hamidul Islam, advocate

..... For the petitioner.

Mr. S.M. Bazlur Rashid, advocate

..... For the Opposite party No.2

Ms. Syeda Shajia Sharmin, D.A.G. with

Mr. Md. Rejaul Islam, A.A.G.

Mr. Khan Mahfuzun Noor, A.A.G.

..... For the State.

**Heard on 06.01.2026, 11.01.2026**

**and 12.01.2026**

**Judgment on 26.01.2026**

By this Rule, the opposite parties were called upon to show cause as to why the Judgment and order dated 16.07.2025, passed by the learned Additional Sessions Judge, 1st Court, Naogaon, in Criminal Appeal No.126 of 2025 dismissing the appeal and affirming the Judgment and order of conviction and sentence dated 26.01.2025 passed by the learned Joint Join Sessions Judge, 3rd Court, Naogaon in Sessions Case No. 2146 of 2024

arising out of C.R. No. 98C of 2024 (Niamatpur) convicting the accused petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced to suffer simple imprisonment for 01(one) year and to pay Tk.12,00,000/- should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The prosecution's case in brief is that the present-opposite party No.2, as complainant, initially filed a petition of complaint under section 138 of the Negotiable Instruments Act, before the learned Judicial Magistrate, cognizance Court No.7, Naogaon, against the convict-petitioner, alleging, inter alia, that the accused petitioner took the cheque amount from the complainant by putting his signature on a non-judicial stamp, in the name of a donation to a school to secure a job for the complainant, and, failing which, on 30.01.2024, the accused issued a cheque in favour of the complainant for the payment of the said amount i.e consideration money of Tk.12,00,000/-. In order to encash the said cheque, the complainant-opposite party No.2 then presented the cheque on 30.02.2024 to the Bank, but on that very

date, the cheque was dishonoured with an endorsement of insufficient funds. Finding no other alternative, the opposite party No.2 then served a legal notice on 14.02.2024, by registered post, requesting him to repay the amount. As the accused petitioner failed to comply with the request made in the legal notice, the complainant-opposite party was constrained to file the petition. In view of the said petition of complaint, the learned Judicial Magistrate, Naogaon, then examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance of the said case. Since the case is triable by the Sessions Judge, the learned Judicial Magistrate then transferred the case to the learned Sessions Judge, Nagaon, for trial. In the meantime, the accused petitioner surrendered before the courts below and obtained bail.

Subsequently, the learned Joint Sessions Judge, 3rd Court, Chattogram, framed the charge against the accused-petitioner under section 138 of the Negotiable Instruments Act, which was read over and explained to the accused-petitioner, who then pleaded innocent and claimed to be tried.

During the trial, the prosecution examined two witnesses and produced several documents. On the contrary, the defence examined one witness.

After the conclusion of the taking of evidence, the accused-petitioner was also examined under section 342 of the Code of Criminal Procedure, when he again pleaded his innocence and claimed that he had issued a blank cheque and that the complainant had inserted the amount as he desired.

From the trend of the cross-examination and the evidence of the defence witness, the defence case was that the accused petitioner is innocent.

However, after the conclusion of the trial, the learned Joint Sessions Judge, 1<sup>st</sup> court, Nagaon vide Judgment and order dated 14.08.2024, convicted the accused petitioner under section 138 of the Negotiable Instruments Act, sentenced to suffer simple imprisonment for 01 (one) year and to pay Tk.12,00,000/- as has been stated above.

Being aggrieved by and dissatisfied with the above Judgment and order of conviction and sentence, the convict-petitioner, as appellant, on surrender before the

Joint Sessions Judge, 3rd Court, Naogaon, and after depositing 50% of the cheque amount, preferred the appeal, which has been registered as Criminal Appeal No.126 of 2025 before the Sessions Judge, Naogaon.

Eventually, the learned Additional Sessions Judge, Naogaon, by the Judgment and order dated 16.07.2025, disallowed the appeal and affirmed the Judgment and order of conviction and sentence passed by the trial court below.

Being aggrieved by and dissatisfied with the said concurrent Judgment and order of conviction and sentence, the convict, as petitioner, then came before this court and obtained the instant Rule and order of bail.

Mr. Md. Hamidul Islam, the learned advocate appearing on behalf of the accused petitioner, submits that the learned Judge of the trial court and the appellate court failed to consider that no notice was served by registered post with acknowledgement due, as the complainant failed to exhibit the acknowledgement due (AD). The accused petitioner did not receive any legal notice.

Ms. Syeda Shajia Sharmin, the learned Deputy Attorney General, appearing on behalf of the state, submits that the learned Judge of both the courts below considered the evidence on record very judiciously, found the accused-petitioner guilty, and thereby convicted under section 138 of the Negotiable Instruments Act. Hence, the Judgment and order of conviction and sentence as a whole is maintainable in law.

Mr. S.M. Bazlur Rashid, advocate appearing on behalf of the opposite party No.2, submits that the accused petitioner took the cheque amount to secure a job for the complainant by putting his signature on a non-judicial stamp, and, failing which, he gave the cheque to the complainant. He then submits that the notice was duly served upon the accused petitioner and the learned Judge of the courts below has properly found the accused petitioner guilty.

We have considered the submissions of the learned counsel for both parties, perused the impugned Judgment and the evidence on record. It appears that, in order to bring home the charge, the complainant himself examined as P.W. 1, who stated in his evidence, in line

with the petition of the complaint, he adduced the material evidence adduced by the complainant, the petition of complaint, a cheque, a dishonoured slip, a copy of the legal notice, and a postal receipt.

P.W. 2, Samsul Islam, whose evidence corroborated the evidence of P.W. 1.

Considering the above, we find that P.W. 1's testimony supports the assertion made in the petition of complaint. Moreover, we find that the documents, namely, the disputed cheque, a return memo, and a legal notice, have been exhibited by the complainant without objection from the accused petitioner, which also establishes that they have been rightly taken into evidence.

Be that as it may, to substantiate the question of mode of service of notices in a case under section 138 of the Negotiable Instruments Act, we may quote Sub-section (1A) of section 138 of the Act, which provides 3 (three) modes of service, which run as under:-

"138. Dishonour of cheque for insufficiency, etc. of funds in the account-(1).....

[(1A) The notice required to be served under clause (b) of sub-section (1) shall be served in the following manner-

(a) by delivering it to the person on whom it is to be served; or

(b) by sending it by registered post with acknowledgement due to that person at his usual or last known place of abode or business in Bangladesh; or

(c) by publication in a daily Bangla national newspaper having wide circulation ....."

It manifests that service of notice upon the drawer of the cheque shall be deemed to have been duly served if: (a) it has been delivered to the person on whom it is to be served; or (b) that the notice has been sent to that person by registered post with acknowledgement due at his usual or last known place of abode or business in the country; or (c) by publication in a daily bangla national newspaper having wide circulation.

Notably, service of notice under clause (b) of sub-section (1) of section 138 of the Act means any of the 3(three) modes as provided under clause (a), (b), and (c) of sub-section (1A) of section 138 of the Act. The

legislature, while prescribing the above three (3) modes of service of notice, has used the word "or," and thus makes each clause disjunctive. The duty of the payee is discharged once he served notice either under clause (a), (b), or (c) of sub-section (1A) of section 138 of the Act.

In the instant case, admittedly, the acknowledgement due (AD) has not been exhibited by the prosecution. However, on perusal of Exhibit 4, a postal registered receipt on which the post office clearly wrote down 'AD'. On the other hand, the complainant stated in the petition of complaint that the accused petitioner received the notice on 18.02.2024. Moreover, immediately after the case was filed, the accused petitioner surrendered to the court, obtained bail, and contested the case. Therefore, it is presumed that the legal notice was duly served upon the accused petitioner by registered post with acknowledgement due.

In view of the above, it appears that there is no doubt that both the courts rightly found that the legal notice in the instant case was deemed to have been duly served upon the accused petitioner under clause (b) of

sub-section (1A) of section 138 of the Negotiable Instruments Act.

Mr. Islam submits that although the charge was framed in the presence of the accused petitioner, and he was examined under section 342 of the Code of Criminal Procedure in the course of the trial, but both the courts below in their Judgment wrote that the accused petitioner was not present at the time of framing of the charge and at the time of examination of the accused under section 342 of the Code of Criminal Procedure due to absence of the accused petitioner from the court. So, the appellate court has failed to consider that the above mistakes vitiate the whole trial.

It is worth noting that these types of mistakes are obviously harmless. An error that does not affect a party's substantive rights or the case's outcome. A harmless error is not a good ground for setting aside or reversing the impugned Judgment. In this regard, the case of Fakrul Islam (Md) Vs. Mahmud Hasan Rans and another, 77DLR(AD)229 laid --

"Clerical error – An error resulting from a minor mistake or inadvertence, esp. in writing or copying

something on the record, and not from judicial reasoning or determination. Among the boundless examples of clerical errors are omitting an appendix from a document, typing an incorrect number, mistranscribing a word, and failing to log a call. A Court can correct a clerical error at any time, even after the Judgment has been entered. Sec FedRCivP60(a); Fed R CrimP36-Also termed scrivener's error, vitium clerici. See VITIUM SCRIPTORIS. [Cases; Federal CIVIL Procedure-2653; Judgment -306, CJS Judgements- 280-281.]

Harmless error- An error that does not affect a party's substantive rights or the case's outcome. A harmless error is not grounds for reversal. See Fed R Civ P 61; Fed R Crim P 52-. Also termed technical error; error in vacuo Cf substantial error. [Cases; Administrative Law and Procedure 764; Appeal and Error 1025-1074, CJS Appeal and Error- 825-830; Juries-421-422; Justices of the Peace-240; Public Administrative Law and Procedure -225."

However, if the cheque is found to have been issued by the drawer and it was dishonoured in that event, there has been no scope for the drawer of the cheque to

exonerate himself in committing an offense triable under section 138 (1) of the Negotiable Instruments Act,1882. Moreover, if the legal requirements provided in various clauses of section 138(1) of the Act are found to have been fully complied with, there is no scope to acquit the accused of the charge leveled against him.

Moreover, on going through the Judgments passed by both the courts, and the materials on record of both parties, we find that the courts below have very exhaustively and vividly discussed the evidence adduced and produced by the opposite party No.2, which has been marked as exhibits on the part of the complainant.

It appears that the learned Judge of the Court of Appeal, after critical examination and analysis of the above evidence and other materials brought on record, found that the prosecution has been able to prove the charge beyond a reasonable doubt under section 138 of the Negotiable Instruments Act against the convict petitioner.

Further, a careful analysis of the oral and documentary evidence adduced by the prosecution as well as the defence side, and on examination of those

documents, we find that this very case was filed in total compliance with the provisions enumerated in section 138 of the Negotiable Instruments Act, having no scope to interfere with the Judgment. However, considering the above facts and circumstances of the case, we are inclined to modify the sentence with the effect that the sentence of the accused petitioner is to pay Tk.12,00,000/-, i.e., the cheque amount, instead of suffering simple imprisonment for 1 (one) year, and to pay Tk.12,00,000/-.

Considering the above facts and circumstances, we do not find any merit in interfering with the Judgment and order passed by the courts below.

As a result, the Rule is discharged with a modification to the sentence.

The sentence of the convict-petitioner is to pay Tk.12,00,000/-, i.e., the cheque amount, instead of suffering simple imprisonment for 1 (one) year, and to pay Tk.12,00,000/-.

The convict petitioner is directed to deposit the 50% of the remaining cheque amount within 02 (two) months from the date of receipt of this Judgment by the trial

court. In default, the complainant is at liberty to take the necessary steps as per the provisions enumerated in Section 386 of the Code of Criminal Procedure.

The learned Judge of the trial court is directed to take the necessary steps so that the complainant can recover the amount deposited by the petitioner to the Government exchequer through chalan within 1(one) month from the date of receipt of this Judgment.

Communicate the Judgment and send down the lower court records.

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(MD. SALIM, J).

Rakib(ABO)