

In the Supreme Court of Bangladesh  
High Court Division  
(Criminal Appellate Jurisdiction)

**PRESENT:**

**MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN**

**CRIMINAL APPEAL NO. 5184 OF 2021**

Joinal Abedin.....Convict-appellant

-Versus-

The State and another.

..Respondent-opposite party

Mr. Mohammad Eunos, Advocate

.....For the convict-appellant

Mrs. Jesmin Sultana Shamsad, Advocate

.....For the respondent No. 2

Mrs. Tashrifa Sultana Jali, AAG with

Mr. Md. Emdadul Hanif, AAG and

Mr. Md. Hemayet Uddin, AAG

.....For the state

Heard on: 08.12.2025, 11.12.2025 and 14.12.2025

**Judgment on: The 17<sup>th</sup> of December, 2025**

**ABU TAHER MD. SAIFUR RAHMAN, J.**

This appeal, at the instance of the convict accused-appellant, is directed against the judgment and order of conviction and sentence dated 12.10.2011 passed by the learned Additional Metropolitan Sessions Judge, 5th Court, Chattogram, in Sessions Case No. 842 of 2011 arising out of C.R. Case No. 1443 of 2010 (Kotwali Zone), whereby the accused-appellant was convicted under section 138 of the Negotiable Instruments Act, 1881 and sentenced thereunder to

suffer simple imprisonment for 6 (six) months and also to pay a fine of **Taka 2,00,000/-** (two lacs).

For disposal of the appeal, the relevant facts may briefly be stated as follows:

That the plaintiff and the defendant are well known to each other and share a long-standing relationship. Relying on such relationship and acting in good faith, the plaintiff paid **Tk. 2,00,000/-** (Two lacs) to the defendant upon his demand in the presence of witnesses. Towards repayment of the said amount, the accused-appellant issued two cheques from his C.D. Account No. 00190211006453 maintained with Jamuna Bank Limited, Jubilee Road Branch, Chattogram, namely-(i) Cheque No. JCD 3412740 dated 02.05.2010 for **Tk. 1,00,000/-** and (ii) Cheque No. JCD 3554653 dated 02.06.2010 for **Tk. 1,00,000/-**, totaling **Tk. 2,00,000/-**.

The complainant deposited the said cheques with his account maintained at United Commercial Bank Limited, Jubilee Road Branch, Chattogram, but both cheques were dishonoured on 07.07.2010 due to “Insufficient Funds.” Thereafter, the complainant served a statutory legal notice through his learned Advocate upon the accused-appellant on 13.07.2010, which was duly received on 15.07.2010. Despite expiry of 30 days from the date of receipt of the notice, the accused-appellant failed to make payment, thereby committing an offence punishable under section 138 of the Negotiable Instruments Act, leading to the filing of the instant case.

The learned trial Court, upon consideration of the evidence on record as well as the facts and circumstances of the case, found the accused-appellants guilty of the offence charged, convicted them accordingly, and sentenced them to suffer imprisonment and also to pay fine with default stipulation as mentioned above. Being aggrieved and dissatisfied therewith, the aforesaid accused-appellant have preferred the present appeal before this Court.

Mr. Mohammad Eunos, the learned Advocate for the appellant, mainly submits that the prosecution has failed to prove the charge against the appellant beyond reasonable doubt, inasmuch as no independent evidence was adduced in support of the prosecution case; therefore, the impugned order of conviction is not sustainable in the eye of law

As against this, Mrs. Jesmin Sultana Shamsad, the learned Advocate for the complainant–opposite party No. 2, submits that the accused-appellant duly appeared before the trial Court and contested the case. After hearing both parties, the learned Court below passed the impugned judgment upon cogent and sound reasons, which does not call for any interference by this Court.

Mrs. Tashrifa Sultana Jali, the learned Assistant Attorney General, concurs with the submissions made by the learned Advocate for opposite party No. 2.

Heard the learned Advocates of both sides and perused the materials on record.

The core issue that calls for determination in this appeal is whether the conviction of the convict-appellant under section 138 of the Negotiable Instruments Act, 1881, together with the consequential sentence of six months' imprisonment and a fine of **Tk. 2,00,000/-** (two lakhs), can be said to be sustainable in law, upon proper appreciation of the evidence on record, the facts and circumstances of the case, and the settled principles governing the administration of criminal justice.

Upon careful examination of the materials on record, it appears that upon due compliance with all statutory requirements, the complainant–respondent No. 2 instituted the instant case against the accused-appellant on 17.08.2010 under section 138 of the Negotiable Instruments Act, 1881. The accused-appellant appeared before the learned Court below and was enlarged on bail. Throughout the trial, the accused-appellant remained present and was afforded full opportunity to contest the case.

On 12.07.2011, the plaintiff, complainant–respondent No. 2 was examined as P.W.1 and adduced documentary evidence in support of the prosecution case, which were duly admitted into evidence and marked as exhibits. P.W.1 was cross-examined by the accused-appellant in part. The case was thereafter fixed on 17.07.2011 and 31.07.2011 for completion of cross-examination. On 31.07.2011, despite being present

before the Court, the accused-appellant failed to further cross-examine P.W.1 or to adduce any evidence on his behalf.

Subsequently, the learned trial Court fixed 18.08.2011 for examination of the accused-appellant under section 342 of the Code of Criminal Procedure and for hearing arguments. Upon an application filed by the accused-appellant, the Court, granting last opportunity, refixed the date on 29.08.2011. The accused-appellant was accordingly examined under section 342 Cr.P.C., wherein he claimed innocence and categorically stated that he would neither examine any defence witness nor produce any documentary evidence.

Arguments were heard on 28.09.2011 and the case was fixed for judgment on 12.10.2011. On the said date, the learned trial Court delivered the judgment convicting the accused-appellant in his absence. It further appears that the accused-appellant did not prefer any appeal within the period prescribed by law. After a considerable lapse of time, in execution of the judgment, the accused-appellant was arrested and sent to jail on 27.05.2021. Thereafter, he preferred the present appeal and obtained bail from this Court.

In the foregoing circumstances, it is evident that the accused-appellant was afforded sufficient and reasonable opportunity at every stage of the trial to defend himself, which he failed to avail. The appeal has been preferred after an inordinate delay of about 10 (ten) years from the date of the impugned judgment without any satisfactory explanation. Upon

an overall assessment of the evidence and materials on record, we find no illegality, impropriety, or material irregularity in the impugned judgment calling for interference by this Court.

Accordingly, the appeal is dismissed.

The judgment and order of conviction and sentence dated 12.10.2011 passed by the learned Additional Metropolitan Sessions Judge, 5th Court, Chattogram, in Sessions Case No. 842 of 2011, arising out of C.R. Case No. 1443 of 2010 (Kotwali Zone) convicting the accused-appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 6 (six) months and to pay a fine of **Tk 2,00,000/-** (two lacs) are hereby affirmed.

The order of stay in respect of the realization of the fine is hereby vacated, and the plaintiff-complainant is at liberty to withdraw the same from the Court in accordance with law.

The convict-appellant is directed to surrender before the concerned Court below within **30 (thirty)** days from the date of receipt of a copy of this judgment, failing which the Court below shall take necessary steps to execute the sentence in accordance with law.

Send down the Lower Court Records (LCR).

Let a copy of this judgment be communicated to the Court below forthwith.