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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 3303 of 2019

In the matter of:

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

And
In the matter of:

Md. Wali Ullah Patowari
...**Convict-Petitioner.**

-Versus-

The State and another
... **Opposite Parties.**

Mr. Hossain Md. Borhan, Advocate
... For the petitioner.

Mr. Md. Shofiul Aziz, Advocate
...For the Opposite Party No. 2.

Mr. Md. Mizanur Rahman, D.A.G with
Mr. Md. Sirajul Karim (Rabi), A.A.G
… For the State

Heard on: 08.09.2026 and 09.09.2026
Judgment on: 13.09.2026

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 05.09.2019 passed by the learned Metropolitan Sessions Judge, Khulna in Criminal Appeal No.

22 of 2019, dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 19.09.2018 passed by the learned Joint Metropolitan Sessions Judge, 2nd Court, Khulna in Metropolitan Sessions Case No. 418 of 2016 arising out of C.R Case No. 435 of 2015, convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 01(one) year and to pay a fine of Tk. 3,51,000/- (Three lac fifty-one thousand) should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The facts, relevant for disposal of the Rule, in brief, are that opposite party No. 2, Islami Bank Bangladesh Limited, Khulna Branch as complainant instituted C.R Case No. 435 of 2015 before the Court of the Metropolitan Magistrate, Cognizance Court, 'Ka' Anchal, Khulna against the present petitioner, alleging *inter alia* that the accused obtained loan from the complainant-bank amounting to Taka 3,51,000/- (three lac fifty-one thousand). In discharge of the said liability, the accused issued cheque No. 8063361 dated

06.04.2015 in favour of the complainant for Taka 3,51,000/- (three lac fifty-one thousand). Upon presentation, the said cheque was dishonoured by the concerned bank on 10.05.2015 with the endorsement ‘insufficiency of funds’. Thereafter, a statutory legal notice was served on 21.05.2015 upon the petitioner demanding payment of the cheque amount, and the same was received by the accused on 27.05.2015. Despite receipt of the notice, the accused failed to comply with the same. Consequently, the complainant instituted the case on 05.07.2015.

Upon receipt of the complaint petition, the learned Magistrate took cognizance of the offence and thereafter transmitted the case record to the learned Metropolitan Sessions Judge, Khulna. Subsequently, the same was transferred to the learned Joint Metropolitan Sessions Judge, 2nd Court, Khulna and the case was registered as Metropolitan Sessions Case No. 418 of 2016. The charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881 on 13.07.2016, to which the accused pleaded not guilty and claimed to be tried, when the charge was read out and explained to him. During trial, the prosecution examined 01 witness while the defence examined 01 witness. The accused was examined under Section 342 of the Code of Criminal Procedure and reiterated innocence.

Upon conclusion of the trial and after hearing the parties, the learned Joint Metropolitan Sessions Judge, 2nd Court, Khulna convicted the petitioner under Section 138 of the Negotiable Instruments Act of 1881 and sentenced him to suffer simple imprisonment for a period of 01 (one) year and to pay a fine of Taka 3,51,000/- (three lac fifty-one thousand) by judgment and order dated 19.09.2018.

Challenging the conviction and sentence, the petitioner filed Criminal Appeal No. 22 of 2019 before the learned Metropolitan Sessions Judge, Khulna, who, upon hearing the parties, dismissed the same by judgment and order dated 05.09.2019, affirming the judgment and order of conviction and sentence.

Being aggrieved by and dissatisfied with the judgment and order dated 05.09.2019, the petitioner preferred the instant Criminal Revision before this Court and obtained the Rule.

Mr. Hossain Md. Borhan, the learned Advocate appearing on behalf of the petitioner, submits that the petitioner has already paid the entire cheque liability amounting to Taka 3,51,000/- to the complainant-bank directly. He further submits that before preferring the appeal, the petitioner deposited 50% of the cheque amount, Taka 1,75,500/- before the concerned Court in compliance with the statutory requirement. So, the petitioner is entitled to have the deposited amount of Taka 1,75,500/- refunded to him. He finally prays for setting aside the conviction and sentence passed by the trial Court.

Per contra, Mr. Md. Shofiul Aziz, the learned Advocate appearing on behalf of the opposite party No. 2, admits that the convict-petitioner has already paid the entire cheque liability to the concerned bank directly and in proof thereof the bank has issued a certificate.

He further submits that the complainant-bank has no objection if the amount deposited by the petitioner before the trial Court is refunded to him.

He also submits that the bank has no objection if the substantive sentence of imprisonment imposed upon the petitioner is set aside.

I have considered the submissions of the learned Advocates for the respective parties, perused the impugned judgments and orders, and materials on record.

The record shows that the complainant has duly complied with the procedures laid down in Section 138 of the 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 do not suffer from any illegality, impropriety or infirmity.

It is an admitted position that during the pendency of the proceedings the petitioner has paid the entire cheque liability directly to the bank-opposite party No. 2. The complainant-bank has acknowledged receipt of the entire outstanding amount and has categorically stated that no amount remains due from the petitioner in respect of the cheque in question. The bank has also expressed no objection to the setting aside of the substantive sentence of imprisonment imposed upon the petitioner. In this regard, the bank issued a certificate dated 20.11.2022. The certificate is reproduced below:

ইসলামি ব্যাংক বাংলাদেশ লিমিটেড
Islami Bank Bangladesh Limited
Khulna Branch, Khulna.

AKANKITA CENTRE
B JASHORE ROAD (1st & 2nd Floor)
GAKBANGLA KHULNA
BANGLADESH
Phew 041-72006
Mob 01711-8077622 IF 1072
E-mail: khulnaislamibank.bd.com

সূত্রঃ আইবিবিএল/খুলনা/বিনিয়োগ/২০২২/১২৯৫

তারিখঃ ২০/১১/২০২২ইং

<u>প্রত্যয়ন পত্র</u>

ইসলামী ব্যাংক বাংলাদেশ লিঃ, খুলনা এই মর্মে প্রত্যয়ন করছি যে, মোঃ ওয়ালীউল্যাহ পাটোয়ারী, প্রোঃ মেসার্স আজমীর ভান্ডার, ৩৮ নং ভৈরব ষ্ট্যান্ড রোড, বড় বাজার, খুলনাকে এন, আই, এ্যাক্টের ১৩৮ ধারায় চেকে ৩,৫১,০০০/- টাকার দাবীতে আসামী করে মহানগর

হাকিম, খুলনায় সি, আর ৪৩৫/২০১৫ নং মামলা করি। পরবর্তিতে দায়রা ৪১৮/২০১৬ নং মামলায় আসামীর ৬ মাস সাজা এবং চেকে বর্ণিত সমপরিমান টাকা জরিমানা হয়। আসামী পক্ষ জরিমানার ৫০% টাকা মহানগর দায়রা জজ এর হিসাব নম্বরে বাংলাদেশ ব্যাংক, খুলনায় জমা দিয়া মহানগর দায়রা জজ আদালতে ক্রিমিনাল আপীল ২২/১৯ নং মামলা দায়ের করেন। উক্ত ক্রিমিনাল আপীলটি নামঞ্জুর হয়। উক্ত ক্রিমিনাল আপীলের বিরুদ্ধে মহামান্য হাইকোর্ট ঢাকায় ক্রিমিনাল রিভিশন ৩৩০৩/১৯ নং মামলাটি চলমান। আপীলকারী/আসামী ইতোমধ্যে চেকে বর্ণিত ব্যাংকের পাওনা সমুদয় টাকা পরিশোধ করিয়াছে। ইসলামী ব্যাংক বাংলাদেশ লিঃ আপীলকারী/আসামীর নিকট চেকে বর্ণিত কোন টাকা পাইবে না।

আপীলকারী/আসামী কর্তৃক দায়েরকৃত ক্রিমিনাল রিভিশন ৩৩০৩/১৯ নং মামলাটি আপোষ মিমাংসা সূত্রে নিষ্পত্তি হইয়া আপীলকারী/আসামী খালাস পাইলে ইসলামী ব্যাংক বাংলাদেশ লিঃ, খুলনা বাদী/রেসপনডেন্ট এর কোন আপত্তি নাই।

আপীলকারী/আসামী কর্তৃক মহানগর দায়রা জজ আদালত, খুলনা আইন অনুযায়ী জরিমানার যে ৫০% টাকা বাংলাদেশ ব্যাংক, খুলনায় জমা দিয়াছিলেন সেই জমাকৃত টাকা আপীলকারী/আসামী পাইবে।

প্রত্যয়নকারী

স্বাক্ষর অস্পষ্ট
20/11/22
Md. Yakub Ali
SVP& Head of Branch, AS No-1517
Islami Bank Bangladesh Ltd.
Khulna Branch, Khulna.
Cell: 01714-048007

However, concerning the sentence, reliance may be placed upon the decision passed in ***Aman Ullah Vs. State***, reported in 73 DLR (2021) 541, wherein this Court observed that in a prosecution under Section 138 of the Negotiable Instruments Act, the sentence of imprisonment would be a harsh sentence having no penal objective to be achieved.

I respectfully concur with the principle enunciated therein. In a prosecution under Section 138 of the Negotiable Instruments Act, the primary object of the legislation is to ensure payment of the cheque amount to the payee rather than incarcerate the drawer. Consequently, where the entire cheque amount has already been paid, insistence upon a custodial sentence may not subserve any meaningful penal objective.

Considering the facts and circumstances of the case, the nature of the offence, this Court is of the view that the ends of justice would be best served if the sentence is modified by setting aside the substantive sentence of imprisonment and pass a direction to refund the deposited money to the petitioner.

In view of the foregoing discussions and *ratio,* the order of the Court is as follows:

The conviction of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 is hereby affirmed. However, the sentence is modified. The sentence of simple imprisonment for 01(one) year is set aside. The sentence of fine of Taka 3,51,000/-(three lac fifty-one thousand) is maintained. It appears from the record that the convict-petitioner deposited 50% of the cheque amount before the trial Court at the time of preferring the appeal. Subsequently, he deposited the entire value of the cheque directly to the complainant bank to adjust the liabilities, and hence he is entitled to refund the deposited amount lying with the trial Court. Consequently, the Court concerned is directed to refund the said deposited money to the accused-appellant-petitioner forthwith if it is not yet disbursed.

In the result, the Rule is disposed of with modification of the sentence and with directions stated above. The convict-petitioner is released from his bail bond.

Let a copy of the judgment along with the Lower Court Records (LCR) be communicated to the Court concerned forthwith.

(***Md. Bashir Ullah, J***)

Md. Sabuj Akan
Assistant Bench Officer