

**IN THE SUPREME COURT OF
BANGLADESH**

HIGH COURT DIVISION

(CRIMINAL APPELATE JURISDICTION)

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 3346 of 2022

Nurunnahar

.....Convict appellant

-versus-

The State and another

.....respondents

Mr. Md. Harunor Rashid, Advocate

.... For the convict appellant

Mr. Saleh Mohmood Nahid, Advocate

...For the respondent Nos. 2a to 2c

Mr. Md. Anichur Rahman, DAG with

Mr. Sultan Mahmood Banna, AAG with

Mr. Mir Moniruzzaman, AAG

...For the State

Heard on 01.06.2025, 02.06.2025 and 22.06.2025

Judgment delivered on 17.07.2025

This appeal under section 410 of the Code of Criminal Procedure, 1898 is directed against the impugned judgment and order dated 28.07.2019 passed by the Sessions Judge, Chandpur in Sessions Case No. 334 of 2018 arising out of C.R. Case No. 27 of 2018 convicting the accused Nurunnahar under section 138 of the

Negotiable Instruments Act, 1881 and sentencing her thereunder to suffer rigorous imprisonment for 1(one) year and fine of Tk. 14,00,000.

The prosecution's case, in short, is that the accused Nurunnahar issued cheque No. CPA-9061293 dated 26.09.2017 drawn on her account No. 0902203151123001 maintained with BRAC Bank Ltd, Chandpur in favour of the complainant for payment of Tk. 14,00,000. The complainant presented the said cheque on 03.10.2017 for encashment, but it was dishonored on 03.10.2017 with the remark “insufficient funds”. Thereafter, the complainant informed the matter to the accused and he requested to present the cheque again. Accordingly, on 21.11.2017, the complainant presented the cheque for encashment, which was also dishonoured. He sent a legal notice on 22.11.2017 to the accused through registered post for payment of the cheque amount, and the accused received the notice on 12.12.2017, but she did not pay the cheque amount within the time. Consequently, the complainant filed the case on 14.01.2018.

At the time of filling the complaint petition, the complainant was examined under section 200 of the Code of Criminal Procedure, 1898 and the learned Magistrate was pleased to take cognizance of the offence against the accused under section 138 of the Negotiable Instruments Act, 1881. During trial, charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881, which was read over and explained to the

accused, and she pleaded not guilty to the charge and claimed to be tried following the law.

The prosecution examined 1 witness to prove the charge against the accused, and the defence cross-examined the prosecution witness. After examination of the prosecution witness, the accused was examined under section 342 of the Code of Criminal Procedure, 1898 and he pleaded not guilty to the charge and claimed to be tried following law. After concluding trial, the trial by impugned judgment and order convicted the accused and sentenced him as stated above, against which he filed the appeal.

P.W.1 Arab Ali is the complainant. He stated that the accused issued a cheque on 26.09.2017 for payment of Tk. 14,00,000. The said cheque was presented for encashment, but it was dishonoured on 21.11.2017 with a remark “insufficient funds”. He sent a legal notice on 22.11.2017 through registered post to the accused, but she did not pay the cheque amount. He proved the complaint petition as exhibit- 1 and his signature on the complaint petition as exhibit- 1/1. He proved the cheque as exhibit-2, dishonoured slip as exhibit-3, and postal receipt as exhibit-4. At the time of the examination of P.W. 1, the accused was absconding.

The learned Advocate Mr. Md. Rarun or Rashid, appearing on behalf of the appellant Nurunnahar submits that she issued the cheque in favour of the complainant for payment of Tk. 14,00,000, but due to financial hardship, she could not pay the cheque amount after service of the notice. However, he submits that both the accused and the complainant settled the dispute out of court and

paid 50% of the cheque amount to the respondent Nos. 2a to 2e, who are the heirs of the deceased complainant. He prayed for setting aside the impugned judgment and order passed by the trial court accepting the compromise made between the parties.

The learned Advocate Mr. Abdul Mannan Mohan, appearing along with learned Advocate Mr. Saleh Mahmood Naheed on behalf of the complainant respondent No. 2a to 2e, submits that the accused issued cheque on 26.09.2017 for payment of Tk. 1400,000, and it was dishonoured on 21.11.2017 with a remark “insufficient funds” and the complainant sent the legal notice on 22.11.2017 to the accused and he also received the same, but he did not pay the cheque amount. Consequently, he filed the case complying with all the procedures under sections 138 and 141(b) of the Negotiable Instruments Act, 1881. During trial, the prosecution proved the charge against the accused beyond all reasonable doubt. However, he admitted that both the complainant and the accused settled the dispute out of court, and the respondent Nos. 2a to 2e received 50% of the cheque amount from the accused in cash and the respondent Nos. 2a to 2e are willing to receive remaining 50% of the cheque amount deposited by the accused in the trial court before filing the appeal.

I have considered the submission of the learned Advocates of both parties, perused the evidence, impugned judgment and order passed by the courts below, and the records.

On perusal of the records, it reveals that an affidavit of compromise has been filed by the appellant and respondent No. 2a

to 2e, who are the heirs of the deceased complainant Arab Ali. In the said affidavit, it has been asserted that the added respondent Nos. 2a and 2e, who are the heirs of the deceased complainant received 50% of the cheque amount out of court, and they are willing to receive the remaining 50% of the cheque amount deposited by the accused in the trial court before filing the appeal. The Negotiable Instruments Act, 1881 is a special law and the offence under section 138 of the said Act is not compoundable. Therefore, the parties are not entitled to compromise the dispute out of court. After filing a case under section 138 of the said Act, the Court shall dispose of the case considering only the merit.

On perusal of the evidence, it appears that the accused Nurunnahar issued cheque No. CPA-9061293 on 26.09.2017 drawn on her Account No. 0902203151123001 maintained with BRAC Bank Ltd, Chandpur in favour of the complainant for payment of Tk. 14,00,000, and the said cheque was presented by the complainant and it was dishonoured on 21.11.2017 for “insufficient funds” and the bank issued the dishonoured slip. P.W.1 proved the cheque as Exhibit 2. The complainant sent notice on 22.11.2017 through registered post to the accused Nurunnahar. The accused admitted that she received the notice but could not pay the cheque amount. Consequently, the complainant filed the case on 14.01.2018. The learned Advocate, Md. Harun-or-Rashid appearing on behalf of accused also admitted that the accused received the notice, but due to financial hardship, she could not pay the cheque amount. The above evidence depicts that the accused issued the cheque on 26.09.2017 in favour of the complainant and it was

dishonoured on 21.11.2017 for “insufficient funds” and the complainant also sent legal notice on 22.11.2017 to the accused and despite the service of notice upon her, she did not pay the cheque amount and the complainant filled the case on 14.01.2018 complying with the procedures under section 138 and 141(b) of the Negotiable Instruments Act, 1881 and the prosecution proved the charge against the accused beyond all reasonable doubt.

Considering the evidence, facts and circumstances of the case, I am of the view that ends of justice would be best served, if the sentence passed by the trial court is modified as under:

The accused Nurunnahar is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and she is sentenced thereunder to pay a fine of Tk. 1400,000.

With of the above findings and observations, the appeal is disposed of with modification of the sentence.

It is admitted by the added respondent Nos. 2a to 2e, heirs of the deceased complainant that they received 50% of the cheque amount from the accused. Therefore, the accused Nurunnahar is not required to deposit 50% of the cheque amount again. The added respondent Nos. 2a to 2e are entitled to get 50% of the cheque amount deposited by the accused before filing the appeal.

The trial court is directed to allow the respondent Nos. 2a to 2e, who are the heirs of the deceased complainant Arab Ali to withdraw 50% of the cheque amount deposited by the accused

before filing the appeal within one week from the date of applying, if any.

However, there will be no order as to costs.

Send down the lower Court's record at once.

1314