

**IN THE SUPREME COURT OF
BANGLADESH**

HIGH COURT DIVISION

**(CRIMINAL REVISIONAL
JURISDICTION)**

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 1496 of 2022

Md. Abdullah Al-Mamun Sozol

.....Convict Petitioner

-versus-

The State and another

.....Opposite Parties

Mr. S.M. Jahangir Alam, Advocate

.... For the convict petitioner

Mr. ABM Rakibuzzaman, Advocate

...For the opposite party No. 2

Mr. Md. Anichur Rahman Khan, DAG with

Mr. Sultan Mahmood Banna, AAG with

Mr. Mir Moniruzzaman, AAG with

....For the State

**Heard on 03.08.2025, 14.08.2025 and
20.08.2025.**

Judgment delivered on 26.08.2025

On an application under sections 439 and 435 of the
Code of Criminal Procedure, 1898 Rule was issued calling

upon the opposite party to show cause as to why the impugned judgment and order of conviction and sentence dated 15.03.2022 passed by Special Judge, Court 3, Dhaka in Special Criminal Appeal No. 9 of 2021 affirming the judgment and order dated 20.01.2020 passed by Joint Metropolitan Sessions Judge, Court No. 1, Dhaka in Metropolitan Sessions Case No. 2514 of 2018 arising out of CR Case No. 587 of 2017 convicting the petitioner Md. Abdullah Al Mamun Sozol under section 138 of the Negotiable Instruments Act, 1881, and sentencing him thereunder to suffer imprisonment for 01(one) year and fine of Tk. 46,00,000 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 short, is that the complainant Md. Shahjahan Bhuiyan and the accused Md. Abdullah Al Mamun Sozol are resident of Dhanias, Jatrahari, Dhaka. The accused received Tk. 45,00,000 for selling a flat to the complainant, but he could not hand over the flat for which he issued Cheques Nos. 5342891 and 5342889 on 09.08.2017 drawn on his Account No. 0321340037577 maintained with SIBL, Dhanias Rasulpur Branch, Jatrahari, Dhaka for payment of Tk. 25,00,000 and Tk. 20,00,000, total Tk. 45,00,000. The complainant presented those cheques on 09.08.2017, but those were dishonoured with the remark "insufficient funds." On 20.08.2017, the complainant sent a legal notice to the accused through registered post with AD to pay the cheques amount within 30 days from the date of receipt of the notice. Despite

the service of notice upon the accused, he did not pay the cheque amount. Consequently, the complainant filed the case on 21.09.2017.

At the time of filing the case on 21.09.2017, 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. Thereafter, the accused obtained bail. During the trial, charge was framed against the accused. After that, the case was sent to the Metropolitan Sessions Judge, Dhaka, who sent the case to the Joint Metropolitan Sessions Judge, Court No. 3, Dhaka, for trial and disposal of the case. During the 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 present in court, and he pleaded not guilty to the charge and claimed to be tried following the law.

Prosecution examined 1 witness to prove the charge and the defence cross-examined P.W. 1. After examination of prosecution witness, the accused was examined under section 342 of the Code of Criminal Procedure, 1898 and he was examined as D.W.1. After concluding trial, the trial court by impugned judgment and order dated 20.01.2000 was pleased to convict the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer imprisonment for 01(one) year and fine of Tk. 45,00,000

against which the accused filed Criminal Appeal No. 09 of 2021 before the Metropolitan Sessions Judge, Dhaka, which was heard by the Special Judge, Court No. 3, Dhaka, who, by impugned judgment and order, affirmed the judgment and order passed by the trial court against which the convict petitioner obtained the rule.

P.W. 1 Md. Shahjahan Bhuiyan stated that the accused Md. Abdullah Al Mamun Sozol received Tk. 45,00,000 to sell a flat, but he could not hand over the flat, for which on 09.08.2017 he issued 2 cheques for payment of Tk. 20,00,000 and Tk. 25,00,000. He presented the cheques on 09.08.2017 for encashment, but those cheques were dishonoured with the remark, “insufficient funds”. On 20.08.2017, a legal notice was sent to the accused through registered post with AD, and the accused received the notice. He did not pay the cheques amount. Consequently, on 21.09.2017, he filed the case. He proved the complaint petition as exhibit-1 and his signature on the complaint petition as exhibit-1/1, the disputed cheque as exhibit-2 series, the dishonoured slip as exhibit-3, the legal notice as exhibit-4, the postal receipt as exhibit-5, and the AD as exhibit-6. He denied the suggestion that he and the accused are friends. He admitted that they reside in the same area. He denied the suggestion that both of them used to visit their house. He affirmed that the accused received Tk. 45,00,000 for the flat. He admitted that the accused did not deal with the flat business. He paid the money in cash. He asserted that after the construction of the flat, he will hand it over to the same person.

He is not aware of the fact that the accused is a student. He said that he is a service holder. He is not aware of the fact that the accused lodged a GD regarding two cheques. He admitted that the accused resides in the same locality. He claimed that his father paid money for business, and he took a loan and paid the same to the accused. He denied the suggestion that the accused did not receive any money for selling the flat. On 20.08.2017, he sent the legal notice, and the accused received the same. He is not aware whether in the complaint petition it has been mentioned that the accused received the notice. He denied the suggestion that since the accused did not receive the notice, there was no cause of action or that he deposed falsely.

D.W. 1 Md. Abdullah Al Mamun Sozol stated that he is the accused. He, along with the complainant Md. Shahjahan Bhuiyan went to Rasulpur Shahi Mosque from his house and reached Jatrabari. He entered the washroom to answer the natural call, keeping his bag with the complainant Md. Shahjahan Bhuiyan, along with 5 cheques signed by him in the bag. After coming out of the washroom, the complainant Md. Shahjahan Bhuiyan quickly left the place, keeping the bag with him. He went to his office and found that there was no cheque book in the bag. He talked to the Md. Shahjahan Bhuiyan over the phone, but he said that he did not take the cheques. Subsequently, he said that he will file the case using those cheques. After that, he received a legal notice. He affirmed that he does not deal with any flat business. He also affirmed that registration is required to sell the flat, but he had no

registration. He did not receive any money to sell the flat. He was an apprentice of NDE. Subsequently, he left the job. He did not write the amount on the cheques. The complainant Md. Shahjahan Bhuiyan himself wrote the amount on the cheque. During cross-examination, he stated that he could not remember the date on which the cheque was taken. The NDE deals with the construction business, and the office is situated at Gulshan-1. He denied the suggestion that, as an employee of NDE, he received Tk. 45,00,000 from the complainant for selling the flat. He admitted that the disputed 2 cheques were signed by him. He is not aware of the result of the GD.

The learned Advocate Mr. S.M. Jahangir Alam, appearing on behalf of the convict petitioner, submits that in the complaint petition, it has been stated that the accused received Tk. 45,00,000 to sell a flat to the complainant, but there is no specific address of the flat in the complaint petition, and there was no consideration for the cheques issued by him. Having drawn the attention of the court to the disputed cheques and the evidence, he submits that the accused did not write the amount on the cheques, which were illegally taken by the accused while the accused went to the washroom to answer the natural call, keeping the bag in possession of the accused, wherein 5 signed cheques were kept. He further submits that the accused received the notice on 23.08.2017 and before expiry of 30 days, from the date of receipt of the notice by the accused, the complainant filed the complainant petition on 21.09.2017 in violation of the provision made in clause c of the proviso to section 138 of the

Negotiable Instruments Act, 1881 and there was no cause of action for filling the case on 21.09.2017. Having drawn the attention of this court to the judgment and order passed by the courts below, the learned Advocate submits that no issue has been framed by the courts below whether there was any consideration of the two cheques allegedly issued in favour of the complainant and the accused is not bound to pay the cheques amount issued without consideration and the prosecution failed to prove that the cheques were issued for consideration, and failed to prove the charge against the accused beyond all reasonable doubt. He prayed for making the rule absolute by setting aside the impugned judgment and order passed by the courts below.

The learned Advocate Mr. ABM Rakibuzzaman, appearing on behalf of the complainant, opposite party No. 2, submits that the accused issued two cheques and there is a presumption under section 118(a) of the Negotiable Instruments Act, 1881 that the cheques were issued for consideration and the accused failed to rebut the said presumption. As regards the cause of action, the learned Advocate cited a decision made in the case of Shahidul Islam vs the State and another, reported in 63 DLR 536. He also submits that the complainant filed the case complying with the procedure stated in clauses a to c of the proviso to sections 138, section 138(1A) and 141(b) of the Negotiable Instruments Act, 1881 and during trial, proved the charge against the accused beyond all reasonable doubt and both the courts below arrived at a concurrent finding of facts

that that the complainant filed the case complying with the procedure stated in sections 138 and 141(b) of the Negotiable Instruments Act, 1881 for dishonoured of the cheque issued by the accused. He prayed for the discharge of the Rule.

I have considered the submission of the learned Advocate Mr.S.M. Jahangir Alam, who appeared on behalf of the convict petitioner, and the learned Advocate Mr. ABM Rakibuzzaman, who appeared on behalf of the complainant opposite party No. 2, perused the evidence, impugned judgments and orders passed by the courts below, and the records.

On perusal of the evidence, it reveals that in the complaint petition, it has been alleged that the accused Md. Abdullah Al Mamun Sozol received Tk. 45,00,000 to sell a flat to the complainant Md. Shahjahan Bhuiyan, but in the complaint petition, there is no description or address of any flat proposed to sell to the complainant P.W. 1. He stated that the accused received Tk. 45,00,000 from him to sell a flat. During cross-examination, P.W. 1 admitted that the accused did not deal with the business of selling flats. In replying to a question, P.W. 1 stated that he is not aware that the accused is a student. He denied the suggestion that P.W. 1 and the accused are friends, but he admitted that the accused and the complainant were residing in the same area. D.W. 1 accused Md. Abdullah Al Mamun Sozol stated that he, along with the complainant, started from his house and reached Jatrabari, and he entered the washroom to answer the natural call, keeping the bag with the

complainant, wherein he kept 5 signed cheques and the cheque book and after returning from the washroom, the complainant left him keeping the bag. Thereafter, he found that there was no cheque. Subsequently, he lodged the GD No. 1513.

It is an admitted fact that the accused is not a businessman, and no address or location of the flat is given in the complaint petition. The accused is neither the owner of a flat nor has any document been proved that the accused had given a proposal to sell a particular flat to P.W. 1. There is no documentary evidence regarding payment of a large amount by complainant to the accused. P.W. 1 could not prove that the accused received Tk. 45,00,000 for selling a flat to him.

On perusal of the evidence, it reveals that two signed cheques by the accused Md. Abdullah Al Mamun Sozol, being No. 5342891 dated 09.08.2017 for payment of Tk. 25,00,000 and cheque No. 5342889 dated 09.08.2017 for payment of Tk. 20,00,000 drawn on his Account No. 0321340037577 were allegedly issued in favour of Md. Shahjahan Bhuiyan maintained with SIBL. D.W. 1 stated that he did not write the amount on the cheques (exhibits 2 and 2/1). The evidence of D.W. 1 that he did not write the amount on the cheques is not denied by the prosecution by giving any suggestion. On scrutiny of 2 cheques (exhibits-2 and 2/1), revealed that different inks have been used to write the amount on the cheques and the name of the payee. The ink used for writing the name of the payee and the ink used for writing the amount on

the cheques are not identical to the ink used for writing the signature of the accused. Therefore, the evidence of D.W. 1 that he did not write the amount on the cheques is found correct. I am of the view that two blank cheques signed by the accused were used to file the case.

At this stage, it is relevant here to rely on a decision made in the case of Alauddin (Md) vs the State and others, reported in 24BLC(AD)(2019) 139, judgment dated 24.10.2017, in which at para 15 our Apex Court has held as under:

“Another important issue is issuance of a blank cheque without mentioning the date and amount will come within the definition of cheque or not. If the cheque is not drawn for a specified amount it would not fall within the definition of bill of exchange. Filling up amount portion and date are material. Any alteration without the consent of the party who issued the cheque rendered the same invalid. However, question of issuance of blank cheque and fraudulent insertion of larger amount than actual liabilities is a question of fact. Insertion of larger amount in blank cheque than actual liability is an ingredient of fraud which cannot be approved since fraud goes to the root of the transaction. Where there is an intention to deceive and means of the deceit to obtain an advantage there is fraud.”

At this stage, it is also relevant here to rely on a decision made in the case of Dr. Shyamal Baidya vs Islami Bank Bangladesh Ltd and another, reported in 66 DLR(2014) 547, judgment dated 23.02.2014 para 24, in which it has been held that:

“Sub-section (1) of section 138 of the NI Act provides that where any cheque drawn by a person on an account maintained by him with a Banker for payment of any amount of money to another person and when such cheque is returned by the Bank unpaid for insufficiency of funds that will come under the mischief of section 138 of the NI Act. But the materials on record shows that it is the cheque which was not drawn for payment of Taka 9,84,918 rather it is the figure which has been inserted on the cheque by the Bank in the year 2007 after a calculation of the amount of debt to the accused by the Bank. Whenever a cheque is drawn by a person in order to make payment of any amount, the amount must be given in it by the drawer of the cheque. Since the amount was not given by the drawer of the cheque having no intention for making any payment, such a cheque cannot be considered as a cheque to serve the purpose of section 138 of the NI Act. So, the conviction and sentence of the appellant under section 138 of the NI Act for the dishonouring of the so-called cheque in question cannot be considered as legal and fair.”

The presumption under Section 118(a) of the Negotiable Instruments Act, 1881 is rebuttable, and the standard of proof of doing so is that of the preponderance of probabilities. The accused, either adducing evidence or by cross-examining PW is entitled to rebut the said presumption. The accused is not bound to prove his innocence by adducing evidence. A negative fact cannot be proved by adducing positive evidence. The issue as to whether the presumption stood rebutted or not must be determined based on the evidence adduced by the parties. In a case under Section 138, the false implication of the accused cannot be ruled out. Therefore, the Court shall not turn a blind eye to the ground realities. The background of the case and the conduct of the parties are required to be taken into

consideration. No explanation has been given by the complainant as to why no instrument was executed between the parties, although a large amount was claimed to have been paid to the complainant.

No documentary evidence has been adduced regarding the payment of Tk. 4500,000 to the accused Md. Abdullah Al Mamun Sozol and selling a flat to the complainant. It is admitted by the complainant that the accused is not his friend. It is found that both the accused and the complainant reside at Jatrabari. No evidence was adduced by the complainant that the accused is a developer or a businessman or that he is the owner of a house or a flat. No address of the flat alleged to have been sold by the accused to the complainant is proved in the case. The prosecution failed to prove that the accused is the owner of a flat. Therefore, selling a flat by the accused to P.W.1 does not arise at all. The prosecution's case that the accused received Tk. 45,00,000 to sell a flat to the complainant is found untrue. I am of the view that there was no consideration of the cheque signed by the accused, allegedly issued in favour of the complainant P.W.1.

In the complaint petition, it has been stated that the accused issued the cheques (exhibit-2 series) on 09.08.2017 which were presented on the same date but those were dishonoured with the remark, "insufficient funds" and he sent the legal notice to the accused on 20.08.2017 through registered post with AD to pay the cheques amount within 30 days from

the date of receipt of the notice. On perusal of the AD (exhibit-6), it reveals that the accused Md. Abdullah Al Mamun Sozol received the notice on 23.08.2017, and the complainant filed the complaint petition on 21.09.2017 before the expiry of 30 days from the date of receipt of the notice by the accused. Under clause c of the proviso to section 138 of the Negotiable Instruments Act, 1881, the accused is entitled 30 days for payment of the cheques amount from the date of receipt of the notice but the complainant filed the complaint petition on 21.09.2017 before two days of arising cause of action for filing the case provided in clause c of the proviso to section 138 of the Negotiable Instruments Act, 1881.

In the case of Md. Idris vs the state and another, reported in 3 LM (AD) (2017)(2) 560, judgment dated 03.07.2004, in which our Apex Court held that;

“an offence under section 138 of the Negotiable Instruments Act, 1881 is not compoundable, it being a special law.”

Since the offence under section 138 of the Negotiable Instruments Act, 1881 is not compoundable, there is no scope to pay the cheque amount by the accused to the complainant during the pendency of the case. Therefore, the provision made in clause c of the proviso to section 138 of the Negotiable Instruments Act, 1881 shall be construed as mandatory. In view of the judgment and order passed by our Apex court in the case of Md. Idris (supra), there is no scope to rely on the decision

made in the case of Shahidul Islam vs the State and another, reported in 63 DLR 536. A cheque issued without mentioning the name of the payee or date does not come within the purview of Section 138 of the said Act.

In the case of Ershadul Haque vs the State, judgment and order dated 06.02.2023, reported in 75 DLR 447, considering all aspects of the matter and the provision made in section 118(a) of the Negotiable Instruments Act, 1881 it has been held that;

“In view of the provision of section 138(1)(a) of the said Act, a cheque is required to be presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. Be that as it may, there is no scope to issue an undated cheque. If the payee or holder in due course is allowed to present the undated cheque, the purpose of section 138(1)(a) will be frustrated. The presentation of the cheque within 6(six) months to the bank is not without purpose. It is not practically possible for the drawer of the cheque to keep the money in the account for a indefinite period. Therefore, a cheque issued without mentioning the name of the payee or date does not come within the purview of section 138 of the said Act. Although there is no bar in issuing an antedated or post-dated cheque in view of the provision of section 21C

of the said Act. Nothing has been stated in the said Act as regards the issuance of an undated cheque.”

In the case of Ershadul Haque (supra), it has been further held that;

“Negotiable Instruments Act, 1881 is a special law. An offence under section 138 is not compoundable, and before filing a case, the drawer and the drawee of the cheque are at liberty to make a compromise between them. Since an offence under section 138 of the Negotiable Instruments Act, 1881 is not compoundable, after filing the complaint petition, there is no scope to settle the dispute out of Court. An offence under section 138 of the Negotiable Instruments Act, 1881 is a pure and simple criminal offence. Therefore, the age-old principle that the accused is presumed to be innocent until proven guilty beyond all reasonable doubt is required to be proved by the complainant based on clear, cogent, credible, or unimpeachable evidence. The presumption of innocence is a fundamental right of the accused. An accused has a constitutional right to remain silent. The presumption of innocence itself is evidence in favour of an accused.”

The evidence adduced by the parties depicts that there was no consideration of the cheques (exhibits 2 series) signed by the accused without mentioning the amount and the name of the drawee on the cheques. By cross-examining P.W. 1 and

adducing D.W. 1, the defence rebutted the presumption under section 118(a) of the Negotiable Instruments Act, 1881 that the cheques were issued for consideration. The accused is not bound to honour the cheque, which has no consideration. I am of the view that no offence was committed by the accused, and the prosecution failed to prove the charge against the accused beyond all reasonable doubt.

It is found that no issue has been framed by the trial court regarding the consideration of the cheque allegedly issued by the accused, and both the courts below failed to hold the correct view that there was no consideration of the cheque (exhibit-2 series) allegedly issued in favour of the complainant.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgment and order of conviction and sentence passed by the courts below against the accused Md. Abdullah Al Mamun Sozol are hereby set aside.

The accused Md. Abdullah Al Mamun Sozol is entitled to get back 50% of the cheques amount deposited by him in the trial court before filing appeal.

The trial court is directed to allow the accused Md. Abdullah Al Mamun Sozol to withdraw 50% of the cheques amount within 30 days from the date of filing application, if any.

However, there will be no order as to costs.

Send down the lower Court's records at once.