

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

Present:

Mr. Justice Md. Shohrwardi

Criminal Appeal No. 8415 of 2022

Zihad Miah

.....Appellant

-Vs-

The State and another

....respondents

No one appears

....For the appellant.

Mr. Mohammad Asad Uddin, Advocate

.....For the respondent No.2

Mr. Md. Anichur Rahman Khan, DAG with

Mr. Sultan Mahmood Banna, AAG with

Mr. Mir Moniruzzaman, AAG

..... For the State

Heard on 14.08.2025

Judgment delivered on: 28.08.2025

This appeal under section 410 of the Code of Criminal Procedure, 1898 is directed against the impugned judgment and order dated 06.12.2020 passed by Sessions Judge, Sirajganj in Sessions Case No. 612 of 2020 arising out of C.R Case No. 310 of 2019(Siraj) convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 1(one) year and fine of Tk. 12,56,000(twelve lac fifty six thousand).

The prosecution's case, in short, is that the accused Zihad Miah is the Proprietor of Malik Vorasha Fisheries and the complainant is the Proprietor of Misham Feeds Ltd. The accused purchased goods on credit

from Misham Feeds Ltd. He issued cheque No. CAP 3178606 on 10.03.2019 drawn on his Account No. 0801203403131001 maintained with BRAC Bank Ltd in favour of Misham Feeds Ltd for payment of Tk. 12,56,000. The complainant presented the said cheque on 13.03.2019 for encashment, but it was dishonoured with a remark, “insufficient funds”. After that, the complainant made a demand, sending a legal notice on 27.03.2019 under section 138(b) of the Negotiable Instruments Act, 1881 to the accused through registered post with AD for payment of the cheque amount within 30 days. The accused received the notice on 19.04.2019, but he did not pay the cheque amount. Consequently, the complainant filed the complaint petition on 20.05.2019.

During the trial, the Sessions Judge, Sirajganj framed charge against the accused under section 138 of the Negotiable Instruments Act, 1881, and at the time of framing charge, the accused was absconding. The prosecution examined 1 witness to prove the charge against the accused. At the time of examination of the prosecution witness, the accused was absconding, and after concluding the trial, the trial court by impugned judgment and order, convicted the accused and sentenced him as stated above, against which the accused filed the instant appeal.

P.W. 1 Md. Nazrul Islam is the Store Officer of Misham Feeds Ltd. He stated that the accused Zihad Miah issued a cheque on 10.03.2019 in favour of Misham Feeds Ltd for payment of Tk. 12,56,000, which was dishonoured on 14.03.2019 with the remark “insufficient funds”. On 27.03.2019, the complainant sent a legal notice to the accused, and he received the notice on 19.04.2019, but the accused did not pay the cheque amount within the time. He proved the complaint petition as exhibit-1-1/1, and the signatures on the complaint petition as exhibit-1/2, the disputed cheque as exhibit-2, dishonoured slips as exhibit-3, and legal notice and AD as exhibits-4 to 6 series respectively.

None appears on behalf of the appellant.

The learned Advocate Mr. Mohammad Asad Uddin, appearing on behalf of the respondent No. 2, submits that the accused issued the cheque for payment of Tk. 12,56,000 and the cheque was presented for encashment complying with the provision made in clause a of the proviso to section 138 of the Negotiable Instruments Act, 1881, but it was dishonoured with a remark “insufficient funds”. The complainant sent legal notice on 27.03.2019 to the accused through registered post which AD in compliance with the provision made in clause b of the proviso to section 138 and sub-section 1(A) of section 138 of the said Act, and the accused duly received the notice on 19.04.2019, but he did not pay the cheque amount within time. Consequently, the complainant filed the case on 20.05.2019, complying with the provisions made in section 138 and 141(b) of the said Act. The prosecution proved the charge against the accused beyond all reasonable doubt, and the trial court legally passed the impugned judgment and order. He prayed for the dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Mohammad Asad Uddin, who appeared on behalf of the respondent No. 2, perused the evidence, impugned judgment and order passed by the trial court, and the records.

On perusal of the evidence, it appears that the accused Zihad Miah, Proprietor of Malik Vorosha Fisheries, issued cheque No. CAP 3178606 on 10.03.2019 drawn on his Account No. 0801203403131001 maintained with BRAC Bank Ltd in favour of Misham Feeds Ltd for payment of Tk. 12,56,000. P.W. 1 proved the cheque as Exhibit 2. The complainant presented the said cheque on 13.03.2019 for encashment, but it was dishonoured on 14.03.2019 with a remark, “insufficient funds,” and the bank issued the dishonoured slip. P.W. 1 proved the

dishonoured slip as exhibit-3. After that, the complainant sent a legal notice on 27.03.2019 under section 138(b) and 138(1A) of the Negotiable Instruments Act, 1881 to the accused through registered post with AD for payment of the cheque amount within 30 days. The accused received the notice on 19.04.2019. P.W. 1 proved the postal receipt as exhibit-4 and the AD as exhibit-5/ 5 and the legal notice as exhibit-6. P.W. 1 stated that the accused did not pay the cheque amount. Consequently, he filed the case on 20.05.2018. During the trial, the accused absconded, and the defence did not cross-examine P.W. 1. Therefore, the evidence of P.W. 1 remained uncontroverted by the defence.

The evidence discussed hereinabove depicts that the accused Zihad Miah issued the cheque on 10.03.2019 (exhibit-2) in favour of the complainant Misham Feeds Ltd. for payment of Tk. 12,56,000 and the complainant presented the said cheque complying with the provision made in clause a of the proviso to section 138 of the Negotiable Instruments Act, 1881 on 13.03.2019 but it was dishonoured on 14.03.2019 and he made demand on 27.03.2019 following the provision made in clause b of the proviso to section 138 and 138(1A) of the said Act and the accused received the notice on 19.04.2019 but he did not pay the cheque amount. I am of the view that the complainant filed the case complying with the provisions made in clauses a to c of the proviso to sections 138 and sub-section 1(A) of sections 138 and section 141(b) of the Negotiable Instruments Act, 1881. During the trial, the prosecution proved the charge against the accused beyond all reasonable doubt, and the trial court legally passed the impugned judgment and order of conviction.

Considering the gravity of the offence, I am of the view that the ends of justice would be best served if the sentence passed by the trial court is modified as under;

The accused Zihad Miah is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881, and he is sentenced to suffer imprisonment for 4 (four) months and fine of Tk. 12,56,000.

In the result, the appeal is disposed of with modification of the sentence.

The trial court is directed to allow the complainant to withdraw 50% of the cheque amount deposited by the accused before filing the appeal within 7 (seven) days from the date of filing the application, if any.

The accused Zihad Miah is directed to surrender forthwith and pay the remaining 50 % of the fine amount within 30 days from the date.

Send down the lower Court's record at once.