

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

**Present:**

**Mr. Justice Md. Bashir Ullah**

**Criminal Appeal No. 9165 of 2022**

**In the matter of:**

An Appeal under Section 410 of the Code  
of Criminal Procedure

**-And-**

**In the matter of:**

S.M. Shadat Hossen

... Appellant

**-Versus-**

The State and another

... Respondents

Mr. Md. Ahsan Habib, Advocate

... For the Appellant

Mr. Snigdha Meharab, Adv.

... For the respondent No. 2

Mr. Md. Shafiquil Islam, D.A.G with

Ms. Farhana Abedin, A.A.G with

Mr. Hemaith Uddin, A.A.G and

Mr. K. M. Saiful Islam, A.A.G

... For the State

**Heard on: 29.04.2026, 30.04.2026**

**and 10.05.2026**

**Judgment on: 13.05.2026**

This appeal, preferred under Section 410 of the Code of  
Criminal Procedure, 1898 is directed against the judgment  
and order of conviction and sentence dated 02.06.2022 passed

by the learned Joint Sessions Judge, 3<sup>rd</sup> Court, Dhaka in Sessions Case No. 358 of 2021 convicting the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 7(seven) months and to pay a fine of Taka 7,88,208/-.

The prosecution case, in short, is that the accused was employed with Delco Agro Industries as a marketing officer. During the course of his employment he sold the goods to various customers and collected the sale proceeds but failed to deposit with his employer. Consequently, the outstanding liability of Taka 7,88,208/- accrued against him. In order to discharge the said liability the accused issued cheque No. MSP 0316736 dated 27.01.2020, drawn on Islami Bank Bangladesh Limited, Mohadebpur Branch, Naogaon. The complainant-respondent presented the cheque to the concerned bank on 19.07.2020 but the same was dishonoured with the endorsement “insufficient funds”. Thereafter, the complainant served a legal notice upon the accused on 30.07.2020, which was received by the accused on 11.08.2020, however, the accused failed to make payment within the statutory period. Consequently, the complainant

instituted C.R. Case No. 280 of 2020(Nababgonj) before the learned Chief Judicial Magistrate, Dhaka on 20.09.2020. The learned Judicial Magistrate took cognizance and transmitted the case to the Court of Sessions Judge, Dhaka. Subsequently, the learned Sessions Judge, Dhaka transferred the case to the learned Joint Sessions Judge, 3<sup>rd</sup> Court, Dhaka and was registered as Sessions Case No. 358 of 2021. The charge was framed under Section 138 of the Negotiable Instruments Act, 1881 on 18.10.2021. The accused pleaded not guilty and claimed to be tried when the charge was read out and explained to him. In course of trial, the prosecution examined 01(one) witness while the defence also examined 01(one) witness. The accused was examined under Section 342 of the Code of Criminal Procedure and he repeated innocence.

Upon conclusion of the trial and hearing of the parties, the learned Joint Sessions Judge, 3<sup>rd</sup> Court, Dhaka convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 07 (seven) months and to pay a fine of Taka 7,88,208/- by judgment and order dated 02.06.2022.

Being aggrieved by and dissatisfied with judgment and order dated 02.06.2022, the appellant preferred the instant Criminal Appeal after depositing Taka 3,94,104/- being 50% of the cheque amount.

Mr. Md. Ahsan Habib, the learned Advocate appearing on behalf of the appellant, by filing a supplementary affidavit submits that the accused joined the service by submitting a non-MICR cheque to Delco Agro Industries. The complainant issued a letter dated 27.11.2018 to the accused showing the outstanding amount as Taka 8,46,338/-, whereas the case was instituted for Taka 7,88,208/-, which proves that the complainant had malafide intention.

He further submits that the accused subsequently deposited Taka 48,500/- in to the bank account of the complainant and thereby he adjusted the entire liability.

He next contends that the case is not maintainable in law as the cheque in question was a non-MICR cheque.

In support of his contention he refers to the case of ***Suruz Miah Vs. Government of Bangladesh***, reported in 71 DLR(2019)517. He finally prays for setting aside the

impugned judgment and order passed by the trial Court and for allowing the appeal.

*Per contra*, Mr. Snigdha Meharab, the learned Advocate appearing for the respondent no. 2 submits that the cheque was admittedly signed and issued by the accused-appellant and the same was dishonoured. He further submits that the legal notice was duly served within the statutory period of time and consequently the case was instituted within time. The prosecution witness proved the case beyond reasonable doubt and as such the accused is liable to be punished.

Mr. Mehrab further submits that there is no illegality, infirmity or impropriety in the impugned judgment and order. He finally prays for dismissal of the appeal.

I have heard the learned Advocates for both sides and perused the materials on record.

It appears from Annexute-1 of the supplementary affidavit dated 10.05.2026 that the complainant issued a show cause notice to the accused on 20.09.2018. Thereafter, the complainant issued another letter on 27.11.2018 requesting the accused to adjust the outstanding dues of Taka 8,46,338/-.

Upon receipt of the letter the accused paid Taka 48,500/-. Subsequently, the cheque was issued for Taka 7,88,208/- after adjustment of payment. Therefore, the contention regarding discrepancy in the amount of liability has no substance.

It appears from the impugned judgment that the trial Court observed that “ডি, ডব্লিউ-১ হিসাবে আসামী এস, এম শাহাদাৎ হোসেন তাহার জবানবন্দী ও জেরায় নালিশী চেকটি বাদীকে দেন নাই বা নালিশী চেকের স্বাক্ষর তাহার নয় এই মর্মে কোন বক্তব্য প্রদান করেন নাই। আসামীপক্ষের দাখিলীয় প্রদর্শনী-ক প্রত্যয়নপত্র পর্যালোচনায় দেখা যায় যে, উক্ত প্রদর্শনী-ক তে সংশ্লিষ্ট প্রতিষ্ঠানের কোন কর্মকর্তা/কর্মচারীর স্বাক্ষর নাই। প্রদর্শনী-খ ছাড়পত্র দাখিল করিলেও উক্ত ছাড়পত্র সম্পর্কে আসামীপক্ষ পরস্পর বিরোধী বক্তব্য প্রদান করিয়াছেন। এখানে আরো উল্লেখ্য যে, আসামীপক্ষ প্রসিকিউশনপক্ষের সাক্ষীকে জেরা করিয়া কোন ডিফেন্স কেইস মেড-আউট করিয়া আসামী বাদীকে চেক দেয় নাই ও যথাযথ প্রক্রিয়ায় এই মামলাটি রাস্ট্রপক্ষ প্রমাণ করিতে পারেন নাই মর্মে প্রমাণ আসামী করিতে পারেন নাই।

এখানে আরো উল্লেখ্য যে, অত্র মামলায় যুক্তিতর্ক শুনানীর পরবর্তীতে মামলার আসামী আদালতে হাজির না হইয়া পলাতক হয়। অর্থাৎ অত্র মামলায় আসামীর কৃত অপরাধ জানিয়া বুদ্ধিয়া আদালতের বিচার পদ্ধতি এড়াইয়া যাইবার জন্যই ইচ্ছাকৃতভাবে নিরুদ্দেশ হইয়াছে। আসামীর এই ইচ্ছাকৃত পলায়ন তাহার দোষী মনোভাব ও অপরাধী আচরণের ইঙ্গিত বহন করে মর্মে আদালত মনে করে।” I find no illegality or perversity in the aforesaid findings of the trial Court.

It appears from the petition of complaint, the deposition of PW1 (complainant) and the documentary evidence that the

convict-appellant issued the cheque in favour of the complainant being No. MSP 0316736 dated 27.01.2020 for Taka 7,88,208/- drawn on Islami Bank Limited, Mahadebpur Branch, Naogaon. The complainant presented the cheque to the concerned bank on 19.07.2020 but it was dishonoured endorsing “insufficient funds”. The complainant duly served legal notice on 30.07.2020, which was received by the accused on 11.08.2020 but the appellant failed to make payment within the stipulated period. Consequently, the case was filed on 20.09.2020. P.W-1 has successfully proved the prosecution case.

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 does not suffer from any illegality, impropriety or infirmity.

However, with regard to the sentence, reliance may be placed upon the decision passed in *Aman Ullah Vs. State*, reported in 73 DLR (2021) 541, wherein this Court set aside the sentence of imprisonment holding that the sentence of imprisonment would be a harsh sentence having no penal objective to be achieved. I have no disagreement with the *ratio* passed in the above-mentioned case.

Considering the facts and circumstances of the case, this Court is of the view that the ends of justice would be best served if the sentence of imprisonment is modified by setting aside the term of imprisonment.

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 07(seven) months simple imprisonment is set aside. The sentence of fine of Tk. 7,88,208/- is upheld. It appears that the convict-appellant has already deposited 50% of the cheque amount

before the trial Court prior to filing the appeal. The Court concerned is directed to disburse the said deposited money to the complainant-respondent no. 2 forthwith. The convict-appellant is directed to pay the remaining portion of the value of the dishonoured cheque to the complainant-respondent No. 2 through the trial Court within 06 (six) months from the date of receipt of this order, in default he will suffer simple imprisonment for 01(one) month. If the convict-appellant does not pay the remaining portion of the fine as ordered or opts to serve out the period of imprisonment in lieu of payment of fine, he is not exempted from paying the same. In that event, the Court concerned shall realise the fine under the provisions of Section 386 of the Code of Criminal Procedure.

In the result, the appeal is dismissed with modification of sentence and with directions made above. The convict-appellant is released from his bail bond.

Send down the lower Court's records (LCR) at once. Communicate the judgment and order to the Court concerned forthwith.

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