

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 11015 of 2022

Babul Hossein

...Appellant

-Versus-

The State and another

...Respondents

No one appears.

...For the appellant

Mr. M. Mizanur Rahman, Advocate

...For the complainant-respondent No. 2

Heard on 12.01.2026

**Judgment delivered on 19.01.2026**

This criminal appeal under section 410 of the Code of Criminal Procedure, 1898 is directed against the impugned judgment and order of conviction and sentence dated 20.01.2021 passed by Additional Sessions Judge, Court No. 2, Dhaka in Sessions Case No. 660 of 2020 arising out of C.R. Case No. 52 of 2019 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 6(six) months and fine of Tk. 10,00,000(ten lakh).

The prosecution's case, in short, is that the accused Babul Hossein obtained loan and availed the credit facility from the complainant One Bank Limited. The accused did not pay the loan along with interest following the terms and condition of the sanction letter. He issued Cheque No. 1001105 on 16.10.2019, drawn on his Account No. 0321020003432 maintained with One Bank Limited for payment of Tk. 10,00,000(ten lakh). The complainant bank presented the cheque, which was dishonoured on 16.10.2019 with the remark "insufficient funds". On 23.10.2019, the complainant bank sent a legal notice to the accused, but he did not pay the cheque amount. Consequently, the complainant filed the case on 03.12.2019.

During trial, charge was framed against the accused Babul Hossein under section 138 of the Negotiable Instruments Act, 1881,

which was read over and explained to him, and he pleaded not guilty to the charge and claimed to be tried following the law. During trial, the prosecution examined 1(one) P.W. to prove the charge against the accused. After examination of the prosecution witness, the accused absconded, for which he was not examined under section 342 of the Code of Criminal Procedure, 1898. After concluding the trial, the trial Court by impugned judgment and order convicted the accused under section 138 of the Negotiable Instruments Act, 1881, and sentenced him thereunder to suffer imprisonment for 6(six) months and fine of Tk. 10,00,000(ten lakh) against which he filed the instant appeal.

P.W. 1 Md. Nazmul Ahad is the Principal Officer of One Bank Ltd, Nababganj Branch. He stated that the accused Md. Babul Hossein took loan from the One Bank Limited. He issued Cheque No. 1001105 on 16.10.2019 for payment of Tk. 10,00,000(ten lakh). The complainant bank presented the cheque on 16.10.2019, but it was dishonoured with the remark “insufficient funds”. Subsequently, a legal notice was sent on 23.10.2019. After receipt of the notice, the accused did not pay the cheque amount. P.W. 1 proved the complaint petition as exhibit 1 and his signatures on the complaint petition as exhibit 1 series. He proved the power of attorney as exhibit 2, cheque as exhibit 3, dishonour slip as exhibit 4, legal notice, and the postal receipt as exhibit 5 series. During cross-examination, he stated that he submitted the authorization letter. He could not remember on which date the accused took the loan. He is not aware of the correct address of the accused. After filing the case, no payment is made. He denied the suggestion that the accused did not issue any cheque. He affirmed that the accused issued the cheque on 16.10.2019. He denied the suggestion that the accused did not fill up the cheque.

No one appears on behalf of the appellant.

Learned Advocate Mr. M. Mizanur Rahman, appearing on behalf of the complainant-respondent No. 2, submits that the accused

Babul Hossein issued a cheque on 16.10.2019 in favour of the complainant One Bank Limited, and it was presented on the same date, but it was dishonoured with the remark “insufficient funds”. The complainant sent notice on 23.10.2019 to the accused, but he did not pay the cheque amount. Consequently, the complainant, complying with the procedure laid down in section 138 of the Negotiable Instruments Act, 1881 filed the case. During the trial, the prosecution proved the charge against the accused beyond all reasonable doubt, and the trial Court, on correct assessment and evaluation of the evidence, passed the impugned judgment and order. He prayed for dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. M. Mizanur Rahman, who appeared on behalf of the complainant-respondent No. 2 One Bank Limited, perused evidence adduced by the prosecution, the impugned judgment and order passed by the trial Court and the records.

On perusal of the evidence, reveals that the accused Babul Hossein issued Cheque No. 1001105 on 16.10.2019 drawn on his Account No. 0321020003432 maintained with One Bank Limited in the name of Babul Motsho Khamar. The accused Babul Hossein is the Proprietor of বাবুল মত্স খামার. P.W. 1 proved the cheque as exhibit 3. The complainant bank presented the said cheque on 16.10.2019, but it was dishonoured with the remark “insufficient funds”. P.W. 1 proved the dishonour slip dated 16.10.2019 as Exhibit 4. The complainant bank sent a legal notice on 23.10.2019 through registered post. P.W. 1 proved the legal notice as exhibit 5 and the postal receipt as exhibit 5/ka.

The mere presentation of a cheque within the specified time mentioned in clause (a) of the proviso to section 138 of the Negotiable Instruments Act, 1881 and sending a notice, in writing, to the drawer of the cheque making a demand for the payment of the cheque amount by the payee within thirty days from the date of

receipt of information by him from the bank regarding the return of the cheque as unpaid does not constitute an offense under section 138 of the Negotiable Instruments Act, 1881 unless the said notice is served upon the drawer of the cheque and he/she failed to pay the cheque amount within thirty days from the date of receipt of said notice and the complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138 of the said Act.

At the time of enactment of the Negotiable Instruments Act, 1881, no provision was made as to the mode of service of notice upon the drawer of the cheque. The legislature inserted sub-section (1A) in section 138(1) of the said Act by Act No. III of 2006, making provision regarding the mode of the service of notice under clause b of the proviso to section 138 of the said Act. Under section 138(1)(1A) of the said Act, the notice under section 138(b) of the said Act is required to be served upon the drawer of the cheque, a. by delivering it to the person on whom it is to be served; or b. by sending it by registered post with acknowledgment due to that person at his usual or last known place of abode or business in Bangladesh; or c. by publication in a daily Bangla national newspaper having wide circulation. After receipt of the notice by the accused or service of notice upon the accused, the accused is entitled to thirty days to pay the cheque amount.

The Negotiable Instruments Act, 1881 is a special law, and compliance with the procedure provided in section 138(1)(1A) of the said Act is sine qua non. The prosecution shall prove that before filing the case under section 138 of the Negotiable Instruments Act, 1881, the demand under clause (b) of the proviso to section 138 of the Negotiable Instruments Act, 1881 has been served upon the accused. In the instant case, no statement is made in the complaint petition or by P.W. 1 as to the date of service of notice upon the accused. Nothing has been stated by P.W. 1 that the notice or the demand has

been sent by the complainant bank in the manner as stated in section 138(1A) of the Negotiable Instruments Act, 1881. In the absence of any statement by P.W. 1 as to the date of service of notice upon the accused, or receipt of notice by the accused and proof of service of notice upon the accused, it cannot be said that the prosecution proved the cause of action as stated in clause (c) of the proviso to section 138 of the Negotiable Instruments Act, 1881. From the evidence adduced by the complainant, the cause of action for filing the case under section 138(c) of the said Act could not be ascertained. The trial court, without arriving at any finding as to the date of service of notice and cause of action, passed the impugned judgment and order.

In view of the above evidence, findings, observation, and the proposition, I am of the view that the trial Court failed to construe the mandatory provision made in clause (c) of the proviso to section 138, 138(1A) and 141(b) of the Negotiable Instruments Act, 1881 and arrived at a wrong decision as to the guilt of the accused. The prosecution failed to prove the cause of action for filing the case under section 138(c) of the Negotiable Instruments Act, 1881, and resultantly failed to prove the charge against the accused beyond all reasonable doubt.

I find merit in the appeal.

In the result, the appeal is allowed.

The impugned judgment and order of conviction and sentence passed by the trial Court against the accused Babul Hossein is hereby set aside.

The convict-petitioner is entitled to get the 50% of the cheque amount deposited him before filing appeal. The trial Court is directed to do the needful.

Send down the lower Court's records at once.