

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

**Present:**

**Mr. Justice Md. Bashir Ullah**

**Criminal Appeal No. 2695 of 2023**

**In the matter of:**

An Appeal under section 410 of the Code of  
Criminal Procedure

**-And-**

**In the matter of:**

Mosammat Sharmin Akhter

... Convict-Appellant

**-Versus-**

The State and another

...Complainant-Respondents

Mr. Md. Wazed Ali, Advocate

... For the Convict-Appellant

Mr. Syed Ridwan Husain, Advocate

... For the Complainant-Respondent No. 2

Mr. S.M. Aminul Islam Sanu, D.A.G with

Mr. Md. Nasimul Hasan, A.A.G with

Mr. Md. Golamun Nabi, A.A.G and

Ms. Farhana Abedin, A.A.G

... For the State

**Heard on: 08.02.2026**

**Judgment on: 22.02.2026**

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 07.02.2016 passed by the learned Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Chattogram in Sessions Case No. 3299 of 2014 arising out of C.R Case No. 137 of 2014 (Doublemooring) convicting the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer imprisonment for a period of 6 (six) months and to pay a fine of Taka. 3,00,953/- (three lac nine hundred fifty three).

The prosecution case, in short, is that Agrani Bank Limited as complainant filed C.R. Case No. 137 of 2014 (Doublemooring) before the learned Metropolitan Magistrate, Cognizance Court No. 4, Chattogram against the accused, Mosammat Sharmin Akhter alleging *inter alia* that the accused obtained a credit facilities of Taka 2,00,000/- from the complainant, Agrani Bank Limited, Pahartali Branch, Chattogram under sanction letter No. পাহাড়তলী/ভোগ্যপন্য ঋণ/৫৪/২০১১ dated 15.03.2011. But she failed to adjust the liabilities within stipulated time which subsequently stood Taka 3,00,953/- with interest. In order to adjust the loan the accused issued cheque No. OIW-7749884 dated 25.02.2014 for Taka 3,00,953/- which was placed for encashment on

25.02.2014 but the same was dishonoured due to “insufficiency of fund”. The complainant sent statutory legal notice to the accused on 18.03.2014. Despite receipt of the notice, the accused failed to make payment, compelling the complainant to institute the case on 12.05.2014.

Subsequently, the case was transferred to the Court of Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Chattogram and registered as Sessions Case No. 3299 of 2014. The Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Chattogram upon taking cognizance of the offence framed charge on 04.05.2015. Upon conclusion of trial the learned Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Chattogram found the accused guilty under Section 138 of the Negotiable Instruments Act, 1881 and sentenced her imprisonment for 6 months with a fine of Taka 3,00,953/- by judgment and order dated 07.02.2016.

Being aggrieved by and dissatisfied with the judgment and order dated 07.02.2016 passed by the learned Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Chattogram the petitioner preferred this instant Criminal Appeal before this

Court whereupon the Court enlarged the appellant on bail till disposal of the appeal.

Mr. Md. Wazed Ali, the learned Advocate appearing on behalf of the appellant submits that the appellant paid Taka 1,50,477/- prior to filing the appeal on 22.02.2023. Subsequently, she paid Taka 1,52,553/-. Thus, she adjusted whole liabilities. He prays for allowing the appeal quashing the impugned judgment and order of conviction and sentence.

*Per contra*, Mr. Syed Ridwan Husain, the learned Advocate appearing for the respondent no. 2 submits that the complainant bank has instructed him not to oppose the appeal since she adjusted the whole liabilities with the bank. However, he prays for a direction so that the bank can withdraw the deposited amount from the trial Court.

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

On perusal of the petition of complaint, the deposition of PW1 (complainant) and the documentary evidence, it transpires that the convict-appellant issued the cheque in question in favour of the complainant-respondent no. 2 on

25.02.2014 for Taka 3,00,953/- to repay the liabilities. The cheque was dishonoured by the bank concerned on 25.02.2014 for insufficiency of funds. Statutory legal notice was duly served upon the convict-appellant on 18.03.2014. The value of the cheque was not paid to the complainant. Consequently, the case was filed on 12.05.2014. P.W.1 proved the prosecution case.

The record shows that the complainant has successfully proved compliance of the procedure 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 trial Court upon proper assessment of evidence rightly found the accused guilty of the charge. Hence, the impugned judgment and order of conviction does not suffer from any illegality or infirmity.

However, as regards to the sentence, reference may be made to the decision passed in *Aman Ullah Vs. State*, reported in 73 DLR (2021) 541, wherein this Court observed

that in cases instituted under section 138 of the Negotiable Instruments Act, the imposition of a sentence of imprisonment would be a harsh having no penal objective to be achieved.

Record shows that the accused deposited Taka 1,50,477/- prior to filing this appeal and during pendency of the appeal the appellant paid Taka 1,52,553/- to the bank. Thus she adjusted the whole amount of liabilities lying with the complainant-bank. Learned Advocate for the respondent no. 2 also admitted that the bank received full amount of liabilities and there is no due.

In view of the foregoing discussions, together with the decision and the *ratio* laid down in the above-mentioned reported case, the appeal is disposed of with the following order:

The conviction of the appellant under Section 138 of the Act, 1881 is upheld, however, the sentence of 04(four) months simple imprisonment is set aside. The sentence of fine of Tk. 3,00,953/- which is equivalent to the cheque amount is upheld. The convict-appellant has already deposited Tk. 1,50,477/- before the trial Court prior to filing the appeal. The

Court concerned is directed to disburse the said amount to the complainant-respondent No.2 forthwith and to allow the complainant to withdraw the money deposited by the convict.

In the result, the Appeal is disposed of with modification of sentence of imprisonment and with directions as made above. The convict-appellant is released from the bail bond.

Let the lower Court's records (LCR) along with the judgment and order be communicated to the Court concerned forthwith.

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