

Present:

Mr. Justice Raziuddin Ahmed

Criminal Revision No.215 of 2007

Mohammad Wali Ullah Shaheen

----- Convict-Appellant-Petitioner

-Vs-

Majedul Islam and another

---- Opposite Parties

Mr. Md. Zahidul Haque, Advocate with

Mr. Jannatul Ferdous, Advocate

----For the Petitioner

Mr. Md. Taherul Islam (Tawhid), D.A.G with

Mr. Mohammad Moniruzzaman, A.A.G

---- For the State

Heard on 02.02.2026, 08.02.2026, 16.02.2026 and

Judgment on 01.03.2026

On an application filed under section 439 read with section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 21.11.2006 passed by the learned Metropolitan Additional Sessions Judge, 4th Court, Dhaka dismissing the Criminal Appeal No.556 of 2006 and upholding the judgment and order of conviction and sentence dated 11.06.2006 passed by the learned Assistant Metropolitan Sessions Judge, 5th Court, Dhaka arising out of Metropolitan Sessions Case No.383 of 2006 with a direction to pay Tk.1,70,000/- to the complainant from the amount of fine and to deposit the rest of the amount to the Government should not be set aside and/ or pass such other or further order or orders as to this court may deem fit and proper.

The prosecution case, in short, is that the accused-petitioner took a loan of Tk.1,00,000/- from the complainant on 29.08.2002 and a further sum of Tk.1,00,000/- on 13.11.2002. Thereafter, he repaid Tk.88,000/- in cash and, towards payment of the remaining liability, issued a cheque dated 17.01.2004 for Tk.1,12,000/- in favour of the complainant. The complainant presented the cheque to the bank concerned for encashment, but the same was dishonoured on the ground of insufficient funds. Thereafter, on 13.03.2004, the cheque was again presented for encashment, but it was once again dishonoured for the same reason. The complainant then served a legal notice dated 10.04.2004 upon the accused-petitioner demanding payment of the cheque amount. The said notice was received by the accused-petitioner on 11.04.2004, but he failed to make payment within the statutory period. Hence, the complainant filed the case under section 138 of the Negotiable Instruments Act, 1881.

On 04.10.2004, charge was framed against the accused-petitioner under section 138 of the Negotiable Instruments Act, 1881. The charge having been read over and explained to him, he pleaded not guilty and claimed to be tried. At the trial, the complainant examined 2(two) witnesses in support of the case, while the defence examined 1(one) witness.

Upon consideration of the evidence and materials on record, the learned Assistant Metropolitan Sessions Judge, 5th Court, Dhaka, by judgment and order dated 11.06.2006, found the accused-petitioner guilty under section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 6(six) months and to pay a fine of

Tk.2,24,000/- with a direction to pay Tk.1,62,000/- to the complainant from the amount of fine and to deposit the remaining amount to the Government.

Being aggrieved thereby, the accused-petitioner preferred Metropolitan Criminal Appeal No. 556 of 2006 before the learned Metropolitan Sessions Judge, Dhaka, which was eventually heard by the learned Metropolitan Additional Sessions Judge, 4th Court, Dhaka, and by judgment and order dated 21.11.2006 the appeal was dismissed affirming the judgment and order passed by the trial Court.

Being aggrieved by and dissatisfied with the judgment and order dated 21.11.2006, the accused-petitioner moved this Court in revision and obtained the present Rule along with an order of bail on 18.02.2007.

Mr. Md. Zahidul Haque, the learned Advocate appearing for the petitioner, submits that the Courts below failed to properly appreciate the evidence on record and the facts and circumstances of the case. He further submits that the accused-petitioner had already paid a substantial part of the loan amount as well as part of the cheque amount, but such aspect was not properly taken into consideration by the Courts below in passing the sentence. He next submits that, in the facts and circumstances of the case, the sentence of imprisonment is too harsh and the amount of fine is liable to be modified. He, therefore, prays for making the Rule absolute at least to the extent of modification of sentence.

None appears on behalf of the opposite party No. 1 at the time of hearing of the Rule.

Mr. Md. Taherul Islam, the learned Deputy Attorney General, appearing with Mr. Mohammad Moniruzzaman, the learned Assistant Attorney General, on behalf of the State, submits that there is no illegality, impropriety or infirmity in the impugned judgment and order. He contends that the complainant duly proved the case under section 138 of the Negotiable Instruments Act, 1881 and, as such, the conviction and sentence passed by the Courts below do not call for any interference by this Court.

I have heard the learned Advocates for the petitioner and the State, perused the revisional application, the impugned judgment and the materials on record.

It appears from the petition of complaint and the evidence on record that the accused-petitioner admittedly took a loan of Tk.2,00,000/- from the complainant. It further appears that out of the said amount he repaid Tk.88,000/- in cash and, for payment of the outstanding amount, issued the cheque for Tk.1,12,000/-. It is also evident from the record that the cheque was dishonoured upon presentation due to insufficiency of funds and that the complainant thereafter served the statutory notice upon the accused-petitioner within time. The case was also filed within the prescribed period as required under section 138 of the Negotiable Instruments Act, 1881.

From the evidence on record, it is manifest that the complainant proved the existence of consideration and also proved that he was the holder of the cheque in due course. The accused-petitioner having failed to make payment within the statutory period after receipt of the legal notice, the

ingredients of the offence under section 138 of the Negotiable Instruments Act, 1881 stand clearly established.

In that view of the matter, I find no illegality or misreading of evidence in the concurrent findings of the Courts below so far as the conviction of the accused-petitioner under section 138 of the Negotiable Instruments Act, 1881 is concerned. The conviction, therefore, calls for no interference.

The next question is with regard to the sentence.

It appears from the record that out of the total loan amount of Tk.2,00,000/-, the accused-petitioner had already paid Tk.88,000/- in cash. It further appears that at the time of filing the appeal, he deposited Tk.50,000/- on 11.06.2006 and a further sum of Tk.6,000/- on 17.07.2006 before the Court below. Thus, it is evident that the accused-petitioner has already paid a substantial portion of the amount covered by the dishonoured cheque.

It further appears from the deposition of D.W.1, the accused-petitioner himself, that he expressed willingness to pay the remaining amount in instalments. Having regard to the facts and circumstances of the case, it appears that the accused-petitioner cannot be said to have had a persistent intention to misappropriate the money of the complainant.

In a case under section 138 of the Negotiable Instruments Act, 1881, the principal object of the law is to ensure payment of the cheque amount and to protect the credibility of commercial transactions. In the facts of the present case, I am of the view that the sentence of 6(six) months' simple

imprisonment is somewhat harsh and that the ends of justice would be sufficiently met if the sentence is modified by maintaining the conviction, setting aside the substantive sentence of imprisonment, and reducing the fine to the amount of the dishonoured cheque.

Accordingly, the conviction of the accused-petitioner under section 138 of the Negotiable Instruments Act, 1881 is maintained.

However, the sentence is modified in the following manner:

The sentence of 6(six) months' simple imprisonment is set aside.

The fine of Tk.2,24,000/- is reduced to Tk.1,12,000/-, that is, the value of the dishonoured cheque. The convict-petitioner having already deposited part of the cheque amount before the trial Court at the time of filing the appeal, the Court concerned is directed to disburse the said deposited amount to the complainant-opposite party No. 1.

The convict-petitioner is further directed to pay the remaining balance of the cheque amount to the complainant-opposite party No. 1 within 3(three) months from the date of receipt of a copy of this judgment. In default of payment of the remaining amount within the time as aforesaid, the convict-petitioner shall suffer simple imprisonment for 1(one) month.

It is, however, made clear that if the convict-petitioner fails to pay the remaining amount of fine as directed above or opts to suffer imprisonment in default thereof, he shall not thereby be exempted from payment of the said amount. In such event, the Court concerned shall realize the same in accordance with section 386 of the Code of Criminal Procedure, 1898.

In the result, the Rule is discharged with the modification of sentence and directions as made above. The petitioner is discharged from the bail bond.

Let the lower Court records be sent down at once.

I.Sarwar/B.O