

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)**

Present:

Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 3374 of 2023

In the matter of:

An Appeal under section 410 of the Code of
Criminal Procedure

-And-

In the matter of:

Md. Shafiqul Islam

... Convict-Appellant

-Versus-

The State and another

...Complainant-Respondent.

None appears

... For the Convict-Appellant

Mr. Md. Rokonzaman (Mamun), 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: 07.01.2026, 11.01.2026

Judgment on: 15.01.2026

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 30.05.2016 passed

by the learned Additional Sessions Judge, 1st Court, Satkhira in Sessions Case No. 236 of 2014 arising out of Complaint Register (C.R) Case No. 31 of 2014 convicting the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer imprisonment for a period of 9 (nine) months and pay a fine of Tk. 1,87,000/- (one lac eighty seven thousand).

The prosecution case, in short, is that the accused Md. Shafiqul Islam took a loan of Taka 1,87,000/- from the complainant and to adjust the loan he issued Cheque No. I.B.A 4214997 dated 20.05.2013 drawn on Islami Bank Bangladesh Limited, Kaliganj Branch, Satkhira in favour of the complainant, Md. Abdul Malek for payment of Tk. 1,87,000/- (one lac eighty seven thousand). The complainant presented the cheque on 18.10.2013, 25.11.2013 and 10.12.2013 for encashment, which was dishonoured with the endorsement 'insufficient funds'. On 17.12.2013, the complainant sent a legal notice through registered post with AD to the accused requesting him to pay the cheque amount. Although the accused received the said notice on 29.12.2013

but he did not pay the cheque amount. Consequently, on 11.02.2014, the complainant filed C.R Case No. 31 of 2014.

Subsequently, the case was transferred to the Court of 1st Additional District and Sessions Judge, Satkhira and was registered as Sessions Case No. 236 of 2014. On taking cognizance of offence alleged charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881. The accused pleaded not guilty and claimed to be tried when the charge was read out and explained to him. The prosecution examined 5(five) witnesses in order to prove the charge brought against the accused while the defence examined 03(three) witnesses. After the closure of prosecution evidence, the accused was examined under section 342 of the Code of Criminal Procedure. After concluding the trial, the Additional Sessions Judge, Satkhira, by judgment and order dated 30.05.2016 convicted the accused under section 138 of the Negotiable Instruments Act, 1881, and sentenced him thereunder to suffer imprisonment for 9 (nine) months and fine of Tk. 1,87,000/- (one lac eighty

seven thousand) against which the accused filed the instant appeal.

When the appeal was taken up for hearing no one appeared for the appellant though the matter had been appearing in the daily cause list on several days with the names of the learned counsels.

Mr. Md. Rokonzaman (Mamun), appearing on behalf of the complainant-respondent No. 2, submits that the accused issued the cheque on 10.12.2013 for payment of Tk. 1,87,000/- and the same was lastly dishonoured on 10.12.2013 for 'insufficient funds'. The complainant sent a legal notice through registered post with AD and despite the service of notice upon the accused, he did not pay the cheque amount. Consequently, he filed the case. 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 convicting the accused.

I have considered the submission of the learned Advocate for the respondent no. 2, perused the evidence,

impugned judgment and order passed by the trial Court and the materials on records.

P.W. 1, Abdul Malek is the complainant stated in his examination-in-chief that on 20.05.2013 the accused took a loan for Taka 1,87,000/- from him sitting in their house in presence of the witnesses. He also stated that on that day as security for that loan the accused issued him a cheque of Islami Bank Kaligonj branch bearing cheque no. 4214997. He further stated that he placed the cheque for encashment on 25.11.2013 and 10.12.2013, but the same was dishonored due to insufficient of fund of the account. He also stated that on 17.12.2013 he sent a legal notice to the accused and the accused received the notice on 29.12.2013. He further stated that as the accused did not refund the money, he filed this case. This witness proved the complaint petition (exhibit-1 series), his signatures thereon (exhibit 1/1), original cheque (exhibit-2 series), dishonor slips (exhibit-3 series), legal notice (exhibit-4 series), registered postal receipt (exhibit-5 series) and acknowledgement receipt (exhibit-6).

In cross examination he stated that at the time of giving the money to the accused, witness Yeasin, Nur Hossain, Younus and Mizanur were present there. He denied the suggestion that the accused took Taka 60,000/- from him and the accused had repaid the money.

PW-2, 3, 4 and 5 corroborated the evidence adduced by PW-1. DW-1 to 3 are relatives of the accused. They failed to mention the date of taking money from the complainant. The evidence are not believable. So, I find no reason to rely upon the evidence adduced by DW-1 to DW-3.

On perusal of the evidence it is found that the accused issued cheque No. I.B.A 4214997 on 18.10.2013 in favour of the complainant, Md. Abdul Malek for payment of Tk. 1,87,000/- which was dishonoured.

The record shows that the complainant has 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 rightly found the petitioner 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 it has been held:

“There can be no dispute in so far as the sentence of imprisonment is concerned that it should commensurate with the gravity of the crime. Court has to deal with the offenders by imposing proper sentence by taking into consideration the facts and circumstances of each case. It is not only the rights of the offenders which are required to be looked into at the time of the imposition of sentence, but also of the victims of the crime and society at large, also by considering the object sought to be achieved by the particular legislation. Considering the facts and circumstances of

the case and the object of the law, I am of the view that the sentence of imprisonment would be a harsh sentence having no penal objective to be achieved. Hence, the sentence of imprisonment is set aside.”

I find no reason to take a different view from the *raito* laid down in the decision passed by the High Court Division.

Considering the gravity of the offence and the facts and circumstances of the case, I am of the view that the ends of justice would be best served if the sentence passed by the trial Court is modified.

The complainant Md. Abdul Malek is entitled to receive the 50% of the cheque amount deposited by the accused in the trial Court prior to filing the appeal.

In view of the foregoing discussions, the order of the Court is as follows:

The conviction of the appellant under Section 138 of the Act, 1881 is upheld, but the sentence is modified. The sentence of 09 months simple imprisonment is set aside. The sentence of fine of Taka 1,87,000/=(one lac eighty seven

thousand) which is equivalent to the value of the cheque, is upheld. 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 amount 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 within 3(three) months from the date of receipt of this order, in default he will suffer simple imprisonment for 03(three) months. 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 realize the fine under the provisions of Section 386 of the Code of Criminal Procedure.

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

The convict-appellant is released from the bail bond.

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

Md. Ariful Islam Khan
Bench Officer