

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 62 of 2023

In the matter of:

An application under Section 439 read with
Section 435 of the Code of Criminal
Procedure

-And-

In the matter of:

Md. Jamal Uddin

... Convict-Petitioner

-Versus-

The State and another

...Complainant-Opposite Parties

Ms. Rana Kawser, Advocate

... For the Convict- Petitioner

Ms. Hosnera Shimul, Advocate

... For the Complainant- opposite party 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: 22.04.2026 and 10.05.2026

Judgment on:18.05.2026

This Rule was issued at the instance of the petitioner
calling upon the opposite parties to show cause as to why the

judgment and order dated 27.11.2022, passed by the learned Sessions Judge, Jhenaidah in Criminal Appeal No. 512 of 2022, dismissing the appeal and thereby affirming the judgment and order dated 10.05.2022 passed by the learned Joint Sessions Judge, 1st Court, Jhenaidah in Sessions Case No. 1665 of 2019 arising out of C.R Case No. 116 of 2019 (Harinakunda) convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881(NI Act) and sentencing him to suffer simple imprisonment for 01(one) year and also to pay a fine of Tk. 2,50,000/- (two lac fifty thousand) should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

The facts, relevant for disposal of the Rule, in brief, are that the accused-petitioner obtained a loan of Taka 2,50,000/- from the complainant. In discharge of the said liability the accused-petitioner issued a cheque being No. 2718192 dated 10.07.2019 for Taka 2,50,000/- drawn on Janata Bank Limited, Jhenaidah Branch in favour of the complainant. The complainant presented the said cheque to the concerned bank on 14.07.2019 but the same was dishonoured endorsing “insufficiency of funds” and “dissimilarity of signature”.

Thereafter, the complainant served a legal notice upon the accused on 16.07.2019 demanding payment of the cheque amount. The petitioner failed to make payment within the statutory period. Consequently, the complainant instituted C.R. Case No. 116 of 2019 before the learned Senior Judicial Magistrate, Cognizance Court, Harinakundu, Jhenaidah on 19.08.2019. The Magistrate Court took cognizance of the offence under Section 138 of the NI Act and subsequently transmitted the case to the learned Sessions Judge, Jenidaha. Subsequently, the case was transferred to the Court of learned Joint Sessions Judge, 1st Court, Jhenaidah and was registered as Sessions Case No. 1665 of 2019. The charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881 on 05.09.2021. 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 and produced documentary evidence. The accused was examined under Section 342 of the Code of Criminal Procedure and he repeated innocence.

Upon conclusion of trial and hearing of the parties, the learned Joint Sessions Judge, 1st Court, Jhenaidah convicted

the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 01(one) year and to pay a fine of Taka 2,50,000/- by judgment and order dated 10.05.2022.

Challenging the conviction and sentence, the petitioner filed Criminal Appeal No. 512 of 2022 before the learned Sessions Judge, Jhenaidah, who upon hearing, dismissed the appeal by judgment and order dated 27.11.2022 affirming the judgment and order of conviction and sentence.

Being aggrieved by and dissatisfied with judgment and order dated 27.11.2022, the petitioner preferred the instant Criminal Revision before this Court and obtained Rule along with an order of bail.

Ms. Rana Kawser, the learned Advocate appearing on behalf of the petitioner submits that the Courts below failed to properly appreciate the evidence on record and did not apply their judicial minds correctly in passing the impugned judgments and orders of conviction and sentence and as such the same are liable to be set aside.

She further submits that the petitioner is in financial distress circumstances and notwithstanding the accused has

already paid Taka 1,25,000/- (50% of the cheque amount). However, the petitioner is unable to pay the rest amount within 06(six) months as such she prays for 06(six) months time to repay the same. She finally prays for making the Rule absolute.

Per contra, Ms. Hosneara Shimul, the learned Advocate appearing on behalf of the opposite party no. 2, submits that there is no illegality, impropriety or infirmity in the impugned judgments and orders. The Courts below rightly convicted and sentenced the petitioner and as such the Rule is liable to be discharged.

I have meticulously heard the learned Advocates for both parties, perused the criminal revision and the materials on record.

It appears from the petition of complaint, the deposition of PW1 (complainant) and the documentary evidence that accused-petitioner obtained a loan from the complainant amounting to Taka 2,50,000/-. In discharge of the said liability the accused-petitioner issued a cheque being No. 2718192 dated 10.07.2019 for Taka 2,50,000/- drawn on Janata Bank Limited, Jhenaidah Branch in favour of the

complainant. The complainant presented the cheque to the concerned bank on 14.07.2019 but the same was dishonoured with the endorsement “insufficiency of funds” and “dissimilarity of signature”. Thereafter, the complainant served a legal notice on 16.07.2019 but the petitioner failed to make payment within the stipulated period. Consequently, the case was filed on 19.08.2019. P.W-1 has successfully proved the prosecution case, he is holder in due course and that the cheque was issued for consideration.

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. The object of Section 138 of the NI Act is primarily compensatory rather than punitive. I have no disagreement with the *ratio* passed in the above-mentioned case.

Considering the financial hardship of the petitioner and 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 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 01(one) year simple imprisonment is set aside. The sentence of fine of Tk. 2,50,000/- is upheld. It appears that the convict-petitioner

has already deposited 50% of the cheque amount with the trial Court prior to filing the appeal. The Court concerned is directed to disburse the said deposited money to the complainant-opposite party No. 2 forthwith upon proper identification. The convict-petitioner is directed to pay the remaining balance of the value of the dishonoured cheque amounting to Taka 1,25,000/- to the complainant-opposite party No. 2 through the trial Court within 04 (four) months from the date of receipt of this order, in default he will suffer simple imprisonment for 01(one) month. If the convict-petitioner 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 Rule is discharged with modification of sentence and with directions made above. The convict-petitioner 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)