

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

Present:

Mr. Justice Md. Shohrwardi

Criminal Appeal No. 5581 of 2023

Md. Golam Faruk

.....Convict-appellant

-Vs-

The State and another

....respondents

No one appears

.For the convict-appellant.

Mr. Md. Shariful Islam, Advocate

.....For the respondent No.2

Mr. Md. Anichur Rahman, DAG with

Mr. Mir Moniruzzaman, AAG with

Mr. Md. Sarwar Alam Khan, AAG
with

Ms. Nargis Parvin (Alija), AAG

... For the State

Heard on 01.02.2026

Judgment delivered on: 01.02.2026

This appeal under section 410 of the Code of Criminal Procedure, 1898 is directed challenging the legality and propriety of the impugned judgment and order dated 28.05.2017 passed by Additional Sessions Judge, Chapai Nawabgonj in Sessions Case No. 457 of 2016 arising out of C.R. Case No. 224 of 2015(Gomastapur) convicting the appellant under Section 138 of the Negotiable Instruments Act,

1881 and sentencing him thereunder to suffer imprisonment for 06(six) months and fine of Tk. 500,000.

The prosecution's case, in short, is that the accused Md. Golam Faruk and the complainant Alhaj Md. Monirul Islam Babu is known to each other. The accused took loan of Tk. 900,000 from the complainant for business. Thereafter, the accused issued cheque No. 8042707 dated 11.06.2015 drawn on his Savings Account No.34158913 maintained with Sonali Bank Ltd., Chapai Nawabganj Branch for payment of Tk. 4.50,000 in favour of the complainant. The complainant presented the cheque on 24.08.2015 for encashment, but the same was dishonoured on 31.08.2015 with a remark “insufficient funds”. The complainant sent a legal notice on 13.09.2015 to the accused by registered post with AD for payment of the cheque amount within 30 days from the date of receipt of the notice, but he did not pay the cheque amount. Consequently, the complainant filed the case on 21.10.2015.

During trial, charge was framed under Section 138 of the Negotiable Instruments Act, 1881 against the appellant. The prosecution examined 01(one) witness to prove the charge against the accused. The defence did not cross-examine P.W.1. Since the accused was absconding, 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 and sentenced him as stated above, against which the accused filed the instant appeal.

P.W. 1 Md. Monirul Islam Babu is the complainant. He stated that the accused issued a cheque on 11.06.2015 for payment of Tk. 4,50,000 in favour of the complainant. He presented the cheque on 24.08.2015 for encashment, which was dishonoured on 31.08.2015 for “insufficient funds”. The complainant sent a legal notice on 13.09.2015 for payment of the cheque amount, but he did not pay the cheque amount within the time. After that, he filed the complaint petition on 21.10.2015. P.W. 1 proved the complaint petition as exhibit-1 and his signature as exhibit-1/1, the cheque as exhibit-2, dishonour slip as exhibit-3, legal notice as exhibit-4, postal receipt as exhibit-5, and the AD as exhibit-6. The defence did not cross-examine P.W. 1.

No one appears on behalf of the appellant.

The learned Advocate Mr. Md. Shariful Islam, appearing on behalf of the complainant, submits that the accused issued the cheque on 11.06.2015 for payment of Tk. 4,50,000. The complainant presented the said cheque on 24.08.2015 for encashment, but the same was dishonoured on 31.08.2015 with a remark “insufficient funds” and sent a legal notice on 13.09.2015, and complying with all the procedures under sections 138 and 141 of the said Act, the complainant filed the complaint petition. However, he submits that both the accused and the complainant settled the dispute between them out of court, and the complainant received 50% of the cheque amount, i.e, Tk. 2,25,000 in cash, and he is willing to withdraw 50% of

the remaining cheque amount deposited by the accused in the trial court. He prayed for acceptance of the compromise made between the accused and the complainant.

I have considered the submission of the learned Advocate Mr. Md. Shariful Islam, who appeared on behalf of the complainant respondent No. 2, perused the evidence, impugned judgment and order passed by the court below, and the records.

On perusal of the records, it appears that an application, sworn on 26.01.2026, has been filed by P.W.1 stating that the accused paid Tk. 2,25,000, i.e., 50% of the cheque amount in cash to the complainant P.W.1 and he also received the said amount. The Negotiable Instruments Act, 1881 is a special law, and the offence under section 138 of the said Act is not compoundable. Therefore, the appeal cannot be disposed of considering the compromise between the parties. After filing a case under section 138 of the said Act, the court shall dispose of the case, considering the merit of the case. There is no scope to accept the compromise made between the parties.

On perusal of the evidence, reveals that the cheque dated 11.06.2015(exhibit-2) was dishonoured on 31.08.2015 (exhibit-3) for insufficient funds. The notice (exhibit-4) sent on 13.09.2015 was served on 16.09.2015 (exhibit-6) upon the appellant, but he did not pay the cheque amount, and the complaint petition was filed on 21.10.2015, complying with the procedure under sections 138(1)(b)(1A) and 141(b) of the said Act. During the trial, the accused was absconding and did not

cross-examine P.W. 1. Therefore, the evidence of P.W.1 that the accused issued the cheque in favour of the complainant (exhibit-2) for consideration remains uncontroverted by the defence.

Until the contrary is proved, there is a presumption under section 118(a) of the Negotiable Instruments Act, 1881 that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. The presumption under Section 118 (a) is rebuttable. The evidence of P.W.1 as regards issuance of the cheque (exhibit-2) for payment of Tk. 4,50,000 remains uncontroverted by the defence. Thereby, he committed an offence under Section 138 of the Negotiable Instruments Act, 1881, and the complainant filed the case on 21.10.2015, following the procedures of Sections 138(1)(b)(1A) and 141(b) of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the appellant beyond all reasonable doubt, and the Courts below, on correct assessment and evaluation of evidence, legally passed the impugned judgment and order of conviction.

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 as under;

The accused Md. Golam Faruk is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881, and he is sentenced to pay a fine of Tk. 4,50,000.

The complainant is entitled to get the fine amount.

The complainant admitted that he received 50% of the cheque amount from the accused Md. Golam Faruk in cash. He is entitled to withdraw the remaining 50% of the cheque amount deposited by the accused before filing the appeal.

The trial court is directed to allow the complainant to withdraw 50% of the cheque amount deposited by the accused before filing the appeal.

With the above findings, observation, and direction, the appeal is disposed of with modification of the sentence.

Send down the lower Court's records at once.