

# **In the Supreme Court of Bangladesh**

**High Court Division  
(Criminal Appellate Jurisdiction)**

**Present:**

**Mr. Justice Md. Bashir Ullah**

## **Criminal Appeal No. 6213 of 2023**

**In the matter of:**

An Appeal under section 410 of the Code of Criminal Procedure

**-And-**

**In the matter of:**

Md. Nozrul Islam

... Convict-Appellant

**-Versus-**

The State and another

... Respondent

None appears.

... For the Convict-Appellant

Mr. S.M. Aminur Rahman, Advocate

... For the respondent

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: 06.01.2026 and 12.01.2026**

**Judgment on: 19.01.2026**

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 04.03.2019 passed by the learned Additional Metropolitan Sessions Judge, 6<sup>th</sup> Court, Dhaka

in Metropolitan Sessions Case No. 21673 of 2018 arising out of C. R Case No. 628 of 2018 convicting the accused Md. Nozrul Islam under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 01(one) year and pay a fine of Tk. 12,50,000/- (twelve lac fifty thousand).

The prosecution case, in short, is that the accused Md. Nozrul Islam issued cheque No. CA- 0312731 dated 03.04.2018 drawn on NRB Global Bank Limited, Nayapaltan Branch, Dhaka in favour of the complainant Sheikh Babor Ali for payment of Tk. 12,50,000/- (twelve lac fifty thousand) which was taken as loan. He presented the cheque on 11.04.2018 through Islami Bank PLC, Karwan Bazar Branch, Dhaka for encashment, which was dishonoured with the endorsement of 'insufficient funds'. On 15.04.2018, the complainant sent a legal notice through registered post with AD to the accused requesting him to pay the cheque amount. Despite receipt of the notice, the accused failed to pay the cheque amount. Consequently, on 28.05.2018 the complainant Sheikh Babor Ali filed C.R. Case No. 628 of 2018.

Eventually, the case was transferred to the learned Additional Metropolitan Sessions Judge, 6<sup>th</sup> Court, Dhaka and

was renumbered as Metropolitan Sessions Case No. 21673 of 2019. Thereafter on taking cognizance of offence the charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881 on 16.01.2019 and the accused pleaded not guilty and claimed to be tried when the charge was read out and explained to him. Thus trial commenced. In cross of trial the prosecution examined 1(one) witness in order to prove the charge brought against the accused while the defence examined none. After concluding the trial, the Additional Metropolitan Sessions Judge, 6<sup>th</sup> Court, Dhaka by judgment and order dated 04.03.2019 convicted the accused under section 138 of the Negotiable Instruments Act, 1881, and sentenced him there under to suffer simple imprisonment for 01(one) year and fine of Tk. 12,50,000/- (twelve lac fifty thousand) against which the accused filed the instant appeal.

When the appeal was taken up for hearing none appeared for the appellant though the matter had been appearing in the daily cause list on several days with the names of the learned Advocates.

Mr. S.M. Aminur Rahman, the learned Advocate appearing for the complainant-respondent no. 2 submits that the charge brought against the convict-appellant under section 138 of the Negotiable Instruments Act, 1881 has been proved beyond reasonable doubt and the trial Court rightly convicted and sentenced the appellant and therefore, the appeal is liable to be dismissed.

During trial PW-1, Sheikh Babor Ali proved his case by oral and documentary evidence. He produced documentary evidence which have been marked as exhibit nos. 1 to 6. No cross examination was held as the accused was absconding at that time.

It appears from records that the complainant-respondent filed the case after due compliance of the procedures laid down in section 138 of the Negotiable Instruments Act, 1881 and within one month of the date on which the cause of action had arisen under clause (c) of the proviso to section 138. During the trial, the complainant proved the case by adducing evidence, both oral and documentary. The complainant also proved consideration against which the cheque was drawn and that he is the holder of the cheque in due course. The trial Court upon proper assessment of evidence rightly found the appellant guilty of charge. Hence, the

impugned judgment and order of conviction does not suffer from any illegality 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, it has been held:

“There can be no dispute insofar 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. However, the sentence of fine, which is equivalent of the value of the cheque, is upheld.”

I have no disagreement with the above-mentioned decision passed by the High Court Division.

In view of the foregoing discussions and the *ratio* laid down in the above-mentioned reported case, 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 of imprisonment is modified. The sentence of 01(one) year simple imprisonment is set aside. The sentence of fine, which is equivalent of the value of the cheque, is upheld. The convict-appellant has already deposited 50% of the value of the cheque *i.e.* Tk. 6,25,000/-. The Court concerned is directed to pay the said deposited money to the complainant-respondent no.2 forthwith. The convict-appellant is directed to pay the remaining 50% of the value of the dishonoured cheque *i.e.* Tk. 6,25,000/- to the complainant-respondent within 3(three) months from the date of receipt of this order, in default he will suffer simple imprisonment for 3(three) months. If the convict-appellant does not pay the remaining portion of the fine as ordered, the same

shall be realised under the provisions of Section 386 of the Code of Criminal Procedure.

In the result, the appeal is dismissed with modification as to sentence and with directions made above. 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