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

Present:
Mr. Justice Md. Bashir Ullah

Criminal Revision No. 2024 of 2023

In the matter of:
An application under section 439 read with 435 of the Code of Criminal Procedure

-And-

In the matter of:
Md. Alauddin
... Convict-Appellant-Petitioner

-Versus-

The State and another
...Complainant-Respondent-Opposite Parties

Mr. Md. Saiful Alam, Advocate
... For the Convict- Petitioner

Mr. Deb Dulal Baral, Advocate
... For the Complainant- opposite party No. 2

Mr. Md. Shafiquil Islam, D.A.G with
Ms. Farhana Abedin, A.A.G with
Mr. Hemayth Uddin, A.A.G and
Mr. K. M. Saiful Islam, A.A.G
… For the State

Heard on: 14.07.2026, 15.07.2026 and 16.07.2026
Judgment on: 22.07.2026

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 14.12.2022 passed by the learned Druto Bichar Tribunal and Special Sessions Judge, Barishal in Criminal Appeal No. 44 of 2022 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 18.01.2022 passed by the learned Joint Sessions Judge, 3rd Court, Barishal in Sessions Case No. 374 of 2021 arising out of C.R Case No. 199 of 2020 (Muladi) convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 06(six) months and to pay a fine of Tk. 5,00,000/- (five lac) 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 obtained a loan of Taka 5,00,000/-(five lac) from the complainant for carrying on a business of cattle. In discharge of the said debt, he issued cheque No. SBLR 7485640 on 02.11.2020 for Taka 5,00,000/-(five lac) drawn on Rupali Bank Limited, Bazar Road Branch, Barishal in favour of the complainant. The complainant presented the cheque for encashment to the concerned bank on 02.11.2020 but it was dishonoured with the endorsement “insufficiency of funds”. Thereafter, she served statutory legal notice upon the accused on 10.11.2020 which was received by the accused but the petitioner failed to make payment within the statutory period. Consequently, the complainant instituted C.R. Case No. 199 of 2020(Muladi) before the learned Senior Judicial Magistrate, Cognizance Court, Barishal on 20.12.2020. The learned Magistrate took cognizance of the offence and sent the case record to the Court of Sessions Judge, Barishal. The learned Sessions Judge, Barishal transferred the case to the learned Joint Sessions Judge, 3rd Court, Barishal and was registered as Sessions Case No. 374 of 2021. Charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881on 14.10.2021. The accused remained absconding at the time of framing of charge.

In course of trial, prosecution examined 01(one) witness while the defence examined 03(three) witnesses to prove their respective case.

Upon conclusion of the trial, the learned Joint Sessions Judge, 3rd Court, Barishal convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 06 (six) months and fine of Taka 5,00,000/- by judgment and order dated 18.01.2022.

Challenging the conviction and sentence the petitioner filed Criminal Appeal No. 44 of 2022 before the learned Sessions Judge, Barishal having deposited Taka 2,50,000/- being 50% of the cheque amount and the complainant subsequently received the amount. Thereafter, the appeal was transferred to the learned Druto Bichar Tribunal and Special Sessions Judge, Barishal who upon hearing the parties dismissed the same by judgment and order dated 14.12.2022 affirming the judgment and order of conviction and sentence.

Being aggrieved by and dissatisfied with judgment and order dated 14.12.2022, the petitioner preferred this instant Criminal Revision before this Court and obtained Rule. Pending the Rule, this Court enlarged the petitioner on bail on 05.06.2023.

Mr. Md. Saiful Alam, the learned Advocate appearing on behalf of the petitioner submits that both the Courts below failed to apply their judicial minds and committed error of law in passing the impugned judgments and orders of conviction and sentence and the prosecution has failed to prove her case beyond reasonable doubt against the petitioner.

He further submits that the petitioner had already deposited 50% of the cheque amount before filing the appeal and had earlier paid Taka 3,12,000/- to the complainant. Therefore, according to the learned Advocate, there is no outstanding due and as such the petitioner deserves an acquittal.

He finally prays for making the Rule absolute.

Per contra, Mr. Deb Dulal Baral, 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 heard the learned Advocates for the respective parties, perused the revisional application and the materials on record.

It appears from the petition of complaint, the deposition of PW1 (complainant) and the documentary evidence that the convict-petitioner issued the cheque in question for carrying on a business of cattle. In discharge of the said debt, he issued cheque No. SBLR 7485640 on 02.11.2020 for Taka 5,00,000/- drawn on Rupali Bank Limited, Bazar Road Branch, Barishal in favour of complainant. The complainant presented the cheque to the concerned bank on 02.11.2020 but it was dishonoured endorsing "insufficiency of funds". Then she served legal notice on 10.11.2020 which was received by the accused but the petitioner failed to make payment. Consequently, the case was filed on 20.12.2020. PW1 successfully proved the prosecution case.

The defence case is that the cheque had been lost and that a General Diary Entry being No. 1106 dated 23.02.2020 had been lodged in that regard. Subsequently, the accused filed Miscellaneous Petition Case No. 02 of 2020 before the learned Executive Magistrate, Barishal under Section 98 of the Code of Criminal Procedure on 05.01.2021, which was kept in record on 16.06.2021. The evidence adduced by the defence, however, does not inspire confidence. DW 1, Sonia Begum and DW 3, Hanif Howlader deposed that the dispute had been amicably settled on 26.08.2020. However, the accused failed to produce any document in support of the alleged settlement or adjustment of the loan. The defence evidence is also attended with material inconsistencies and contradictions. The Courts below therefore rightly disbelieved the defence version.

The record further 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 righty found the petitioner guilty of the charge. I find no misreading or non-reading of evidence. Hence, the impugned judgment and order of conviction does not suffer from any illegality, impropriety or infirmity.

However, with regards 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 observed that in prosecution under Section 138 of the Negotiable Instruments Act, the sentence of imprisonment would be a harsh sentence having no penal objective to be achieved. I respectfully concur with the principle enunciated therein. The principal object of the Negotiable Instruments Act is to ensure recovery of the cheque amount rather than to incarcerate the drawer and that imprisonment should ordinarily be resorted to only in appropriate circumstances.

Considering the facts and circumstances of the case, this Court is of the view that the petitioner should be given a few months to pay the rest amount and the sentence of imprisonment should be set aside in the interest of justice.

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 Act, 1881 is affirmed, however the sentence of imprisonment is modified. The sentence of 06(six) months simple imprisonment is set aside. The sentence of fine of Tk. 5,00,000/- which is equivalent to the cheque amount is upheld. The convict-petitioner has already deposited Taka 2,50,000/- before the trial Court prior to filing the appeal and the complainant have already received the amount. The convict-petitioner is directed to deposit the remaining portion of the dishonoured cheque *i.e.* Taka 2,50,000/- to the complainant-opposite party No. 2 through trial Court within 03(three) months from the date of receipt of this judgment, in default he shall suffer simple imprisonment for 02(two) months. 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 recover 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 of imprisonment and with directions made above. The convict-petitioner 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. Bashir Ullah, J*)

Md. Ariful Islam Khan
Bench Officer