

**IN THE SUPREME COURT OF
BANGLADESH**

HIGH COURT DIVISION

(CRIMINAL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Shohrwardi

Criminal Appeal No. 11838 of 2023

Md. Mostafizur Rahman
..... appellant

-Vs-

The State and another
.....respondents
Mr. Deb Dulal Baral, Advocate
....For the appellant.

Mr. Md. Sirajul Islam, Advocate
.....For the respondent No.2

Mr. Md. Anichur Rahman Khan, DAG
with
Mr. Sultan Mahmood Banna, AAG with
Mr. Mir Moniruzzaman, AAG
For the State

Judgment delivered on: 28.08.2025

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 30.08.2016 passed by Sessions Judge, Dinajpur in Sessions Case No. 265 of 2015 arising out of C.R. Case No. 31 of 2015(Ghoraghat) 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. 3,66,120, in default, to suffer imprisonment for one month.

The prosecution's case, in short, is that the accused Md. Mostafizur Rahman issued Cheque No. 4814686 on 11.01.2015

drawn on his Current Account No.1011003129 maintained with Janata Bank Ltd for payment of Tk. 366120 in favour of the complainant. The complainant presented said cheque on 13.01.2015 for encashment, but the same was dishonoured with a remark “insufficient funds”. Thereafter, he sent a legal notice on 28.01.2015 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 30.03.2015.

During the trial, charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881. The prosecution examined 02(two) witnesses to prove the charge against the accused. Since the accused was absconding, the defence did not cross-examine P.W.1. After concluding trial, the trial court, by impugned judgment and order, convicted the accused and sentenced him as stated above, against which he filed the instant appeal.

P.W. 1 Md. Raju Ahmed is the complainant. He stated that the accused Md. Mustafizur Rahman issued Cheque No. 4814686 on 11.01.2015 drawn on his Current Account No.1011003129 maintained with Janata Bank Ltd for payment of Tk. 3,66,120 in his favour. He presented said cheque on 13.01.2015 for encashment, but the same was dishonoured with a remark “insufficient funds”. Thereafter, he sent a legal notice on 28.01.2015 to the accused by registered post with AD 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 30.03.2015. P.W. 1 proved the complaint petition as exhibit-1 series, the disputed cheque as exhibit-2, dishonour slip as exhibit-3, legal notice as exhibit-4, postal receipt as exhibit-5, and AD as exhibit-5/1.

P.W. 2 A.T.M. Sadek Mondal is the Manager of Janata Bank, Hili Land Port Branch. He stated that the cheque and dishonoured slip submitted in court were issued and signed by the then Manager Joydul Alam. He proved the dishonour slip as exhibit-3/1.

The learned Advocate Mr. Deb Dulal Baral, appearing on behalf of the appellant, submits that the accused issued the cheque on 11.01.2015 in favour of the complainant for payment of Tk. 3,66,120, but after service of notice, he could not pay the cheque amount due to financial hardship. He further submits that the accused settled the dispute out of court with the complainant and deposited 50% of the cheque amount before filing the appeal, and 50% of the cheque amount was paid to the complainant in cash. He prayed for setting aside the impugned judgment and order.

The learned Advocate Mr. Md. Sirajul Islam, appearing on behalf of the complainant, submits that the accused issued the cheque for payment of Tk. 3,66,120. The complainant presented the said cheque for encashment, but the same was dishonoured with a remark “insufficient funds” and after complying with all the procedures under section 138 of the Negotiable Instruments Act, 1881 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, Tk. 183,060 in cash, and he is willing to withdraw the remaining 50% of the 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 Advocates of both parties, perused the evidence, impugned judgment and order passed by the court below, and the records.

On perusal of the records, it appears that a joint application for compromise, sworn in on 13.05.2025, has been filed by P.W.1 and the accused Md. Mostafizur Rahman stating that the accused paid Tk. 1,83,060 i.e., 50% of the cheque amount to the complainant in cash, 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.

It is admitted that the accused issued the cheque (exhibit-2) in favour of the complainant, and the notice sent by the complainant on 28.01.2015 was served upon the accused. By filing a joint affidavit, the accused stated that he settled the dispute with the complainant out of court. 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 (exhibit-2) in favour of the complainant remains uncontroverted by the defence.

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 accused did not cross-examine P.W.1. Furthermore, the accused admitted that he issued the cheque in favour of the complainant. The cheque was dishonoured for insufficient funds. After service of notice sent on 28.01.2015, the accused could not pay the cheque amount due to hardship. Thereby, he committed offence under section 138 of the Negotiable Instruments Act, 1881, and the complainant filed the case following the procedures of sections 138 and 141(b) of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the accused Md. Mostafizur Rahmna, beyond all reasonable doubt and the Court 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. Mostafizur Rahman is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881, and he is sentenced thereunder to pay a fine of Tk. 3,66,120.

The complainant is entitled to get the fine amount.

The complainant admitted that he received 50% of the cheque amount from the accused Md. Mostafizur Rahman in cash. He is entitled to withdraw the remaining 50% of the

cheque amount of Tk. 1,83,060 deposited by the accused in the trial court before filing the appeal.

The trial court is directed to allow the complainant to withdraw 50% of the cheque amount, i.e., 1,83,060, 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.

However, there will be no order as to costs.

Send down the lower Court's records at once.