

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

Present:

**Mr. Justice Md. Shohrwardi**

**Criminal Appeal No. 12524 of 2023**

Md. S.M. Samiullah Somrat  
..... appellant

-Vs-

The State and another

....respondents

Mr. Md. Abdus Salam, Advocate

...For the appellant.

Mr. Md. Arif Hossain Talukder,  
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 19.01.2026**

**Judgment delivered on: 19.01.2026**

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 10.10.2018 passed by Sessions Judge, Thakurgaon in Sessions Case No. 02 of 2018 arising out of C.R. Case No. 62 of 2016 (Baliadangi) 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. 6,60,000.

The prosecution case, in short, is that the accused Md. S.M. Samiullah Somrat issued cheque No. CEZ-1263025 dated 29.09.2016 drawn on his Savings Account No. 6308202318091001 maintained with Brac Bank for payment of Tk. 6,60,000 in favour of the complainant Md. Bodudozza. The complainant presented said cheque for encashment but the same was dishonoured on 31.10.2016 with the remark “insufficient funds”. He sent a legal notice on 17.11.2016 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 27.12.2016.

During the trial, charge was framed against the accused under section 138 of the said Act which was read over and explained to the accused and he pleaded not guilty to the charge and claimed to be tried following law. The prosecution examined 01(one) witness to prove the charge against the accused. After examination of the prosecution witness, the accused was examined under section 342 of the Code of Criminal Procedure, 1898 and he pleaded not guilty to the charge and claimed to be tried following law. 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. Badrudozza stated that the accused Md. S.M. Samiullah Somrat issued cheque dated 29.09.2016 for payment of Tk. 6,60,000 in favour of the complainant Md. Bodudozza. He

presented said cheque for encashment but the same was dishonoured on 31.10.2016 with the remark “insufficient funds”. He sent a legal notice on 17.11.2016 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. P.W. 1 proved the complaint petition as exhibit-1 and his signature as exhibit-1/1, the disputed cheque as exhibit-2, dishonour slips as exhibit-3, legal notice as exhibit-4, postal receipt and AD as exhibit-5 series.

The learned Advocate Mr. Md. Abdus Salam appearing on behalf of the appellant submits that the accused issued the cheque on 29.09.2016 in favour of the complainant for payment of Tk. 6,60,000 but after service of notice on 20.11.2016, the accused 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. Arif Hossain Talukder appearing on behalf of the complainant submits that the accused issued the cheque for payment of Tk. 6,60,000. The complainant presented the said cheque for encashment but the same was dishonoured with a remark “insufficient funds”. After complying with all the procedure under section 138 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 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. Abdus Salam who appeared on behalf of the appellant and the learned Advocate Mr. Md. Arif Hossain Talukder who appeared on behalf of the respondent No.2, perused the evidence, impugned judgment and order passed by the court below and the records.

On perusal of the evidence, it appears that a joint application for compromise sworn on 18.01.2025 has been filed by P.W.1 Md. Bodrudozza and the accused Md. S.M. Samiullah Somrat stating that the accused paid Tk.3,30,000 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 made 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 17.11.2016 was served upon the accused on 20.11.2016. By filing a joint application, the accused stated that he settled the dispute with the complainant out of court.

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. Furthermore, the accused admitted that he issued the cheque in favour of the complainant. The cheque dated 29.09.2016 was dishonoured on 31.10.2016 for insufficient funds. The notice dated 17.11.2016 was served on 20.11.2016 upon the convict petitioner but he 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 procedures of Sections 138, 138(1)(1A) and 141(b) of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the convict petitioner 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. S.M. Samiullah Somrat 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. 6,60,000.

The complainant is entitled to get the fine amount.

The complainant admitted that he received Tk. 3,30,000 i.e. 50% of the cheque amount from the accused 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 i.e. 3,30,000 deposited by the accused before filing the appeal.

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

Send down the lower Court's records at once.