

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

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 1522 of 2024

Md. Turap Ali Mondal
..... petitioner

-Vs-

The State and another
.....opposite parties
Mr. A.K.M. Shamshad, Advocate
.....For the petitioner.
Mr. Sikder Guljar Ahmed, Advocate
.....For the opposite party No.2
Mr. Md. Anichur Rahman Khan, DAG
with
Mr. Sultan Mahmood Banna, AAG, with
Mr. Mir Moniruzzaman, AAG
..... For the State

Heard on 08.05.2025

Judgment delivered on: 17.07.2025

On an application under section 439 read with section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 14.04.2023 passed by the Additional Sessions Judge, Court No. 2, Rajbari in Criminal Appeal No. 130 of 2022 affirming the judgment and order of conviction and sentence dated 17.05.2022 passed by the Joint Sessions Judge, Court No. 2, Rajbari in Sessions Case No. 15 of 2012 arising out of C.R. Case No. 859 of 2011 convicting the petitioner under section 138 of the Negotiable Instruments Act,

1881 and sentencing him thereunder to suffer imprisonment for 01(one) year and fine of Tk. 800,000 should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The prosecution's case, in short, is that the accused Md. Tarap Ali Mondal issued cheque No. IBF 3709869 on 07.03.2011 drawn on his Al-Wahiyah Current Account No.113 maintained with Islami Bank Bangladesh Ltd for payment of Tk. 800,000 in favour of the complainant. The complainant presented said cheque on 04.09.2011 for encashment, but the same was dishonoured with the remark “insufficient funds”. He sent a legal notice on 06.09.2011 to the accused by registered post for payment of the cheque amount within 30 days from the date of receipt of the notice. The accused received the notice on 19.09.2011 but he did not pay the cheque amount. Consequently, the complainant filed the case on 17.11.2011.

After filing the complaint petition, the complainant was examined under section 200 of the Code of Criminal Procedure, 1898, and the learned Magistrate was pleased to take cognizance of the offence against the accused under section 138 of the Negotiable Instruments Act, 1881. Thereafter, the learned Magistrate sent the case to the Sessions Judge, Rajbari, who sent the case to the Joint Sessions Judge, Court No. 2, Rajbari for trial.

During the trial, charge was framed against the accused under section 138 of the said Act. The prosecution examined 01(one) witness to prove the charge against the accused. The defence cross-examined P.W.1. After the examination of the prosecution witness, the accused was examined under section 342 of the Code of

Criminal Procedure, 1898, and he declined to adduce any DW. After concluding the trial, the trial court by impugned judgment and order convicted the petitioner under section 138 of the said Act and sentenced him thereunder to suffer imprisonment for 01(one) year and fine of Tk. 800,000, against which the convict petitioner filed Criminal Appeal No. 130 of 2022 before the Sessions Judge, Rajbari, who transferred the appeal to the Additional Sessions Judge, Court No. 2, Rajbari for hearing. The appellate court, by impugned judgment and order, affirmed the judgment and order passed by the trial court against which the convict petitioner obtained the Rule.

P.W. 1 Md. Sarwar Mia stated that the accused Md. Tarap Ali Mondal issued a cheque No. IBF 3709869 on 07.03.2011 drawn on his Al-Wahiyah Current Account No.113 maintained with Islami Bank Bangladesh Ltd for payment of Tk. 800,000 in favour of the complainant. The complainant presented said cheque on 04.09.2011 for encashment, but the same was dishonoured with a remark “insufficient funds”. The complainant sent a legal notice on 06.09.2011 for payment of the cheque amount, but he did not pay the cheque amount. Consequently, he filed the case. P.W. 1 proved the complaint petition as exhibit-1 and his signature as exhibit-1/1, the disputed cheque, dishonour slip, postal receipt, legal notice, and the AD as exhibits 2, 3, 4, 5, and 6. The defence did not cross-examine P.W. 1.

The learned Advocate Mr. A.K.M. Shamshad, appearing on behalf of the convict-petitioner, submits that the accused issued the cheque on 07.03.2011 in favour of the complainant for payment of Tk. 800,000, but after service of notice, he could not pay the cheque amount due to financial hardship. He further submits that the

convict-petitioner 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, considering the compromise between the parties.

The learned Advocate Mr. Sikder Guljar Ahmed, appearing on behalf of the complainant opposite party, submits that the convict-petitioner issued the cheque for payment of Tk. 800,000. He presented the said cheque on 04.09.2011 for encashment, but the same was dishonoured on 06.09.2011 with a remark “insufficient funds”. After complying with all the procedures under section 138 of the said Act, he filed the complaint petition. However, he submits that both the convict-petitioner and the complainant-opposite party settled the dispute between them out of court, and the complainant received 50% of the cheque amount Tk. 400,000 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 convict-petitioner and the complainant-opposite party.

I have considered the submission of the learned Advocates of both parties, perused the evidence, impugned judgments and orders passed by the courts below, and the records.

On perusal of the records, it appears that a joint application for compromise, sworn in on 03.07.2025, has been filed by the opposite party and the convict-petitioner stating that he paid Tk. 400,000 i.e., 50% of the cheque amount to the complainant-opposite party 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 Rule 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 only considering the merit of the case. There is no scope to accept the compromise made between the parties.

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. It is admitted that the convict-petitioner issued the cheque (exhibit-2) in favour of the complainant, and the notice sent by the complainant on 06.09.2011 was also served upon him. The cheque was dishonoured for insufficient funds, and after service of notice upon the convict-petitioner sent on 06.09.2011, he did 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 convict petitioner beyond all reasonable doubt, and the Courts below, on correct assessment and evaluation of evidence, legally passed the impugned judgments and orders 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 courts below is modified as under;

The accused Md. Turap Ali Mondal 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. 800,000.

The complainant-opposite party is entitled to get the fine amount.

The complainant-opposite party admitted that he received 50% of the cheque amount from the convict-petitioner Md. Turap Ali Mondal in cash. He is entitled to withdraw the remaining 50% of the cheque amount i.e. Tk. 400,000 deposited by the convict-petitioner before filing the appeal.

The trial court is directed to allow the complainant-opposite party to withdraw 50% of the cheque amount, i.e., 400,000, deposited by the convict-petitioner before filing the appeal.

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

Send down the lower Court's records at once.

