

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 3773 of 2023

Md. Mostafa

...Convict-Petitioner.

-Versus-

The State and another

.....Respondent-Opposite Parties.

None appears

.....For the petitioner.

Ms. Morjina Raihan (Modina), Advocate with
Ms. Afroza Farhana Ahmed Orange, Advocate
...For the Opposite Party No.

Mr. S. M. Aminul Islam Sanu, DAG with
Mr. Md. Nasimul Hasan, AAG with
Mr. Md. Golamun Nabi, AAG and
Ms. Farhana Abedin, AAG

..... For the State.

Heard on 13.01.2026 and 22.01.2026
Judgment on 01.02.2026.

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 of conviction and sentence dated 02.04.2023 passed by the learned Additional Sessions Judge,

2nd Court, Natore in Criminal Appeal No. 38 of 2022 dismissing the appeal and affirming the judgment and order of conviction and modifying the sentence dated 24.10.2019, passed by the learned Joint Sessions Judge, 1st Court, Natore in Sessions Case No. 3 of 2019 arising out of C.R. Case No. 39 of 2018 (Lal) convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 01(one) year and to pay a fine of Taka 2,00,000/- (two 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.

Facts relevant for disposal of the Rule, in brief, are that opposite party No. 2, Most. Shahana Khanom as complainant filed C.R case No. 39 of 2018 before the Court of the learned Senior Judicial Magistrate, Lalpur, Natore against the present petitioner alleging *inter alia* that the accused received Taka 2,00,000/- (two lac) from the complainant, Most. Shahana Khanom as loan. Subsequently, in order to refund the said

amount the petitioner issued cheque No. AWCDI4732861 in favour of the complainant on 17.09.2017 for Taka 2,00,000/- (two lac). It was dishonoured by the bank concerned on 17.12.2017 due to insufficiency of funds. The complainant issued statutory legal notice upon the petitioner on 20.12.2017, which was received by him on 08.01.2018. Despite receipt of the notice, the petitioner failed to make payment of the cheque amount within the stipulated time. Consequently, C.R. Case No. 39 of 2018 was filed on 14.02.2018.

Subsequently, learned Sessions Judge, Natore transferred the case to the learned Joint Sessions Judge, 1st Court, Natore and the case was registered as Sessions Case No. 03 of 2019. On taking cognizance of offence the charge was framed on 03.04.2019 under Section 138 of the Negotiable Instruments Act, 1881 wherein the accused pleaded not guilty and claimed to be tried when the charge was read out and explained to him. Upon conclusion of trial

and hearing of the parties, the learned Joint Sessions Judge, 1st Court, Natore found the petitioner guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and convicted and sentenced to suffer simple imprisonment for 01 (one) year and to pay a fine of Taka 2,00,000/- (two lac) by judgment and order on 24.10.2019.

Against the said judgment and order the petitioner preferred Criminal Appeal No. 38 of 2022 before the Sessions Judge, Natore. On transfer, the appeal was heard by the Court of Additional Sessions Judge, 2nd Court, Natore who dismissed the appeal by its judgment and order dated 02.04.2023 affirming the conviction and modifying the period of sentence of imprisonment for 06 (six) months.

Being aggrieved by and dissatisfied with the judgment and order dated 02.04.2023 the petitioner preferred this Criminal Revision before this Court and obtained Rule and bail.

When the revisional application was taken up for hearing none appeared on behalf of the petitioner to support the Rule although the matter had been appearing in the daily cause list on several days with the name of the learned Advocate.

Per contra Ms. Afroza Farhana Ahmed Orange, the learned Advocate appearing on behalf of the opposite party No. 2 submits that there is no illegality, impropriety or infirmity in the judgments and orders passed by the Courts below and the charge brought against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 has been proved beyond reasonable doubt and therefore, the Rule is liable to be discharged.

I have heard the learned Advocate for the opposite party No. 2 and perused the revisional application along with the materials on record.

On scrutiny of the petition of complaint, the deposition of PW1 (complainant) and the documentary evidence, it

appears that the convict-petitioner issued the cheque in question in favour of the complainant-opposite party on 17.09.2017 to refund the loan amount. The cheque for Taka 2,00,000/- (two lac) was dishonoured by the bank concerned on 17.12.2017 due to insufficiency of funds. The complainant-opposite party served statutory legal notice upon the convict-petitioner on 20.12.2017, despite service of notice payment was not made and the case was filed on 14.02.2018. PW1 has successfully proved the prosecution case.

The record shows that the complainant duly complied with all 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 rightly found the petitioner guilty of the charge.

Hence, the impugned judgment and order of conviction does not suffer from any illegality, impropriety or infirmity.

However, as regards to the sentence, reliance may be placed upon the decision passed in *Aman Ullah Vs. State*, reported in 73 DLR (2021)541, wherein it has been held:

“There can be no dispute in so far 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."

I have no disagreement with the principle of the decision passed in the above-mentioned case.

In view of the foregoing discussions and the *ratio* laid down in the above-mentioned reported case, the order of this Court is as follows:

The conviction of the petitioner under Section 138 of the Negotiable Instruments 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 of Taka 2,00,000/- (two lac) which is equivalent to the value of the cheque, is maintained. It appears that the petitioner has already deposited 50% of the value of the

cheque amounting to Taka 1,00,000/- (one lac). The trial Court is directed to pay the said deposited money to the complainant-opposite party No.2 forthwith. The convict-petitioner is directed to pay the remaining 50% of the value of the dishonoured cheque that is Taka 1,00,000/- (one lac) to the complainant-opposite party No. 2 within 03 (three) months from the date of receipt of this order through the trial Court, in default he shall suffer simple imprisonment for 03(three) 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 realise 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 and directions as above. The convict-petitioner is discharged 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. Sabuj Akan
Assistant Bench Officer