

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 3336 of 2024

In the matter of:

An appeal under section 410 of the Code of
Criminal Procedure

-And-

In the matter of:

Md. Masum Hossain

... Convict-Petitioner

-Versus-

The State and another

...Complainant-Opposite Parties

Ms. Seema Rani Das, Advocate

... For the Convict- Petitioner

Mr. Md. Abul Fazal, Advocate

... For the Complainant- opposite party No. 2

Mr. Md. Shafiquil Islam, D.A.G with

Ms. Farhana Abedin, A.A.G with

Mr. Hedayth Uddin, A.A.G and

Mr. K. M. Saiful Islam, A.A.G

... For the State

**Heard on: 21.04.2026, 26.04.2026 and
28.04.2026**

Judgment on:12.05.2026

This appeal, preferred under section 410 of the Code of
Criminal Procedure, 1898 is directed against the judgment

and order dated 04.06.2017 passed by the learned Additional District and Sessions Judge, 7th Court, Dhaka in Sessions Case No. 555 of 2014 convicting the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 6 (six) months and to pay a fine of Tk. 9,14,000/- (nine lac fourteen thousand).

The facts, relevant for disposal of the appeal, in brief, are that, the accused-appellant obtained loan of Taka 7,50,000/- on 23.02.2011 from the complainant. Subsequently, the outstanding amount stood at Taka 9,14,000/-. In order to adjust the said liability, the accused-appellant issued a cheque being No. 4742263 dated 15.04.2014 for amount of Taka 9,14,000/-, drawn on BRAC Bank Limited in favour of the complainant. The complainant presented the cheque to the concerned bank on 27.04.2014 but the same was dishonoured with the endorsement "Account closed". Thereafter, the complainant served a legal notice upon the accused on 28.04.2014, however, the appellant failed to make payment within the statutory period. Consequently, the complainant filed C.R. Case No. 352 of

2014 before the learned Chief Judicial Magistrate, Dhaka on 08.06.2014. The learned Magistrate took cognizance of the offence and subsequently transmitted the case to the Court of Sessions Judge, Dhaka. Thereafter, the learned Sessions Judge, Dhaka transferred the case to the learned Additional District and Sessions Judge, 7th Court, Dhaka and was registered as Sessions Case No. 555 of 2014. Charge was framed against the accused on 24.03.2015 under Section 138 of the Negotiable Instruments Act, 1881. The accused pleaded not guilty and claimed to be tried when the charge was read out and explained to him. In course of trial, the prosecution examined 01(one) witness and produced documentary evidence in support of the case. The accused was also examined under Section 342 of the Code of Criminal Procedure and he repeated innocence.

Upon conclusion of the trial and hearing of the parties, the learned Additional District and Sessions Judge, 7th Court, Dhaka convicted the appellant under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 06 (six) months and to pay a fine of Taka 9,14,000/- by judgment and order dated 04.06.2017.

Being aggrieved by and dissatisfied with judgment and order dated 04.06.2017, the convict-appellant preferred the instant appeal before this Court.

Ms. Seema Rani Das, the learned Advocate appearing on behalf of the appellant submits that the appellant had already paid Taka 3,51,120/- but the said amount was not adjusted against the cheque amount of Taka 9,14,000/- and the complainant had taken 24 blank cheques from the appellant as security against the loan, no legal notice was served upon the appellant and the postal receipt produced by the complainant is forged but the Court below failed to properly appreciate the evidence on record and did not apply its judicial mind while passing the impugned judgment and order of conviction and sentence and as such the same is liable to be set aside.

She further submits that the appellant is passing through severe financial hardship and is unable to pay the remaining amount within 06(six) months. She prays for granting reasonable time to repay the same. Notwithstanding he has already paid 50% of the cheque amount to the trial Court and

during the pendency of the trial and appeal the appellant deposited a further sum of Taka 80,000/-. Accordingly, she prays for reduction of the fine imposed upon the appellant and setting aside the sentence of imprisonment. Finally she prays for allowing the appeal.

Per contra, Mr. Md. Abul Fazal, the learned Advocate appearing on behalf of the opposite party no. 2 by filing a counter-affidavit submits that the accused issued the cheque but it was dishonoured on 27.04.2014 due to 'Account closed'. The complainant duly served legal notice through registered post with AD and despite the service of notice upon the accused, he did not pay the cheque amount. He next contends that during the trial, the prosecution proved the charge against the accused beyond all reasonable doubt, and the trial Court legally passed the impugned judgment and order convicting and sentencing the accused.

He further submits that there is no illegality, impropriety or infirmity in the impugned judgment and order and as such the appeal is liable to be dismissed. .

I have considered the submissions of the learned Advocates for the respective parties, perused the evidence, impugned judgment and order passed by the trial Court and the materials on record.

On perusal of the evidence it appears that the accused issued cheque No. 4742263 dated 15.04.2014 in favour of the complainant for Taka 9,14,000/- which was dishonoured.

The record further shows that the complainant has duly complied with the procedure 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 of the Act. The complainant also proved consideration against which the cheque was drawn and that it is the holder of the cheque in due course. The trial Court rightly found the accused guilty of the charge. Hence, the impugned judgment and order of conviction does not suffer from any illegality or infirmity.

It appears from the supplementary affidavit dated 04.05.2026 that the appellant deposited Taka 20,000/- on 13.04.2017, Taka 20,000/- on 21.05.2017 and 40,000/- on 30.06.2017 totaling Taka 80,000/-, which shall be adjusted

against the cheque amount. The complainant had obtained 23 cheques from the appellant which shall be returned upon receipt of the remaining dues amounting to Taka 3,77,000/-.

However, as regards to the sentence, reference may be made to the decision passed in *Aman Ullah Vs. State*, reported in 73 DLR (2021) 541, wherein this Court observed that in cases instituted under Section 138 of the Negotiable Instruments Act, the imposition of sentence of imprisonment would be a harsh having no penal objective to be achieved. I find no reason to take a different view from the *raito* laid down in the decision passed in the said case.

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 of imprisonment imposed by the trial Court is set aside.

The complainant, Midas Financing Limited is entitled to receive the 50% of the cheque amount already deposited by the accused in the trial Court prior to filing the appeal.

In view of the foregoing discussions, the order of the Court is as follows:

The conviction of the appellant under Section 138 of the Act, 1881 is affirmed, however, the sentence of 06 months simple imprisonment is set aside. The sentence of fine of Taka 9,14,000/=(nine lac fourteen thousand) which is equivalent to the value of the dishonoured cheque, is maintained. It appears that the convict-appellant has already deposited 50% of the cheque amount before the trial Court prior to filing the appeal. The Court concerned is directed to disburse the said deposited amount to the complainant-respondent No. 2 forthwith. The convict-appellant is further directed to pay the remaining amount of the dishonoured cheque amounting to Taka 3,77,000/- (Taka 4,57,000/= - Taka 80,000/=) to the complainant-respondent No. 2 within 6(six) months from the date of receipt of this order, in default he shall suffer simple imprisonment for 01(one) month. If the convict-appellant 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

realize the fine under the provisions of Section 386 of the Code of Criminal Procedure.

Upon receipt of the entire outstanding dues amounting to Taka 3,77,000/-, the complainant-respondent no. 2 is directed to return all cheques to the appellant.

In the result, the appeal is dismissed with modification of the sentence.

The convict-appellant 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.)