In the Supreme Court of Bangladesh

High Court Division

(Criminal Appellate Jurisdiction)

Present:

Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 6331 of 2024

In the matter of:

An Appeal under Section 410 of the Code of Criminal Procedure

-And-

In the matter of:

Rehena Akter

... Convict-Appellant

-Versus-

The State and another

...Complainant- Respondents.

Mr. Md. Shohidul Islam with
Mr. Md. Rofikul Islam (Rofik), Advocates
... For the Convict-Appellant

Mr. Ashaque Momin with
Ms. Sultana Jahan Bithey and
Mr. Amit Shuvro, Advocates
... For respondent Nos. 3-7

Mr. S.M. Aminul Islam Sanu, D.A.G with
Mr. Md. Nasimul Hasan, A.A.G with
Mr. Md. Golamun Nabi, A.A.G and
Ms. Farhana Abedin, A.A.G
… For the State.

Heard on: 12.01.2026, 13.01.2026, 14.01.2026 and 15.01.2026
Judgment on: 22.01.2026

This appeal preferred under section 410 of the Code of Criminal Procedure, 1898 is directed against the judgment and order of conviction and sentence dated 06.10.2019 passed by the learned Additional Metropolitan Sessions Judge, 5th Court, Dhaka in Metropolitan Sessions Case No. 11718 of 2015 arising out of C. R Case No. 197 of 2015 convicting the accused Rehena Akter under Section 138 of the Negotiable Instruments Act, 1881 and sentencing her to suffer simple imprisonment for a period of 06(six) months and pay a fine of Taka 35,00,000/- (thirty five lac).

The prosecution case, in short, is that the accused Rehena Akter issued Cheque No. $\frac{\text{FSIB}}{\text{AWCD}}$ 5173383 dated 30.11.2014 drawn on First Security Islami Bank Limited, Master Bari Branch, Dhaka for Taka 35,00,000/- in favour of the complainant, Haji Mohammad Ali towards adjustment/refund of money received in connection with a land transaction and business dealings. The complainant presented the cheque for encashment on 05.01.2015 to the concerned bank but the same was dishonoured due to insufficiency of funds.

Thereafter, he issued legal notice on 08.01.2015 by registered post with A.D but the accused failed to make payment. Consequently, the complainant filed C.R. Case No. 197 of 2015 before the learned Chief Metropolitan Magistrate, Dhaka on 24.02.2015. Eventually, the case was transferred to the learned Additional Metropolitan Sessions Judge, 5th Court, Dhaka who took cognizance of offence and framed charge against the accused under Section 138 of the Negotiable Instruments Act, 1881(in short, 'the Act, 1881') wherein the accused pleaded not guilty and claimed to be tried when the charge was read out and explained to her.

During trial, the prosecution examined 01(one) witness to prove the prosecution case while the defence examined 02(two) witnesses. After completion of recording evidence the accused was examined under Section 342 of the Code of Criminal Procedure wherein she again pleaded not guilty.

Upon hearing the parties and considering the evidence on record the trial Court convicted the accused under Section 138 of the Act, 1881 and sentenced to suffer simple imprisonment for 06(six) months with fine of Taka

35,00,000/- which is the value of the cheque. Being aggrieved by the judgment and order of conviction and the sentence the convict preferred the instant appeal. This Court enlarged the appellant on bail for 06(six) months on 21.08.2024.

Mr. Md. Shohidul Islam, learned Advocate appearing on behalf of the appellant contends that PW1, the complainant stated that the cheque dated 30.11.2014 for Taka 35 lac was issued in connection with earnest money for sale of land and business transactions, but such facts were not specifically stated in the petition of complaint. He further submits that no deed of agreement for sale of land or business documents were produced to establish lawful consideration, and as such, the essential ingredient of enforceable debt or liability is absent. If the liability, debt and consideration are not proved then section 138 of the Act is not attracted in the absence of consideration as contemplated under section 43 of the Act, 1881 and the Apex Court recognized that consideration is fundamental to the enforceability of a Negotiable Instrument as per Section 43 of the Act, 1881. In support of his

contention learned Advocate refers to the decision passed in ***Md. Shafiqul Islam and others Vs. Bangladesh,*** reported in 2 SCOB (2015)HCD 1.

He further contends that PW1 admitted in his cross-examination that the cheque was written by the daughter of the accused and the accused was neither his business partner, nor party to the business transaction and the business dealings were with the husband of the accused and not with her.

He next contends that if a cheque is issued under a conditional or contingent business arrangement and if such condition is not fulfilled, no offence under Section 138 of the Act, 1881 is committed. In support of his contention he referred to ***Md. Abul Kaher Shahin Vs. Emran Rashid and another***, reported in 14 SCOB (2020)(AD)96.

Mr. Islam further contends that the accused provided the consideration for "Deed of Agreement for Sale of Land" not for the alleged cheque.

He also contends that the alleged deed of compromise was obtained fraudulently, was neither notarized nor attested, and

the original was not produced before the trial Court. Moreover, in the absence of documentary proof, oral evidence regarding the agreement for sale of land is barred by sections 91 and 92 of the Evidence Act. In this regard reliance is placed on ***Syed Aynul Akhter being dead his heirs Vs. Sanjit Kumar Bhowmik***, reported in 4 SCOB[2015]HCD 127.

Mr. Islam next contends that PW-1 stated in his deposition that the accused went to his office by herself to compromise the dispute but such statement is fully absent in the petition of complaint.

He next contends that the instant case is related to disonour of cheque not for "Deed of Agreement for Sale of Land". The complainant placed his contention regarding the non registration of the sale of land and not for payment of cheque. Thus he failed to prove his case.

He further contends that DW-1 did not admit that he had business with the complainant and put her signature in the cheque. Rather she stated that she did not issue any cheque. In this regard learned Advocate refers to the case of ***Md.***

Nurul Islam Vs. The State, reported in 19 SCOB[2024]HCD 14.

He finally prays for allowing the appeal, setting aside the judgment and order of conviction of sentence and refund the money deposited at the time of filing the appeal.

Per contra, Mr. Md. Ashaque Momin along with Ms. Sultana Jahan Bithey, the learned Advocates appearing for the complainant-respondent No. 2 submits that the charge brought against the convict-appellant under Section 138 of the Act, 1881 has been proved beyond reasonable doubt and therefore, the appeal is liable to be dismissed.

He further submits that the oral evidence of PW-1, DW-1 and DW-2 clearly established the consideration and liability, and therefore production of any deed of agreement for sale of land or any document was not necessary.

He next contends that the accused-appellant admitted receipt of earnest money and issuance of the cheque for refund thereof, attracting section 58 of the Evidence Act, 1872, which dispenses with proof of admitted facts.

He next contends that DW1, Rehana Akter once stated in examination-in-chief that she did not issue the cheque. Subsequently, she deposed that the complainant had taken the cheque from her husband in connection with business transaction by adopting stratagem. Thus the accused deposed material contradictions in the defence evidence regarding alleged issuance of the cheque.

He finally prays for dismissal of the appeal and affirming the judgment of conviction and sentence passed by the trial court.

Mr. S.M. Aminul Islam (Sanu), learned Deputy Attorney General appearing on behalf of the State submits that all statutory requirements under section 138 of the Act have been duly complied with and the trial Court rightly found the accused guilty. He prays for dismissing the appeal.

Upon meticulous scrutiny of the petition of complaint, depositions of PW-1, DW-1, and DW-2, and the documentary evidence, it appears that that the convict-petitioner issued the cheque in question in favour of the complainant on

30.11.2014 towards refund of money received as earnest money and loan. The value of the cheque is Taka 35,00,000/- (thirty five lac). It was dishonoured by the bank concerned on 05.01.2015 due to insufficiency of funds. The complainant sent statutory legal notice to the convict-appellant on 08.01.2015. The value of the cheque was not paid to the complainant. The case was filed on 24.02.2015.

It appears from records that the complainant-respondent filed the case after due compliance of the procedures laid down in Section 138 of the Act, 1881 and within one month of the date on which the cause of action had arisen under clause (c) of the proviso to section 138. During the trial, the complainant proved the case by adducing evidence, both oral and documentary.

PW-1, the complainant, Haji Mohammad Ali, in his deposition stated that আমি বাদী। আসামী রেহেনা আক্তার। আমি তার নিকট হতে জমির বায়না ও ব্যবসাসূত্রে টাকা পেতাম। সে আমাকে গত ৩০.১১.২০১৪ খ্রিঃ তারিখে ৩৫ লক্ষ টাকার একটি চেক দেয় পাওনা টাকার বিপরীতে।

In cross-examination PW-1, the compainant stated that বায়নাপত্রে উল্লেখিত টাকা পরিশোধ করার জন্য আসামী চেক দেয়।

The testimony of the accused reveals the truthfulness of the complainant's statement made above.

The record shows that DW1, Rehana Akter in her examination-in-chief deposed that দুই বিঘা (৬৬ শতাংশ) জমি ফরিয়াদির নিকট বিক্রয় করিয়াছিলাম। বায়নাবাবদ ২৫,০০,০০০/- টাকার মধ্যে ফরিয়াদী ৯,০০,০০০/- টাকা তার স্বামীকে পরিশোধ করে। বায়নাপত্রে ফরিয়াদী হাজী মোহাম্মদ আলী ও আমরা স্বামী ও স্ত্রী স্বাক্ষর করি।

DW-1, Rehena Akter, in cross examination stated that ২৯/০৪/২০১৪ খ্রিঃ তারিখ আমি ও আমার স্বামী বাদীর সাথে একটি রেজিষ্টার্ড বায়নানামা সম্পাদন করি। উক্ত রেজিস্টার্ড বায়নানামায় উল্লেখ আছে যে, জমির মূল্য ৫০,০০,০০০/- (পঞ্চাশ লক্ষ) টাকা এবং বায়নাবাবদ আমরা বিক্রেতাগণ ২৫,০০,০০০/- (পঁচিশ লক্ষ) টাকা গ্রহণ করেছি।

In cross examination the accused DW-1 further stated that আমি ও আমার স্বামী বাদীর নিকট হতে বায়নাবাবদ গ্রহণকৃত ২৫,০০,০০০/- (পচিশ লক্ষ) টাকা ফেরত দিতে সম্মত হই।

DW-2, Abdul Mazid, husband of accused, in examination in chief deposed that বাদীর সাথে অংশীদার ব্যবসা ছিল। ৩ বৎসর যাবৎ বাদীর সাথে ব্যবসা করেন। ...আমি দুই বিঘা জমি বাদীর নিকট বিক্রয় করার জন্য বায়নাবদ্ধ হই। জমির মূল্য নির্ধারণ করা হয় ৫০,০০,০০০/- (পঞ্চাশ লক্ষ) টাকা।

বায়নামতে বায়না মূল্য লেখা হয় ২৫,০০,০০০/- (পঁচিশ লক্ষ) টাকা কিন্তু বাস্তবে বাদী আমাকে ৯,০০,০০০/- টাকা দেয়।

In view of the above facts and circumstances, it appears that the consideration was proved against which the cheque was drawn. Hence, the decision passed in ***Md. Shafiqul Islam and others Vs. Bangladesh,*** (Supra) and ***Md. Abul Kaher Shahin Vs. Emran Rashid and another*** (Supra) are distinguishable and not applicable to the facts of the present case.

The record shows that an amicable settlement was held on 29.10.2014 between the complainant and the accused. In this connection DW-2, Abdul Mazid in his cross-examination stated that জমির বিক্রয় কবলা সম্পাদন না করায় মীমাংসাপত্র সম্পাদিত হয়।

DW-1, accused, Rehena Akter in her cross-examination clearly stated that "মীমাংসাপত্রে আমার স্বাক্ষর আছে।"

It transpires that the cheque in question was issued in terms of the মীমাংসাপত্র (Deed of Compromise). DW-2 also corroborated the existence of the transaction and subsequent compromise. It is contended that the complainant forcibly

obtained the signature of the accused on the deed of compromise and by adopting a technique obtained the alleged cheque; however it appears that no case or proceeding was instituted in respect thereof. Even no information seeks to have been elicited in the cross-examination of the PW-1, complainant to substantiate the allegation that the complainant forcibly obtained the signature of the accused on a deed of compromise and by adopting a stratagem, obtained the cheque in question.

During trial PW1, Hazi Mohammad Ali proved his case by oral and documentary evidence. He produced documentary evidence which have been marked as exhibit Nos. 1 to 5.

In view of the above, the trial Court upon proper assessment of evidence on record rightly found the appellant guilty of charge. Hence, the impugned judgment and order of conviction does not suffer from any illegality or infirmity and the same should be upheld.

However, with 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. However, the sentence of fine, which is

equivalent of the value of the cheque, is upheld."

Respectfully concurring with the principle laid down therein, this Court is of the view that the sentence of imprisonment deserves modification.

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

The conviction of the appellant under section 138 of the Act, 1881 is upheld, but the sentence is modified. The sentence of 06(six) months simple imprisonment is set aside. The sentence of fine, which is equivalent to the value of the cheque, is upheld. The convict-appellant has already deposited 50% of the value of the cheque *i.e.* Taka 17,50,000/-. The Court concerned is directed to disburse the said deposited money to the complainant-respondent Nos. 3 to 7 being the heirs of the deceased complainant forthwith. The convict-appellant is directed to pay the remaining 50% of the value of the dishonoured cheque *i.e.* Taka 17,50,000/- to

the complainant-respondent Nos. 3 to 7 within 04 (four) months from the date of receipt of this order through trial Court, in default she shall suffer simple imprisonment for 02 (two) months. If the convict-appellant does not pay the remaining portion of the fine as ordered, the same shall be realized under the provisions of Section 386 of the Code of Criminal Procedure.

In the result, the appeal is dismissed with modification as to sentence and with directions made above.

The convict-appellant is discharged from her bail bond.

Let a copy of this judgment and order along with lower court's records (LCR) be communicated to the court concerned forthwith.

(*Md. Bashir Ullah, J*)

Md. Ariful Islam Khan
Bench Officer