

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 1625 of 2024

In the matter of:

An application under section 439 read with
435 of the Code of Criminal Procedure

-And-

In the matter of:

Md. Sheikh Sadi

... Petitioner

-Versus-

The State and another

... Opposite Parties

Ms. Shimonti Ahmed, Advocate with
Mr. Mohammad Abdul Hamid, Advocate

... For the Petitioner

Mr. Shahjada Al Amin Kabir, Advocate
with Mr. Md. Golam Kibria, Advocate

... For the Opposite party No. 2

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: 13.01.2026 and 29.01.2026

Judgment on: 08.02.2026

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 dated 10.07.2023 passed by the learned Sessions Judge, Bogura in Criminal Appeal No. 371 of 2023 dismissing the appeal affirming the judgment and order of conviction and sentence dated 15.02.2022 passed by the learned Joint Sessions Judge, 3rd Court, Bogura in Sessions Case No. 3066 of 2019 arising out of C.R. Case No. 111C of 2019 (Shibganj) convicting the petitioner under Section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer simple imprisonment for a period of 6(six) months along with a fine of Tk. 2,10,000/- 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, Md. Bachchu Mondal as complainant filed C.R case No. 111C of 2019 (Shibgonj) before the Court of the learned Senior Judicial Magistrate,

Bogura against the present petitioner alleging *inter alia* that the accused received Taka 2,00,000/- (Two lac) as loan from the complainant, Md. Bachchu Mondal. Subsequently, in order to refund the said amount the petitioner issued cheque Nos. $\frac{SB}{A}$ 8954694 and $\frac{SB}{A}$ 8954696 for Taka 1,00,000/- (one lac) each each in favour of the complainant on 14.10.2018. Both were dishonoured by the bank concerned on 15.01.2019 due to insufficiency of funds. The complainant issued statutory legal notice upon the petitioner on 28.01.2019. Despite receipt of the notice, the petitioner failed to make payment of the cheque amount within the stipulated time. Consequently, C.R. Case No. 111C of 2019 was filed on 27.03.2019. Subsequently, the case was transferred to the learned Joint Sessions Judge, 3rd Court, Bogura and was registered as Sessions Case No. 3066 of 2019. Upon taking cognizance of the offence, charge was framed on 07.10.2020 under Section 138 of the Negotiable Instruments Act, 1881. The accused was absent at the time

of framing of charge. After conclusion of trial and hearing of the parties, the learned Joint Sessions Judge, 3rd Court, Bogura 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 a period of 06 (six) months and to pay a fine of Taka 2,10,000/- (two lac ten thousand) by judgment and order dated 15.02.2022.

Against the said judgment and order the convict-petitioner preferred Criminal Appeal No. 371 of 2023 before the learned Sessions Judge, Bogura with delay of 442 days. The appeal was not admitted by the learned Sessions Judge, Bogura vide order dated 10.07.2023.

Being aggrieved by and dissatisfied with the judgment and order dated 10.07.2023 passed by the learned Sessions Judge, Bogura, the petitioner preferred this Criminal Revision before this Court and obtained Rule and bail.

Mr. Mohammad Abdul Hamid, learned Advocate appearing on behalf of the petitioner submits that the petitioner is in financially distressed circumstances and is not in a position to pay the fine. He prays for modification of the amount of fine and for setting aside the sentence of imprisonment.

Per contra, Mr. Md. Golam Kibria, 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 Advocates for the respective parties 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 two cheques in question in favour of the complainant-opposite party on 14.10.2018 to refund the loan. The cheques for Taka 2,00,000/- (two lac) were dishonoured by the bank concerned on 15.01.2019 due to insufficiency of funds. The complainant-opposite party served statutory legal notice upon the convict-petitioner on 28.01.2019, despite service of notice payment was not made and the case was filed on 27.03.2019. 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.

Considering the financial hardship of the petitioner, this Court is of the view that the amount of fine warrants modification and reduction, and that the sentence of imprisonment should be set aside in the interest of justice.

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 and fine are modified. The sentence of 06 (six) months simple imprisonment is set aside. The sentence of fine of Taka 2,10,000/- (Two lac ten thousand) is reduced to Taka 2,00,000/- (Two lac) which is equivalent to the value of the cheques. The convict-petitioner 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-opposite party No. 2 forthwith. The convict-petitioner is directed to pay the remaining portion of the value of the dishonoured cheques to the complainant-opposite party No. 2 within 03(three) months from the date of receipt of this judgment through trial court in default he shall suffer simple imprisonment for 01 (one) month. 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**