

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 1091 of 2023

In the matter of:

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

-And-

In the matter of:

Md. Zahidul Islam

... Convict-Petitioner

-Versus-

The State and another

...Complainant-Opposite Parties

Mr. Md. Abdul Mukit, Advocate

... For the Convict- Petitioner

Mr. Md. Mozammal Haque Rana, Advocate

... For the Complainant- 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: 27.01.2026, 01.02.2026 and
02.02.2026**

Judgment on: 15.02.2026

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 01.12.2022 passed by the learned Sessions Judge, Meherpur in Criminal Appeal No. 68 of 2022 dismissing the appeal affirming the judgment and order of conviction and sentence dated 13.06.2022 passed by the learned Joint Sessions Judge, 2nd Court, Meherpur in Sessions Case No. 145 of 2020 arising out of C.R Case No. 89 of 2020 (Mujibnagar) convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 6(six) months and also to pay a fine of Tk. 6,00,000/- (six 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, there was business transactions between the accused Md. Zahidul Islam and son of the complainant namely, Pappu. The son of the complainant owed Taka 3,80,000/- from the accused. Pappu waived Taka 80,000/- and then in order to refund the debt the accused issued 3 cheques in favour of the complainant for Taka 3,00,000/-. The issued cheque nos. are SBLQ 3024975, SBLQ 3024976 and SBLQ 3024977 all dated 09.07.2020 each for Taka 1,00,000/- drawn on Rupali

Bank Ltd., Muzibnagar Branch, Meherpur to refund the dues in favour of complainant. The complainant presented the cheques to the concerned bank on 12.07.2020 but it was dishonoured endorsing “insufficiency of funds”. Then he served legal notice on 14.07.2020 which was received by the accused on 15.07.2020 but the petitioner failed to make payment. Consequently, the complainant filed C.R. Case No. 89 of 2020 before the learned Judicial Magistrate, 2nd Court, Mujibnagar, Meherpur on 18.08.2020. The cognizance Court took cognizance and sent the case to the Court of Sessions Judge, Meherpur. The learned Sessions Judge, Meherpur transferred the case to the learned Joint Sessions Judge, 2nd Court, Meherpur and was registered as Sessions Case No. 145 of 2020. Charge was framed on 25.03.2021 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, prosecution examined 01(one) witness and produced documentary evidence which have been marked as exhibits-1 to 6 to prove the indictment.

Upon hearing, the learned Joint Sessions Judge, 2nd Court, Meherpur convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 06 (six) months and fine of Taka 6,00,000/- by judgment and order dated 13.06.2022.

Challenging the conviction and sentence the petitioner filed Criminal Appeal No. 68 of 2022 before the learned Sessions Judge, Meherpur, who dismissed the appeal by judgment and order dated 01.12.2022 affirming the order of conviction and sentence.

Being aggrieved by and dissatisfied with judgment and order dated 01.12.2022, the petitioner preferred the instant Criminal Revision before this Court and obtained Rule and bail.

Mr. Md. Abdul Mukit, the 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, which was illegally imposed at double the cheque amount. The petitioner is a poor day labourer, his mother and sister are very sick and he is the only earning member of his family.

He prays for modification of the amount of fine and for setting aside the sentence of imprisonment and also one year time to pay the rest amount of the cheque. He finally prays for making the Rule absolute.

Per contra, Mr. Md. Mozammal Haque Rana, the learned Advocate appearing on behalf of the opposite party no. 2 submits that, there is no illegality, impropriety or infirmity in the impugned judgments and orders. The Courts below rightly convicted and sentenced the petitioner and as such the Rule is liable to be discharged.

I have heard the learned Advocates for both the parties, perused criminal revision and the materials on record.

It appears from the petition of complaint, the deposition of PW1 (complainant) and the documentary evidence that there was business transactions between the accused Md. Zahidul Islam and son of the complainant namely, Pappu. The son of the complainant owed Taka 3,80,000/- from the convict-petitioner. Pappu waived Taka 80,000/- and then in order to refund the debt the accused issued 3 cheques in favour of the complainant for Taka 3,00,000/-.

He issued cheque nos. are SBLQ 3024975, SBLQ 3024976 and SBLQ 3024977 all dated 09.07.2020 each for Taka 1,00,000/- drawn on Rupali Bank Ltd., Muzibnagar Branch, Meherpur to refund the liabilities in favour of complainant. The complainant presented the cheques to the concerned bank on 12.07.2020 but it was dishonoured endorsing “insufficiency of funds”. The complainant-opposite party sent statutory legal notice to the convict-petitioner on 14.07.2020. Despite receipt of the notice, the petitioner failed to make the payment. Consequently, the case was filed on 18.08.2020. P.W-1 successfully proved the prosecution case.

The record shows that the complainant has duly complied with 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, 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 this Court set aside the sentence of imprisonment holding that the sentence of imprisonment would be a harsh sentence having no penal objective to be achieved.

I have no disagreement with the *ratio* passed by High Court Division 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 *ratio* the order of the Court is as follows:

The conviction of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 is upheld, but the sentence is modified. The sentence of 06(six) months rigorous imprisonment is set aside. The sentence of fine of Tk. 6,00,000/- is reduced to equivalent to the value of the

dishonoured cheque i.e. Taka 3,00,000/-. 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 money to the complainant-opposite party No. 1 forthwith. The convict-petitioner is directed to pay the remaining portion of the value of the dishonoured cheque to the complainant-opposite party No. 2 through trial Court within 04 (four) months from the date of receipt of this order, in default he will 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 with directions made above. The convict-petitioner 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)

Md. Ariful Islam Khan
Bench Officer