

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

Present:

**Mr. Justice Md. Shohrwardi**

**Criminal Revision No. 5120 of 2023**

Md. Saiful Islam

.....Convict petitioner

-Vs-

The State and another

....respondents

No one appears

....For the convict petitioner.

Mr. Aklas Uddin Bhiyan, Advocate

.....For the opposite party No.2

**Heard on 24.08.2025**

**Judgment delivered on: 04.12.2025**

On an application under sections 435 and 439 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 19.11.2023 passed by the Additional Sessions Judge, Court No.3, Cumilla in Criminal Appeal No. 205 of 2023 affirming the judgment and order of conviction and sentence dated 04.01.2023 passed by the Joint Sessions Judge, Court No.3, Cumilla in C.R. Case No. 261 of 2019 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 01(one ) year and fine of Tk. 900,000/- (nine

lac) should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The prosecution's case, in short, is that the complainant Md. Iqbal Hossain, and the accused Md. Saiful Islam are businessmen. The accused took loan of Tk. 900,000 from the complainant for business. The accused issued cheque No. 4049076 on 01.12.2018 drawn on his Account No. 0760210005448 maintained with Jamuna Bank Limited for payment of Tk. 900,000. The complainant presented the cheque for encashment, but it was dishonoured on 28.01.2019 with the remark “insufficient funds”. Thereafter, on 06.02.2019, the complainant sent a legal notice through registered post with AD to the permanent and business address of the accused, and the accused personally received the notice on 07.02.2019 and 10.02.2019, but he did not pay the cheque amount. Consequently, he filed the case on 21.03.2019.

During trial, charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881. At the time of framing charge, the accused was absconding. During trial, the prosecution examined 1 P.W., and the defence cross-examined him. After concluding the trial, the Joint Sessions Judge, Court No. 3, Cumilla, by judgment and order dated 04.01.2023, convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to suffer imprisonment for 01(one) year and fine of Tk. 900,000 (nine lac) against which the accused filed Criminal

Appeal No. 205 of 2023 and after hearing the appeal, the Additional Sessions Judge, Court No. 3, Cumilla, by impugned judgment and order, affirmed the judgment and order passed by the trial court against which the accused obtained the Rule.

P.W. 1 Md. Iqbal Hossain is the complainant. He stated that the accused Md. Saiful Islam is a businessman and he took loan of Tk. 900,000 from the complainant. On 01.12.2018, he issued a cheque for payment of Tk. 900,000. On 28.01.2019, the complainant presented the said cheque for encashment, which was dishonoured on the same date. On 06.02.2019, he sent legal notices to the accused, who received notices on 07.02.2019 and 10.02.2019, but he did not pay the cheque amount. Consequently, he filed the case on 21.03.2019. P.W. 1 proved the complaint petition and his signature as exhibit-1 series, the disputed cheque as exhibit-2, dishonoured slip as exhibit-3, postal receipt and AD as exhibit-4 series, and the legal notice as exhibit-5. During cross-examination, he admitted that he is also a businessman. The accused took loan on the condition of paying the profit. No agreement was executed regarding the payment of the loan, and no written cheque was also received by P.W. 1. On 01.12.2018, cheque was issued. Three months ago, the cheque was drawn. His brother deals with the wheat business at Burichang Bazar. He denied the suggestion that one Shahadat was detained regarding an occurrence or a blank cheque was issued, or a false case was filed.

No one appears on behalf of the convict petitioner.

The learned Advocate Mr. Aklas Uddin Bhuiyan, appearing on behalf of the complainant opposite party No. 2 submits that the accused took loan of Tk. 900,000 from the complainant, and the cheque was issued by the accused Md. Saiful Islam for payment of Tk. 900,000 on 01.12.2018, which was dishonoured on 28.01.2019, and the notices were sent on 06.02.2019 to the accused in compliance with the provision made in section 138 1(b) of the said Act, which were received by the accused on 07.02.2019 and 10.02.2019, but he did not pay the cheque amount. Consequently, the complainant filed the case on 21.03.2019, complying with the procedure under sections 138 1(a) to (c), 138(1)(1A) and 141(b) of the Negotiable Instruments Act, 1881.

I have considered the submission of the learned Advocate Mr. Aklas Uddin Bhuiyan, who appeared on behalf of the complainant opposite party No. 2, perused the evidence, impugned judgment and order passed by the courts below, and the records.

On perusal of the evidence, it reveals that on 01.01.2018, the accused allegedly issued cheque No. 4049076 drawn on his Account No. 0760210005448 maintained with the Jamuna Bank Limited in favour of P.W. 1 Md. Iqbal Hossain for payment of Tk. 900,000, which was presented on 28.01.2019, but it was dishonoured with the remark “insufficient funds” and he sent legal notice. P.W. 1 proved the cheque as exhibit-2 and

the dishonoured slip as exhibit-3, legal notice as exhibit-5, and postal receipt with AD(exhibits-4 series).

On perusal of the evidence, it reveals that the cheque dated 01.12.2018 for payment of Tk. 900,000 was presented on 28.01.2019 in compliance with the procedure provided in section 138 (1)(a) and it was dishonoured on the same date with the remark “insufficient funds” and the legal notices dated 06.02.2019 sent under clause (b) of the proviso to section 138 of the said Act for payment of the cheque amount were received by the accused on 07.02.2019 and 10.02.2019. P.W. 1 proved the disputed cheque as exhibit-2 and the dishonoured slip as exhibit-3. From the postal receipt and AD (exhibit-4), reveal that the accused received the legal notice on 07.02.2019 and 10.02.2019. P.W. 1 also proved the legal notice as exhibit-5. A suggestion was given to P.W. 1 that the accused issued a blank cheque, which has been denied by P.W.1. After service of notice on 07.02.2019 and 10.02.2019, the convict petitioner did not pay the cheque amount. Consequently the complainant legally filed the case on 21.03.2019 complying with the procedures provided in clauses a to c of the proviso to section 138, sections 138(1)(1A) and 141(b) of the Negotiable Instruments Act, 1881. During trial, the prosecution proved the charge against the accused beyond all reasonable doubt, and both the courts below, on correct assessment and evaluation of the evidence, passed the impugned judgment and order of conviction.

Considering the gravity of the offence and facts and circumstances of the case, I am of the view that ends of justice would be best served if the sentence passed by the trial court is modified as under:

The convict petitioner is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881, and he is sentenced to pay a fine of Tk. 900,000.

The trial court is directed to allow the complainant to withdraw 50% of the cheque amount deposited by the accused before filing the appeal within 7 (seven) days from the date of filing the application, if any.

The convict petitioner is directed to deposit the remaining 50% of the cheque amount in the trial court forthwith, failing which the trial court shall do the needful following law.

However, there will be no order as to costs.

Send down the lower Court's records at once.

