

**IN THE SUPREME COURT OF
BANGLADESH**

HIGH COURT DIVISION

**(CRIMINAL REVISIONAL
JURISDICTION)**

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 284 of 2022

Reba Begum

.....Convict Petitioner

-versus-

The State and another

.....Opposite Parties

Mr. Md. Ruhul Quddus, Advocate

.... For the convict petitioner

Mr. Md. Abdur Razzak, Advocate with

Ms. Kalpona Akter Banu, Advocate

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

Mr. Md. Anichur Rahman Khan, DAG with

Mr. Sultan Mahmood Banna, AAG with

Mr. Mir Moniruzzaman, AAG with

....For the State

Heard on 20.02.2025.

Judgment delivered on 12.08.2025

On an application under sections 439 and 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order of conviction and sentence dated 02.01.2022 passed by Additional

Sessions Judge, Court No. 1, Narayanganj in Criminal Appeal No. 257 of 2021 affirming the judgment and order of conviction and sentence dated 27.01.2021 passed by Joint Sessions Judge, Court No. 3, Narayanganj in Sessions Case No. 249 of 2020 arising out of CR Case No. 856 of 2018 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing her thereunder to suffer imprisonment for 01(one) year and fine of Tk. 600,000 should not be set aside and/or pass such other or further orders or orders as to this court may seem fit and proper.

The prosecution's case, in short, is that the accused Reba Begum took loan of Tk. 600,000 from the complainant Mina to send her husband to Malaysia. The accused issued cheque No. 1821011 on 12.06.2018 drawn on her Current Account No. 13559/0 maintained with Janata Bank Ltd. Sonargaon Branch, Narayanganj, for payment of Tk. 600,000 in favour of the complainant, and she presented the said cheque on 06.08.2018 for encashment, but it was dishonoured with the remark "in insufficient funds". On 14.08.2018, the complainant sent a legal notice to the accused for payment of the cheque amount within 30 days from the date of receipt of the notice. Despite the service of notice upon the accused, she did not pay the cheque amount. Consequently, she filed the case on 04.10.2018.

During the trial, the Joint Sessions Judge, Court No. 3, Narayanganj framed charge against the accused under section 138 of the Negotiable Instruments Act, 1881, and the accused was absconding, for which the charge framed against the accused could not be read over and explained to her. During the trial, the prosecution examined 01 witness to prove the charge against the accused. Since the accused was absconding, the trial court could not

examine her under section 342 of the Code of Criminal Procedure, 1898.

P.W. 1 Mina is the complainant. She stated that on 12.06.2018, the accused issued a cheque for payment of Tk. 6,00,000, and it was dishonoured on 06.08.2018. The legal notice was sent on 14.08.2018, but the accused did not pay the cheque amount. Consequently, she filed the case. She proved the complaint petition as exhibit-1 and her signature on the complaint petition as exhibit-1/1. She proved the dishonoured slip, the postal receipt, and the legal notice as exhibit-2 series.

No one appears on behalf of the convict petitioner.

The learned Advocate Ms. Kalpona Akter Banu, appearing on behalf of the complainant opposite party No. 2, submits that the accused Reba Begum issued a cheque on 12.06.2018 for payment of Tk. 6,00,000 in favour of the complainant, and the complainant presented the cheque on 06.08.2018, but the cheque was dishonoured due to insufficient funds. Thereafter, the complainant sent a legal notice on 14.08.2018 to the accused through registered post for payment of the cheque amount within 30 days from the date of receipt of the notice. After the service of notice, the accused did not pay the cheque amount. Consequently, the complainant filed the case on 04.10.2018, complying with the provisions under sections 138 and 141(b) of the Negotiable Instruments Act, 1881. During the trial, the prosecution proved the charge against the accused, and both the courts below, considering the evidence of the prosecution witness, passed the impugned judgment and order. She prayed for discharging the Rule.

I have considered the submission of the learned Advocate Ms. Kalpana Akter Banu, who appeared on behalf of the complainant opposite party No. 2, perused the evidence, impugned judgments and orders passed by the courts below, and the records.

On perusal of the evidence, it appears that the convict-petitioner Beba Begum issued cheque No. 1821011 drawn on her Account No. 13559/0 on 12.06.2018, maintained with Janata Bank Ltd, Sonargaon Branch, Narayanganj, in favour of the complainant Mina for payment of Tk. 6,00,000. P.W. 1 proved the said cheque as Exhibit 2. The complainant presented the said cheque on 06.08.2018, and it was dishonoured with the remark “insufficient funds”. P.W. 1 proved the dishonoured slip as Exhibit- 2(1). Thereafter, she sent a legal notice on 14.08.2018 through registered post. P.W. 1 proved the legal notice and postal receipt as Exhibit 2 series. The above evidence depicts that the cheque No. 1821011 dated 12.06.2018 was presented on 06.08.2018 following the provision made in clause a of the proviso to section 138 of the Negotiable Instruments Act, 1881, and the legal notice was sent on 14.08.2018 through registered post.

The mere presentation of a cheque within the specified time mentioned in clause (a) of the proviso to Section 138 of the Negotiable Instruments Act, 1881 and making demand by the payee in writing to the drawer of the cheque for the payment of the cheque amount within thirty days from the date of receipt of information by him from the bank regarding the return of the cheque as unpaid does not constitute an offense under Section 138 of the Negotiable Instruments Act, 1881 unless the said notice is served upon the drawer of the cheque and he/she failed to pay the cheque amount within thirty days from the date of receipt of said notice and the

complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138 of the said Act.

At the time of insertion of section 138 in the Negotiable Instruments Act, 1881, by Act No. XIX of 1994, the legislature made provision in clause b to section 138 of the said Act, regarding the demand for payment of cheque amount, but no provision was made at that time in the said Act as to the mode of making demand or service of notice upon the drawer of the cheque. The legislature inserted Sub-Section (1A) in Section 138(1) of the said Act by Act No. III of 2006, making provision regarding the mode of the service of notice under clause b of the proviso to Section 138 of the said Act. Under Section 138(1)(1A) of the said Act, the notice under Section 138(b) of the said Act is required to be served upon the drawer of the cheque, a. by delivering it to the person on whom it is to be served; or b. by sending it by registered post with acknowledgment due to that person at his usual or last known place of abode or business in Bangladesh; or c. by publication in a daily Bangla national newspaper having wide circulation. The Negotiable Instruments Act, 1881 is a special law. Service of notice upon the accused in compliance with the provision made in Section 138(1)(1A) of the said Act at least by one mode as stated above, is sine qua non.

As per section 27 of the General Clauses Act, 1958, if the notice or a letter is sent by registered post addressing the correct address of the addressee, it is to be presumed that the notice was served upon him. Nothing is stated in section 27 of the said Act as to

the determination of the date of receipt of notice by the drawer of the cheque or service of notice upon the drawer of the cheque.

Nothing has been stated in the complaint petition as to the sending notice to the convict-petitioner complying with the provision made in sub-section 1(A) of section 138 of the Negotiable Instruments Act, 1881. Sending notice to the convict petitioner following the provision made in sub-section 1(A) of section 138 of the said Act, is sine qua non. No AD is proved in the case. From the evidence adduced by the prosecution, the cause of action stated in clause c of the proviso to section 138 of the Negotiable Instruments Act, 1881 could not be asserted.

The above view of this Court regarding service of notice upon the drawer of the cheque before filing a case under Section 138 of the Negotiable Instruments Act, 1881 lends support from the decision made in the case of Nizamuddin Mahmood vs Abdul Hamid Bhuiyan and another reported in 60 DLR (AD) 195 para 20, in which it has been held that;

“Since the date of receipt is a question of fact to be ascertained at the time of trial, non-disclosure of such fact in the complaint petition cannot render the proceeding liable to be quashed to the great prejudice of the complainant who is entitled to prove his case on evidence.”

The provisions made in clauses a to c of the proviso to section 138 and sections 138 (1)(A) and 141(b) of the Negotiable Instruments Act, 1881 are cumulative. The complainant failed to comply with the provision made in clauses a to c of the proviso to section 138, sections 138(1A) and 141(b) of the said Act and both

the courts below failed to hold the correct view as to the said provisions and arrived at a wrong decision as to the guilt of the convict petitioner Reba Begum and illegally convicted her under section 138 of the Negotiable Instruments Act, 1881.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgments and orders of conviction and sentence passed by the courts below against the convict petitioner Reba Begum are hereby set aside.

The convict petitioner Reba Begum is entitled to get the 50% of the cheque amount deposited by her before filing appeal. The trial court is directed to allow the convict petitioner Reba Begum to withdraw 50% of the cheque amount within 30 days from the date of filing application, if any.

However, there will be no order as to costs.

Send down the lower Court's records at once.