

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 1968 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:

Younus Khan

... Convict-Petitioner

-Versus-

The State and another

...Complainant-Opposite Parties

Mr. S.M. Kamrul Islam, Advocate

... For the Convict- Petitioner

Mr. Md. Kawser Ali, Advocate

... For the Complainant- opposite party No. 2

Mr. Md. Shafiquil Islam, D.A.G with

Ms. Farhana Abedin, A.A.G with

Mr. Hemaith Uddin, A.A.G and

Mr. K. M. Saiful Islam, A.A.G

... For the State

**Heard on: 21.04.2026, 22.04.2026,
26.04.2026 and 27.04.2026**

Judgment on: 29.04.2026

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 29.11.2023 passed by the learned Sessions Judge, Patuakhali in Criminal Appeal No. 29 of 2023, dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 23.01.2023 passed by the learned Joint Sessions Judge (In-Charge), 3rd Court, Patuakhali in Sessions Case No. 35 of 2021 arising out of C.R Case No. 375 of 2020 (Patuakhali) convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 08(eight) months and to pay a fine of Tk. 3,00,000/- (three 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.

The facts, relevant for disposal of the Rule, in brief, are that the accused-petitioner obtained a debt of Taka 3,00,000/- from the complainant on 01.06.2019. In discharge of the said liability, the accused-petitioner issued cheque No. 9933095 dated 17.02.2020 for Taka 3,00,000/= drawn on Sonali Bank Limited, New Town Branch, Patuakhali on 17.02.2020. The complainant presented the said cheque to the concerned bank on 02.03.2020 but the same was dishonoured with the

endorsement “insufficiency of funds”. Thereafter, the complainant served a statutory legal notice on 09.03.2020, however, the petitioner failed to make payment within the stipulated period.

Consequently, the complainant filed C.R. Case No. 375 of 2020 before the learned Senior Judicial Magistrate, Cognizance Court No. 1, Patuakhali on 11.06.2020. The delay in filing the case was occasioned due to the COVID-19 pandemic. The learned Magistrate took cognizance of the offence and subsequently transmitted the case to the Court of Sessions Judge, Patuakhali. The learned Sessions Judge, Patuakhali transferred the case to the learned Joint Sessions Judge, 3rd Court, Patuakhali and was registered as Sessions Case No. 35 of 2021. Charge was framed on 16.03.2022 under Section 138 of the Negotiable Instruments Act, 1881 against the accused.

In course of trial, the prosecution examined 01(one) witness. The accused was not examined under Section 342 of the Code of Criminal Procedure.

Upon conclusion of the trial and hearing, the learned Joint Sessions Judge, 3rd Court, Patuakhali convicted the

petitioner under Section 138 of the Negotiable Instruments Act, 1881 (the Act, 1881) and sentenced him to suffer simple imprisonment for 08(eight) months and to pay a fine of Tk. 3,00,000/- (three lac) by judgment and order dated 23.01.2023.

Challenging the conviction and sentence, the petitioner filed Criminal Appeal No. 29 of 2023 before the learned Sessions Judge, Patuakhali. Upon hearing, the learned Sessions Judge, Patuakhali dismissed the appeal by judgment and order dated 29.11.2023, affirming the order of conviction and sentence.

Being aggrieved by and dissatisfied with judgment and order dated 29.11.2023, the petitioner preferred the instant Criminal Revision before this Court and obtained the Rule along with an order of bail.

Mr. S.M. Kamrul Islam, the learned Advocate appearing on behalf of the petitioner, submits that the Courts below failed to properly appreciate the evidence on record and did not apply their judicial mind in passing the impugned judgment and order of conviction and sentence and as such the same is liable to be set aside.

He further submits that the petitioner is in financial distress circumstances and is not in a position to pay the remaining amount within 06(six) months, he however prays for 06(six) months time to repay the same. Notwithstanding he has already paid Taka 1,50,000/- (50% of the cheque amount). He prays for reduction of the fine imposed upon the petitioner and setting aside the sentence of imprisonment. He finally prays for making the Rule absolute.

Per contra, Mr. Md. Kawser Ali, 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 have 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 the convict-petitioner took a loan of Taka 3,00,000/- from the complainant on 01.06.2019. In discharge of the said liability the accused-petitioner issued cheque No. 9933095 dated

17.02.2020 for Taka 3,00,000/=. The complainant presented the cheque to the concerned bank on 02.03.2020 but the same was dishonoured with the endorsement “insufficiency of funds”. Thereafter, the complainant served a legal notice on 09.03.2020, however, the petitioner failed to make payment within the stipulated period. Consequently, the case was filed on 11.06.2020. P.W-1 has successfully proved the prosecution case.

The record shows that the complainant has duly complied with the mandatory provisions and procedures laid down in Section 138 of the Act, 1881 in filing the case. The case was filed upon accrual of the cause of action under clause (c) of the proviso to Section 138 of the Act. The complainant has also proved the existence of consideration against which the cheque was drawn and he 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 regard 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 in the above-mentioned case.

Considering the financial hardship of the petitioner and the facts and circumstances of the case this Court is of the view that the ends of justice would be best served if the sentence is modified by setting aside the term of imprisonment.

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 hereby affirmed. However, the sentence is modified. The sentence of 08(eight) months simple imprisonment is set aside. The sentence of fine of Tk. 3,00,000/- is upheld. It appears that 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. 2 forthwith. The convict-

petitioner is directed to pay the remaining portion of the value of the dishonoured cheque amounting to Taka 1,50,000/- to the complainant-opposite party No. 2 through the trial Court within 03 (three) months from the date of receipt of this order, 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 with directions made above.

The convict-petitioner is released from his bail bond.

Let the judgment along with the lower Court records (LCR) be transmitted to the Court concerned forthwith.

(Md. Bashir Ullah, J.)