

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 4861 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:

Abdul Jalil

... Convict-Petitioner

-Versus-

The State and another

...Complainant-Opposite Parties

None appears.

... For the Convict- Petitioner

Mr. Md. Nasir Uddin, 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: 27.04.2026, 04.05.2026,
05.05.2026 and 06.05.2026**

Judgment on: 11.05.2026

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 09.07.2024 passed by the learned Sessions Judge, Jhalakati in Criminal Appeal No. 15 of 2024, dismissing the appeal and thereby affirming the judgment and order dated 14.01.2024 passed by the learned Joint Sessions Judge, 2nd Court, Jhalakati in Sessions Case No. 180 of 2022 arising out of C.R Case No. 93 of 2022 (Rajapur), convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 01(one) year and to pay a fine of Tk. 10,00,000/- (ten 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 loan of Taka 10,00,000/- from the complainant. In discharge of said liability, the accused-petitioner issued cheque No. 9654540 dated 03.01.2022 for Taka 10,00,000/=, drawn on Rupali Bank Limited, Putiakhali Bandar Branch, Jhalakati. The complainant presented the said cheque to the concerned bank on 30.03.2022, but the same was dishonoured with the endorsement “insufficiency of funds”. Thereafter, the

complainant served a statutory legal notice upon the petitioner on 13.04.2022, however, the petitioner failed to make payment within the stipulated period.

Consequently, the complainant filed C.R. Case No. 93 of 2022 (Raja) before the learned Senior Judicial Magistrate, Cognizance Court, Rajapur, Jhalakati on 19.05.2022. The learned Magistrate took cognizance of the offence and subsequently transmitted the case to the Court of Sessions Judge, Jhalakati. The learned Sessions Judge, Jhalakati transferred the case to the learned Joint Sessions Judge, 2nd Court, Jhalakati and was registered as Sessions Case No. 180 of 2022. Charge was framed on 22.08.2023 under Section 138 of the Negotiable Instruments Act, 1881 against the accused to which he pleaded not guilty of the offence and claimed to be tried.

In course of trial, the prosecution examined 01(one) witness. The accused was examined under Section 342 of the Code of Criminal Procedure to which he repeated innocence.

Upon conclusion of the trial and hearing the parties, the learned Joint Sessions Judge, 2nd Court, Jhalakati convicted the petitioner under Section 138 of the Negotiable

Instruments Act, 1881 (the Act, 1881) and sentenced him to suffer simple imprisonment for 01(one) year and to pay a fine of Tk. 10,00,000/- (ten lac) by judgment and order dated 14.01.2024.

Challenging the conviction and sentence, the petitioner filed Criminal Appeal No. 15 of 2024 before the learned Senior Sessions Judge, Jhalakati. Upon hearing, the learned Sessions Judge, Jhalakati dismissed the appeal by judgment and order dated 09.07.2024, affirming the order of conviction and sentence.

Being aggrieved by and dissatisfied with judgment and order dated 09.07.2024, the petitioner preferred the instant Criminal Revision before this Court and obtained the Rule along with an order of bail.

When the revisional application was taken up for hearing, none appeared on behalf of the petitioner to support the rule, although the matter appeared in the daily cause list on 27.04.2026, 04.05.2026, 05.05.2026, 06.05.2026 and 11.05.2026.

Mr. Md. Nasir Uddin, 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 Advocate appearing for the opposite party no. 2, perused the revisional application 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 obtained a loan of Taka 10,00,000/- from the complainant. In discharge of the said liability the accused-petitioner issued cheque No. 9654540 dated 03.01.2022 for Taka 10,00,000/=. The complainant presented the cheque to the concerned bank on 30.03.2022 but the same was dishonoured with the endorsement “insufficiency of funds”. Thereafter, the complainant served a legal notice upon the petitioner on 13.04.2022; however, the petitioner failed to make payment within the stipulated period. Consequently, the case was filed on 19.05.2022. 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 was 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 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 substantive 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 of 01(one) year simple imprisonment is set aside. The sentence of fine of Tk. 10,00,000/- is maintained. 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 5,00,000/- 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 a copy of this judgment along with the lower Court records (LCR) be transmitted to the Court concerned forthwith.

(Md. Bashir Ullah, J.)