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

Present:
Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 3220 of 2025

In the matter of:
An Appeal under Section 410 of the Code of Criminal Procedure

-And-

In the matter of:
Md. Masud Alam
... Appellant

-Versus-

The State and another
... Respondents

Mr. Md. Asmall Bin Alam Mithu with
Mr. Shaikh Shariful Islam, Advocates
... For the Appellant

Mr. Mohammad Abdul Aziz Talukder, Advocate
... For the Respondent Nos. 2(a) to 2(c)

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: 12.07.2026 and 13.07.2026
Judgment on: 15.07.2026

This appeal, preferred under Section 410 of the Code of Criminal Procedure, 1898 is directed against the judgment and order dated 28.02.2021 passed by the learned Additional

Sessions Judge, Court No. 7, Dhaka in Sessions Case No. 2322 of 2019 arising out of C.R. Case No. 457 of 2018 convicting the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer rigorous imprisonment for 06(six) months and to pay a fine of Taka 13,00,000/- (thirteen lac).

The prosecution case, in short, is that the accused obtained a loan of Taka 13,00,000/- from the complainant for doing his business smoothly. In discharge of the debt, the accused issued cheque No. CD/A 2392448 on 01.12.2017, drawn on Dutch-Bangla Bank Limited for Taka 13,00,000/-. The complainant presented the cheque to the concerned bank for encashment on 24.05.2018 but the same was dishonoured with the endorsement "Drawers Signature Differ of Missing" on 27.05.2018. Thereafter, the complainant served a statutory legal notice upon the accused on 12.06.2018 demanding payment.

Despite such notice, the accused failed to make the payment within the statutory period. Consequently, the complainant instituted C.R. Case No. 457 of 2018 before the learned Chief Judicial Magistrate (Keranigonj Cognizance)

Court, Dhaka under Section 138 and 140 of the Negotiable Instruments Act, 1881.

The accused absconded and deliberately concealed himself with a view to evading arrest and trial. So, the learned Magistrate took cognizance of the offence against the accused in compliance with the provisions of Section 339B of the Code of Criminal Procedure for holding the trial in *absentia*. Thereafter, the learned Magistrate sent the case record to the learned Sessions Judge, Dhaka.

Subsequently, the learned Sessions Judge, Dhaka transmitted the case to the learned Additional District and Sessions Judge, 7th Court, Dhaka which was registered as Sessions Case No.2322 of 2019. The charge was framed under Section 138 of the Negotiable Instruments Act, 1881(the Act, 1881) against the accused. At the time of framing of the charge the accused remained absconding. In course of trial, the prosecution examined 02(two) witnesses whereas the defence examined none. The examination of the accused under Section 342 of the Code of Criminal Procedure could not be held as he remained absconding. The trial was held in *absentia*.

Upon conclusion of the trial, hearing the complainant, the learned Additional District and Sessions Judge, 7th Court, Dhaka convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer rigorous imprisonment for 06 (six) months and to pay a fine of Taka 13,00,000/- by judgment and order dated 28.02.2021.

Being aggrieved by and dissatisfied with judgment and order dated 28.02.2021, the convict preferred the instant Criminal Appeal having deposited Taka 6,50,000/- before the Court below through Treasury Chalan on 20.04.2025. This Court enlarged the appellant on bail till disposal of the appeal on 26.05.2025.

Mr. Md. Asmall Bin Alam (Mithu), the learned Advocate appearing on behalf of the appellant submits that the appellant does not dispute the issuance of the cheque but owing to severe financial hardship, he could not make the payment of the cheque amount following receipt of the notice sent by the complainant after dishonour of the cheque. He highlights that the appellant has already deposited Taka 6,50,000/- before the trial Court through T.R. Chalan equivalent to 50% of the dishonoured cheque amount.

He further submits that the appellant is currently in financial hardship and hence he prays for an extension of 06(six) months to clear the remaining dues. Finally, he prays for the appeal to be allowed with necessary modification.

Per contra, Mr. Mohammad Abdul Aziz Talukder, the learned Advocate appearing on behalf of the respondent Nos. 2(a), 2(b) and 2(c) submits that the respondent No. 2 died on 03.08.2021 left behind his legal heirs one wife, one son, one daughter. On 03.03.2026 they were substituted as respondent no. 2(a) to 2(c) by this Court and they have been suffering severe financial hardship.

He further submits that there is no illegality, impropriety or infirmity in the impugned judgment and order. He contends that the prosecution successfully proved all the legal ingredients required under Section 138 of the Negotiable Instruments Act, 1881. The trial Court rightly convicted the accused and sentenced him to suffer imprisonment. Finally, he prays for the dismissal of the appeal.

I have considered the submissions of the learned Advocates for both sides, perused the evidence, impugned judgment and order passed by the trial Court and the materials on record.

Upon careful scrutiny of the evidence, this Court finds that the accused issued cheque No. CD/A 2392448 dated 01.12.2017 in favour of the complainant for Taka 13,00,000/- towards discharge of a legally enforceable liability. The cheque when presented within its period of validity was dishonoured by the drawee bank.

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 complainants as PW1 and PW2 proved consideration against which the cheque was drawn and that it is the holder of the cheque in due course. PW1 identified the signature of the accused on the cheque in question and the same remained unchallenged. The Court below righty arrived at the finding that the appellant 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 it has been held that the sentence of imprisonment in the case of cheque dishonour would be a harsh sentence having no penal objective to be achieved. I respectfully concur with the principle enunciated therein.

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 substantive sentence of imprisonment is modified by setting aside the term of imprisonment.

In view of the foregoing discussions and the principle laid down in the aforesaid decision, the order of the Court is as follows:

The conviction of the appellant under Section 138 of the Negotiable Instruments Act, 1881 is hereby affirmed. However, the substantive sentence of 06(six) months' rigorous imprisonment is set aside. The sentence of fine of Taka

13,00,000/- is upheld. It appears that the convict-appellant 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-respondent Nos. 2(a), 2(b) and 2(c) forthwith. The convict-appellant is directed to pay the remaining portion of the value of the dishonoured cheque to the complainant-respondent Nos. 2(a), 2(b) and 2(c) through the 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-appellant 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 recover the fine under the provisions of Section 386 of the Code of Criminal Procedure.

In the result, the Criminal Appeal is dismissed with modification of sentence and with directions made above. The convict-appellant is released from his 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