

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 5936 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:

Ranjan Majumdar

... Convict-Appellant-Petitioner

-Versus-

The State and another

... Respondent-Opposite Parties

None appears.

... For the Convict-Appellant- Petitioner

Mr. Md. Mozammal Haque(Rana), Advocate

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

Mr. S.M. Aminul Islam Sanu, D.A.G with

Mr. Md. Nasimul Hasan, A.A.G with

Mr. Md. Golamun Nabi, A.A.G and

Ms. Farhana Abedin, A.A.G

... For the State

**Heard on: 07.01.2026, 08.01.2026 and
11.01.2026**

Judgment on: 14.01.2026

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 07.02.2024 passed by the learned Jananirapatta Bignokari Aporadh Damon Tribunal and Special Sessions Judge, Barishal in Criminal Appeal No. 87 of 2023 allowing the appeal in part affirming the conviction but modifying the sentence from 10 (ten) months to 04 (four) months imposed by the judgment and order dated 22.09.2022 passed by the learned Joint Sessions Judge, 1st Court, Barishal in Sessions Case No. 600 of 2022 arising out of C.R. Case No. 167 of 2021 convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 10 (ten) months and to pay a fine of Taka 10,00,000/- (ten lac), should not be set aside and/or other or further order or orders be passed as to this Court may seem fit and proper.

Facts relevant for disposal of the Rule, in brief, are that the opposite party No. 2, Bimol Krishna Gharami as complainant filed C.R case No. 167 of 2021 before the Court of the learned Senior Judicial Magistrate, Cognizance Court, Barishal against the present petitioner alleging *inter alia* that the accused received Taka 10,00,000/- (ten lac) from the

complainant, Bimol Krishna Gharami as consideration for selling 40 decimals of land but he failed to execute and register the deed due to absence of necessary documents. Subsequently, in order to refund the said amount the petitioner issued cheque No. 11720876745 in favour of the complainant on 28.02.2021 for Taka 10,00,000/-(ten lac). It was dishonoured by the bank concerned on 25.08.2021 due to insufficiency of funds. The complainant issued statutory legal notice upon the petitioner on 25.08.2021, which was received by him on 26.08.2021. Despite receipt of the notice, the petitioner failed to make payment of the cheque amount within the stipulated time. Consequently, C.R. Case No. 167 of 2021 was filed on 12.10.2021.

Subsequently, the case was transferred to the learned Joint Sessions Judge, 1st Court, Barishal and was registered as Sessions Case No. 600 of 2022. On taking cognizance of offence the charge was framed on 05.09.2022 under Section 138 of the Negotiable Instruments Act, 1811. The accused was absent at the time of framing of charge. Upon conclusion of trial and hearing of the parties, the learned Joint Sessions

Judge, Barishal found the petitioner guilty of the offence under Section 138 of the Negotiable Instruments Act, 1811 and convicted and sentenced to suffer simple imprisonment for 10 (ten) months and to pay a fine of Taka 10,00,000/- (ten lac) by judgment and order dated 22.09.2022.

Against the said judgment and order the petitioner preferred Criminal Appeal No. 87 of 2023 before the Sessions Judge, Barishal. On transfer, the appeal was heard by the Court of Jananirapatta Bignokari Aporadh Damon Tribunal and Special Sessions Judge, Barishal who dismissed the appeal by its judgment and order dated 07.02.2024 affirming the conviction and modifying the period of sentence of imprisonment from 10 (ten) months to 4 (four) months.

Being aggrieved by and dissatisfied with the judgment and order dated 07.02.2024 passed by the Jananirapatta Bignokari Aporadh Damon Tribunal and Special Sessions Judge, Barishal, the petitioner preferred this Criminal Revision before this Court and obtained Rule and bail.

When the revisional application was taken up for hearing none appeared on behalf of the petitioner to support the

Rule although the matter had been appearing in the daily cause list on several days with the name of the learned Advocate.

Mr. Md. Mozammel Haque (Rana), the learned Advocate appearing on behalf of the opposite party No. 2 submits that there is no illegality, impropriety or infirmity in the judgments and orders passed by the Courts below and the charge brought against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 has been proved beyond reasonable doubt and therefore, the Rule is liable to be discharged.

I have heard the learned Advocate for the opposite party No. 2 and perused the revisional application along with the materials on record.

On scrutiny of the petition of complaint, the deposition of PW1 (complainant) and the documentary evidence, it appears that the convict-petitioner issued the cheque in question in favour of the complainant-opposite party on 28.02.2021 to refund the outstanding liability. The cheque for Taka 10,00,000/- (ten lac) was dishonoured by the bank concerned on 25.08.2021 due to insufficiency of funds. The complainant-opposite party served statutory legal notice upon

the convict-petitioner on 25.08.2021, despite service of notice payment was not made and the case was filed on 12.10.2021. PW1 has successfully proved the prosecution case.

The record shows that the complainant duly complied with all 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 complainant also proved consideration against which the cheque was drawn and that it 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, as regards 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:

“There can be no dispute in so far as the sentence of imprisonment is concerned that it should commensurate with the gravity of the crime. Court has to deal with the offenders

by imposing proper sentence by taking into consideration the facts and circumstances of each case. It is not only the rights of the offenders which are required to be looked into at the time of the imposition of sentence, but also of the victims of the crime and society at large, also by considering the object sought to be achieved by the particular legislation. Considering the facts and circumstances of the case and the object of the law, I am of the view that the sentence of imprisonment would be a harsh sentence having no penal objective to be achieved. Hence, the sentence of imprisonment is set aside.”

I have no disagreement with the principle of the decision passed in the above-mentioned case.

In view of the foregoing discussions and the *ratio* laid down in the above-mentioned reported case, the order of this Court is as follows:

The conviction of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 is upheld, but the sentence of imprisonment is modified. The sentence of 04(four) months simple imprisonment is set aside. The sentence of fine of Taka 10,00,000/- (ten lac) which is equivalent to the value of the cheque, is maintained. The convict-petitioner has already deposited Taka 5,00,000/- (five lac) before the trial Court prior to filing the appeal and has subsequently, paid Taka 50,000/- (fifty thousand). The Court concerned is directed to disburse the said deposited amount 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 *i.e.* Taka 4,50,000/- (four lac fifty thousand) to the complainant-opposite party No. 2 within 03(three) months from the date of receipt of this judgment in default he shall suffer simple imprisonment for 03 (three) months. 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 directions as above. The convict-petitioner is discharged from the 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. Sabuj Akan/
Assistant Bench Officer**