

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 3881 of 2024

Md. Ashir Molla

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

No one appears.

...For the convict-petitioner

Mr. Md. Nizam Uddin, Advocate

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

Heard on 14.08.2025 and 20.08.2025

Judgment delivered on 24.08.2025

On an application filed under section 439 read with section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 23.05.2024 passed by the Additional Sessions Judge, Court No. 2, Rajbari in Criminal Appeal No. 286 of 2023 affirming the judgment and order of conviction and sentence dated 08.08.2023 passed by Joint Sessions Judge, Court No. 2, Rajbari in Sessions Case No. 483 of 2022 arising out of C.R. Case No.125 of 2022 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 01(one) year and fine of Tk. 1,90,000 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution's case, in short, is that the complainant Md. Shiam Ahmed and the accused Md. Ashir Molla was previously known to each other, and the accused took loan of Tk. 1,90,000 from the complainant, but he could not pay the said loan. When the complainant demanded money from the accused, he issued Cheque No. 0607002 on 28.12.2021 drawn on his Account No. 1711120006224 maintained with Al-Arafa Islami Bank Ltd, Rajbari Branch for payment of Tk. 1,90,000 in favour of the complainant. The

complainant presented the said cheque for encashment, which was dishonoured on 03.01.2022 with the remark 'insufficient funds'. He sent a legal notice to the accused on 05.01.2022 through registered post with AD, but in connivance with the concerned postal peon, he did not receive the notice. Thereafter, the complainant filed the case on 14.02.2022.

During the trial, the charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881, which was read over and explained to him present in Court, and he pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 1 witness to prove the charge against the accused. During the examination of P.W. 1, the accused was absconding. After concluding the trial, the trial Court by judgment and order dated 08.08.2023 convicted the accused under section 138 of the Negotiable Instruments Act, 1881, and sentenced him thereunder to suffer imprisonment for one year and fine of Tk. 1,90,000 against which the convict-petitioner filed Criminal Appeal No. 286 of 2023 in the Sessions Judge, Rajbari, which was heard by the Additional Sessions Judge, Court No. 2, Rajbari, who, by impugned judgment and order, affirmed the judgment and order passed by the trial Court against which the convict-petitioner obtained the Rule.

P.W. 1 Shiam Ahmed is the complainant. He stated that on 28.12.2021, the accused issued a cheque. He presented the cheque on 03.01.2022, but it was dishonoured. He sent a legal notice on 05.01.2022, which was returned on 10.01.2022. Consequently, he filed the case. He proved the complaint petition as exhibit 1 and his signature on the complaint petition as exhibit 1/1. He proved the cheque as exhibit 2, dishonour slip as exhibit 2/1, legal notice as exhibit 2/2, postal receipt as exhibit 3, and the AD as exhibit 3/1. The defence declined to cross-examine P.W. 1.

No one appears on behalf of the convict-petitioner.

Learned Advocate Mr. Md. Nizam Uddin, appearing on behalf of the complainant-opposite party No. 2, submits that the accused issued a cheque on 28.12.2021 for payment of Tk. 1,90,000 in favour of the complainant Shiam Ahmed but it was dishonoured on 03.01.2022 with the remark 'insufficient funds' and the complainant sent legal notice on 05.01.2022 through registered post with AD but the accused did not receive the said notice in connivance with the concerned postal peon and thereafter, the complainant complying with the procedure under sections 138 and 141(b) of the Negotiable Instruments Act, 1881 filed the case. During the trial, the prosecution proved the charge against the accused beyond all reasonable doubt. He prayed for the discharging of the Rule.

I have considered the submission of the learned Advocate Mr. Md. Nizam Uddin, who appeared on behalf of the complainant-opposite party No. 2, perused the evidence, the impugned judgments and orders passed by the Courts below, and the records.

On perusal of the evidence, it reveals that the accused Md. Ashir Molla issued Cheque No. 0607002 on 28.12.2021 drawn on his Account No. 1711120006224 maintained with Al-Arafa Islami Bank Ltd, Rajbari Branch for payment of Tk. 1,90,000 in favour of the complainant Md. Shiam Ahmed. P.W. 1 proved the cheque as exhibit 2. The complainant presented the cheque on 03.01.2022, but the same was dishonoured on the same date with the remark 'insufficient funds'. P.W. 1 proved the dishonour slip as Exhibit 2. The complainant sent a legal notice on 05.01.2022 to the accused Md. Ashir Molla through registered post with AD. P.W. 1 proved the postal receipt as exhibit 3 and the AD as exhibit 3/1. The legal notice was proved as Exhibit 2/2. P.W. 1 stated that in connivance with the clerk of the concerned post office, the accused did not receive the notice.

The above evidence depicts that Cheque No. 0607002 dated 28.12.2021 was presented on 03.01.2022, complying with the

provision made in clause (a) of the proviso to section 138 of the Negotiable Instruments Act, 1881. The complainant also made a demand on 05.01.2022 to the accused through the registered post with AD complying with the provision made in clause (b) of the proviso to section 138 and sub-section (1A) of section 138 of the said Act, but the accused did not receive the said notice. At the time of framing charge, the accused was present in Court and subsequently absconded. During the trial, the defence did not cross-examine P.W. 1. Therefore, the evidence of P.W. 1 that the accused did not receive the legal notice on 10.01.2022 is admitted by the accused. When a notice or demand is made following the provision made in clause (b) of the proviso to section 138 and sub-section (1A) of section 138 of the Negotiable Instruments Act, 1881 to the correct address of the accused through registered post with AD, it is to be deemed that the notice was duly sent. P.W. 1 stated that the notice was returned on 10.01.2022.

In the case of Md. Amir Hossain Vs. the State and another passed in Criminal Revision No. 3514 of 2023 judgment dated 19.11.2024, this bench (Mr. Md. Shohrowardi, J) held that;

“In Section 138 (1) (b) of the Negotiable Instruments Act, 1881, the legislature used the words “makes a demand... in writing” and in Section 138 (1) (c) of the said Act, the legislature used the words “receipt of the said notice”. The literal meaning of the words “receipt of said notice” means that the drawer of the cheque received the notice on a specific date. No provision is made in the said Act as to how the court will determine that notice under Section 138 (1) (b) of the said Act has been received by the drawer or served upon the drawer. In the absence of any statutory provision, as regards the determination of service of notice upon the drawer, I am of the view that the actual date of service of notice upon the drawer or receipt of notice by the drawer on a particular date

might have been reckoned as service of notice upon the drawer. Receipt of notice indicates that the drawer of the cheque had been notified about the dishonour of the cheque. If any drawer refused to receive the said notice, the date of refusal to receive the notice by the drawer might have been reckoned as 'receipt of said notice' mentioned in Section 138 (1) (c) of the said Act."

In the instant case, the notice was returned on 10.01.2022 as un-served due to the refusal of the accused to accept the notice. Therefore, the date of refusal to receive the notice is reckoned as the valid service of notice upon the accused. After service of notice on 10.01.2022, the accused is entitled to 30(thirty) days' time to pay the cheque amount. In the instant case, the notice was served on 10.01.2022, but he did not pay the cheque amount. Consequently, the cause of action for filing the case arose on 10.02.2022, and the complaint petition was filed on 14.02.2022. The above evidence depicts that the complainant filed the case complying with the provisions made in clauses (a) to (c) of the proviso to section 138 and sub-section (1A) of section 138 and section 141(b) of the Negotiable Instruments Act, 1881. During the trial, the prosecution proved the charge against the accused beyond all reasonable doubt, and both the Courts below, considering the evidence, passed the impugned judgment and order of conviction.

It is the duty of the Court to award sentence considering the gravity of the offence. In the instant case, the sentence passed by the Courts below appears too harsh.

Considering the gravity of the offence and the facts and circumstances of the case, I am of the view that the ends of justice would be best served if the sentence passed by the Courts below is modified as under;

The convict-petitioner Md. Ashir Molla is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881

and he is sentenced thereunder to suffer imprisonment for 2(two) months and fine of Tk. 1,90,000(one lakh ninety thousand).

In the result, the Rule is disposed of with modification of the sentence.

The complainant is entitled to get the fine amount.

The accused Md. Ashir Molla is directed to surrender before the trial Court forthwith and deposit the remaining 50% of the fine amount to the trial Court within 30 days.

The trial Court is directed to do the needful.

Send down the lower Court's records at once.