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

Present:
Mr. Justice Md. Bashir Ullah

Criminal Revision No. 249 of 2025

In the matter of:
An application under section 439 read with 435 of the Code of Criminal Procedure

-And-

In the matter of:
Most. Rubina Yeasmin
... Convict-Petitioner

-Versus-

The State and another
...Complainant-Opposite Parties

Mr. Kanai Lal Saha, Advocate
... For the Convict- Petitioner

Ms. Kazi Samsun Nahar, Advocate
... For the Complainant- opposite party No. 2

Mr. Md. Mizanur Rahman, D.A.G and
Mr. Md. Sirajul Karim (Rabi), A.A.G
… For the State

Heard on: 19.08.2026 and 30.08.2026
Judgment on: 07.09.2026

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 12.10.2023 passed by the learned Sessions Judge, Dinajpur in Criminal Appeal No. 152 of

2022, dismissing the appeal and thereby affirming the judgment and order dated 06.04.2022 passed by the learned Joint Sessions Judge, 1st Court, Dinajpur in Sessions Case No. 639 of 2021, arising out of C.R Case No. 738 of 2020 (Kotwali) convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing her to suffer simple imprisonment for 01(one) year and to pay a fine of Tk. 17,55,000/-, 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 one Md. Abdul karim Lue, Proprietor of M/S Shaharia Traders, Kalitola Sadar, Dinajpur obtained a loan of Taka 15,00,000/- from the opposite party No. 2 Bank under sanction letter dated 14.12.2017. Md. Abdul Karim Lue subsequently failed to repay the loan, whereupon the loan account was classified and following his death, the total outstanding liability stood at Taka 17,55,146.90. In discharge of the said loan, the accused-petitioner being the guarantor, issued a cheque being No. IBI 2999722 dated 08.10.2020 for Taka 17,55,000/- drawn on Islami Bank Limited, Dinajpur

Branch, Dinajpur. The complainant presented the said cheque for encashment to the concerned bank on 08.10.2020 but the same was dishonoured on the very day with the endorsement "Insufficient Funds". Thereafter, the complainant caused a statutory legal notice to be served upon the petitioner on 13.10.2020 and the convict-petitioner received the said notice on 15.10.2020. Despite receipt of the said notice, the petitioner failed to make payment of the cheque amount within the stipulated period. Consequently, the complainant instituted C.R. Case No. 738 of 2020(Kotwali) before the Court of Senior Judicial Magistrate, Cognizance Court No. 1, Sadar, Dinajpur on 16.11.2020.

The learned Magistrate took cognizance of the offence and subsequently transmitted the case file to the Court of Sessions Judge, Dinajpur. The learned Sessions Judge, Dinajpur transferred the case to the learned Joint Sessions Judge, 1st Court, Dinajpur for trial and disposal which was registered as Sessions Case No. 639 of 2021. Charge was framed on 12.10.2021 under Section 138 of the Negotiable Instruments Act, 1881 against the accused. The accused remained absconding at the time of framing of the charge.

In course of the trial, the prosecution examined 01(one) witness while the defence examined none. The accused could not be examined under Section 342 of the Code of Criminal Procedure due to her abscondence.

Upon conclusion of the trial and after hearing the parties, the learned Joint Sessions Judge, 1st Court, Dinajpur convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (the Act, 1881) and sentencing her to suffer simple imprisonment for 01(one) year and to pay a fine of Taka 17,55,000/- by judgment and order dated 06.04.2022.

Challenging the conviction and sentence, the petitioner filed Criminal Appeal No. 152 of 2022 before the learned Sessions Judge, Dinajpur upon depositing Taka 8,77,500/- being 50% of the cheque amount. Upon hearing the parties, the learned Sessions Judge, Dinajpur dismissed the appeal by judgment and order dated 12.10.2023, affirming the order of conviction and sentence.

Being aggrieved by and dissatisfied with judgment and order dated 12.10.2023, the petitioner preferred the instant Criminal Revision before this Court and obtained the Rule.

Mr. Kanai Lal Saha, the learned Advocate appearing on behalf of the petitioner submits that the petitioner was merely a guarantor and she had not obtained the loan from the complainant-bank. He further submits that the Courts below failed to properly appreciate the evidence on record and did not apply their judicial minds in passing the impugned judgments and orders of conviction and sentence and as such the same are liable to be set aside.

He next submits that the petitioner has already deposited Taka 8,77,500/- at the time of filing the appeal and being in financial hardship, she requires a reasonable period of 06(six) months to pay the remaining amount.

Finally, he prays for making the Rule absolute and for setting aside the sentence of imprisonment.

Per contra, Ms. Kazi Samsun Nahar, 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 parties, perused the revisional application and examined the materials on record.

It appears from the petition of complaint, the deposition of PW1 (complainant) and the documentary evidence that the accused-petitioner Md. Abdul karim Lue, Proprietor of M/S Shaharia Traders, Kalitola Sadar, Dinajpur, obtained a loan of Taka 15,00,000/- from the complainant-bank but he failed to repay the loan amount as a result the loan account became classified. Following his death the total outstanding liability stood at Taka 17,55,146.90. In discharge of the said loan, the accused-petitioner being the guarantor issued cheque being No. IBI 2999722 dated 08.10.2020 for Taka 17,55,000/- drawn on Islami Bank Limited, Dinajpur Branch, Dinajpur. The complainant presented the said cheque for encashment to the concerned bank on 08.10.2020 but the same was dishonoured on the same day with the endorsement "Insufficient Funds". Thereafter, the complainant served a statutory legal notice upon the petitioner on 13.10.2020 and the convict-petitioner received the said notice on 15.10.2020. Despite receipt of the notice, the petitioner failed to make payment of the cheque amount within the stipulated period. Consequently, the complainant instituted C.R. Case No. 738 of 2020 (Kotwali) on 16.11.2020. P.W-1 has successfully established the prosecution case. His evidence, coupled with the documentary evidence brought on record, remained substantially unshaken and has not been controverted by any evidence on behalf of the defence.

The learned Advocate appearing on behalf of the petitioner contended that the petitioner acted solely as a guarantor and she was not the primary recipient of loan facility extended by the bank. Notwithstanding her status as a guarantor, it is an admitted position that the cheque in question was duly executed and issued by her. Consequently, under the applicable statutory provisions, she cannot evade legal liability arising from the dishonour of the said instrument.

The record further reveals 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 and the legally enforceable liability against which the cheque was drawn and it is the holder of the cheque in due course. The Courts below righty 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 observing that the sentence of imprisonment in a case instituted under Section 138 of the Negotiable Instruments Act would be a harsh sentence having no penal objective to be achieved. I find no reason to take a different view from the principle enunciated therein.

Considering the financial hardship of the petitioner, the facts and circumstances of the case the payment already deposited by the petitioner, this Court is of the view that the ends of justice would be best served if the substantive sentence of imprisonment is modified while maintaining the conviction and the liability to pay the fine imposed by the trial Court.

In view of the foregoing discussions and principle enunciated in the above-mentioned case, the order of the Court is as follows:

The conviction of the petitioner under Section 138 of the Act, 1881 is hereby affirmed, however the sentence of imprisonment is modified. The sentence of 01(one) year simple imprisonment imposed upon the petitioner is set aside. The sentence of fine of Tk. 17,55,000/- being equivalent to the cheque amount is upheld. It appears that the convict-petitioner has already deposited Taka 8,77,500/- 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 deposit the remaining portion of the dishonoured cheque *i.e.* Taka 8,77,500/- to the complainant-opposite party No. 2 through trial Court within 06(six) months from the date of receipt of this judgment, in default she 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 instead of payment of fine, she 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 Rule is discharged with modification of sentence of imprisonment and with the directions made above. The convict-petitioner is released from the bail bond.

Let a copy of this judgment and order along with the lower Court records (LCR) be communicated to the Court concerned forthwith.

(*Md. Bashir Ullah, J.*)

Md. Ariful Islam Khan
Bench Officer