

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 897 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:

Md. Saista Miah

... Convict-Appellant-Petitioner

-Versus-

Islami Bank Bangladesh Limited and another

...Complainant-Respondent-Opposite Parties

Mr. Das Tapon Kumar with

Mr. Mohammad Imran, Advocates

... For the Convict-Appellant- Petitioner

Mr. Md. Shofiul Aziz, Advocate

... For the Complainant-respondent-opposite party No. 1

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: 24.02.2026 and 02.03.2026

Judgment on: 03.03.2026

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 of conviction and sentence dated 13.02.2023 passed by the learned Metropolitan Sessions Judge, Sylhet in Criminal Appeal No. 65 of 2022, dismissing the appeal and affirming the judgment and order of conviction and sentence dated 01.03.2021 passed by the learned Joint Metropolitan Sessions Judge, 1st Court, Sylhet in Sessions Case No. 2057 of 2019, arising out of Kotwali C.R. Case No. 50 of 2019, convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 5(five) months and to pay a fine of Tk. 1,27,200/- (one lac twenty seven thousand and two hundred), 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.

Facts relevant for disposal of the Rule, in brief, are that opposite party no. 02, Islami Bank Bangladesh PLC as complainant filed C.R Case no. 50 of 2019 before the Court of the Chief Metropolitan Magistrate, Sylhet against the present petitioner alleging *inter alia* that, the accused obtained credit facilities of Taka 1,10,000/- in the name of his business concern M/S Saistha Fish Supplier under Bai-

Muazzal (SBIS) deal dated 02.10.2017. Subsequently, the accused-petitioner failed to repay the loan amount and became loan defaulter. In order to adjust the loan the accused issued cheque No. IBE 7290429 dated 13.11.2018 for Taka 1,27,200/- in favour of the complainant-bank. The said cheque was presented for encashment but was dishonoured by the bank concerned on 14.11.2018 due to insufficiency of fund. The complainant-opposite party sent a legal notice to the petitioner on 19.11.2018. Despite receipt of the notice, the petitioner failed to make payment, compelling the complainant to institute the case on 08.01.2019.

Subsequently, the case was transferred to the Court of Metropolitan Sessions Judge and registered as Sessions Case No. 2057 of 2019. The Metropolitan Sessions Judge transferred the case to the learned Joint Metropolitan Sessions Judge, 1st Court, Sylhet. Thereafter, on taking cognizance of offence, charge was framed on 19.01.2020. The accused was absconding at the time of framing of charge.

The prosecution examined 01 (one) witness in order to prove the charge brought against the accused while the

defence examined none. The accused was not examined under section 342 of the Code of Criminal Procedure as he was absconding. Upon conclusion of trial the learned Joint Metropolitan Sessions Judge, 1st Court, Sylhet found the petitioner guilty under Section 138 of the Negotiable Instruments Act, 1881 and sentenced simple imprisonment for 5 months with a fine of Taka 1,27,200/- by judgment and order dated 01.03.2021.

Against the said judgment and order the petitioner preferred Criminal Appeal No. 65 of 2022 before the learned Metropolitan Sessions Judge, Sylhet which upon hearing both the parties dismissed the appeal by its Judgment and Order dated 13.02.2023 affirming the conviction and sentence.

Being aggrieved by and dissatisfied with the Judgment and Order dated 13.02.2023 passed by the learned Metropolitan Sessions Judge, Sylhet, the petitioner preferred this instant Criminal Revision before this Court whereupon the Rule was issued and bail was granted.

Mr. Das Tapon Kumar, the learned Advocate appearing for the petitioner submits that the petitioner is in financially

distressed circumstances and is not in position to pay the rest amount within a short period. He further prays for setting aside the impugned judgments and orders.

Per contra, Mr. Md. Shofiul Aziz, the learned Advocate appearing for the opposite party no. 1 submits that the charge brought against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 has been proved beyond all reasonable doubt and therefore, the Rule is liable to be discharged.

I have heard the learned Advocate for both sides and perused the materials on record.

On perusal of the petition of complaint, the deposition of PW1 (complainant) and the documentary evidence it transpires that the convict-petitioner issued the cheque in question in favour of the complainant-opposite party on 13.11.2018 for Taka 1,27,200/- to repay the outstanding loan amount. The cheque was dishonoured by the bank concerned on 14.11.2018 due to insufficiency of funds. Statutory legal notice was duly served upon the convict-petitioner on 19.11.2018. The value of the cheque was not paid to the

complainant. Consequently, the case was filed on 08.01.2019.

P.W.1 proved the prosecution case.

The record shows that the complainant has successfully proved compliance of the procedure 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 upon proper assessment of evidence rightly found the petitioner guilty of the charge. Hence, the impugned judgment and order of conviction does not suffer from any illegality or infirmity.

However, as regards to the sentence, reference may be placed upon the decision passed in *Aman Ullah Vs. State*, reported in 73 DLR (2021) 541, wherein this Court observed that in cases instituted under Section 138 of the Negotiable Instruments Act, the imposition of a sentence of imprisonment would be a harsh having no penal objective to be achieved.

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

The conviction of the petitioner under Section 138 of the Act, 1881 is affirmed, however the sentence is modified. The sentence of 05(five) months simple imprisonment is set aside. The sentence of fine of Tk. 1,27,000/- which is equivalent to the cheque amount is upheld. The convict-petitioner has already deposited Tk. 63,600/- before the trial Court prior to filing the appeal. The Court concerned is directed to disburse the said deposited amount to the complainant-opposite party No. 1 forthwith. The convict-petitioner is directed to pay the remaining portion of the dishonoured cheque *i.e.* Tk.63,200/- to the complainant-opposite party No. 1 within 3(three) months from the date of receipt of this judgment through trial Court, in default he will 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 as made above. The convict-petitioner is released from the bail bond.

Let the lower Court's records (LCR) along with the judgment and order be communicated to the Court concerned forthwith.

Md. Ariful Islam Khan
Bench Officer