

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

Present:
Mr. Justice Md. Bashir Ullah

Criminal Revision No. 3657 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:

Md. Abdul Jalil

... Convict-Appellant-Petitioner

-Versus-

Md. Naim Khan and another

...Complainant-Respondent-Opposite Parties

Mr. Md. Hasan Abdul Quium, Advocate

... For the Convict-Appellant- Petitioner

Mr. Md. Yahia Kabir, 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: 11.01.2026

Judgment on: 18.01.2026

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 05.02.2024 passed by the learned
Senior Sessions Judge, Natore in Criminal Appeal No. 223 of

2023 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 17.08.2023 passed by the learned Joint Sessions Judge, 1st Court, Natore in Sessions Case No. 862 of 2022 arising out of C.R. Case No. 75 of 2022(Boraigram) convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 4(four) months and to pay a fine of Tk. 4,00,000/- (four lac), 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, the accused petitioner took advance of Taka 4,00,000/- for supply of construction materials. But he failed to supply the materials and to adjust the amount he issued a cheque bearing No. 3191-0891429 drawn on Agrani Bank Limited, Laxmikol Branch, Natore on 10.11.2021 for Taka 4,00,000/- in favour of complainant. The complainant presented the cheque to the concerned bank on 05.12.2021 but it was dishonoured endorsing “insufficiency of fund”. Then he served legal notice on 23.12.2021 but the petitioner failed to make payment. Consequently, the complainant filed C.R. Case No.

75 of 2022 (Barai) before the cognizance Court, Baraigram, Natore on 16.02.2022. The cognizance Court took cognizance and sent the case to the Court of Sessions Judge, Natore. The learned Sessions Judge, Natore transferred the case to the learned Joint Sessions Judge, 1st Court, Natore and was registered as Sessions Case No. 862 of 2022. Charge was framed on 15.11.2022 under Section 138 of the Negotiable Instruments Act, 1881. He pleaded not guilty and claimed to be tried when the charge was read out and explained to him. In course of trial, prosecution examined 01(one) witness and produced documentary evidence which have been marked as exhibits-1 to 6 to prove the indictment.

Upon hearing, the learned Joint Sessions Judge, 1st Court, Natore convicted the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced simple imprisonment for 04(four) months and fine of Taka 4,00,000/- by judgment and order dated 17.08.2023.

Challenging the conviction and sentence the petitioner filed Criminal Appeal No. 223 of 2023 before the learned Sessions Judge, Natore, who dismissed the appeal by

judgment and order dated 05.02.2024 affirming the order of conviction and sentence.

Being aggrieved by and dissatisfied with judgment and order dated 05.02.2024, the petitioner preferred the instant Criminal Revision before this Court and obtained Rule and bail.

Mr. Md. Hasan Abdul Quium, the learned Advocate appearing on behalf of the petitioner submits that the petitioner already has paid Taka 2,00,000/- at the time of filing of the appeal. The petitioner intends to pay the rest amount within 01(one) month. Since he will adjust the liability so, the learned Advocate prays for making the Rule absolute and setting aside the judgments and orders passed by the Courts below.

Per contra, Mr. Md. Yaheia Kabir, the learned Advocate appearing for the opposite party no. 1 submits that there is no illegality or infirmity in the impugned judgments and orders passed by the Courts below.

He further submits that, he has no objection if the sentence is set aside, however the rest amount will be paid within 15(fifteen) days.

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

It appears from the petition of complaint, the deposition of PW-1 (complainant) and the documentary evidence that the convict-petitioner issued the cheque in question in favour of the complainant-opposite party on 10.11.2021 to repay the advance which was received by him for Taka 4,00,000/-. It was dishonoured by the bank concerned on 05.12.2021 due to insufficiency of funds. The complainant-opposite party sent statutory legal notice to the convict-petitioner on 23.12.2021. Despite receipt of the notice, the petitioner failed to make the payment. Consequently, the case was filed on 16.02.2022. P.W-1 successfully proved the prosecution case.

The record shows that the complainant has 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 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, reference may be made to 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 *ratio* passed by High Court Division in the above-mentioned case.

In view of the foregoing discussions and *ratio* the order of the 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 Tk. 4,00,000/- which is equivalent to the value of the cheque, is upheld. The convict-petitioner has already deposited Tk. 2,00,000/- 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. 1 forthwith. The convict-petitioner is directed to pay the remaining portion of the value of the dishonoured cheque *i.e.* Tk.2,00,000/- to the complainant-opposite party No. 1 within 01(one) month from the date of receipt of this order, in

default he will suffer simple imprisonment for 03(three) 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 made above. The convict-petitioner is released from the bail bond.

Send down the lower Court's records (LCR) at once. Communicate the judgment and order to the Court concerned forthwith.