

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 7802 of 2025

In the matter of:

An Appeal under Section 410 of the Code of
Criminal Procedure

-And-

In the matter of:

Md. Roki Chowdhury

... Appellant

-Versus-

Md. Rezaul Karim and another

... Respondents

Ms. Ismath Ara, Advocate

... For the Appellant

Mr. Rashedul Haque with

Mr. Md. Wasiur Rahman, Advocates

... For the Respondent No. 1

Mr. Md. Shafiquil Islam, D.A.G with

Ms. Farhana Abedin, A.A.G with

Mr. Hemaith Uddin, A.A.G and

Mr. K. M. Saiful Islam, A.A.G

... For the State

Heard on: 28.06.2026 and 06.07.2026

Judgment on: 09.07.2026

This appeal, preferred under Section 410 of the Code of
Criminal Procedure, 1898 is directed against the judgment and
order dated 14.03.2019 passed by the learned Additional

Sessions Judge, Chapainawabganj in Sessions Case No. 704 of 2018 arising out of C.R. Case No. 211 of 2017 (Gomostapur) convicting the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 01(one) year and to pay a fine of Taka 12,00,000/- (twelve lac).

The prosecution case, in short, is that the accused obtained a loan of Taka 11,60,000/- from the complainant. In discharge of the debt, the accused issued cheque No. IBQ-2934159 on 13.04.2017, drawn on Islami Bank Bangladesh Limited, Rohonpur Branch, Chapainawabganj. The complainant presented the cheque to the concerned bank for encashment on 17.05.2017 but the same was dishonoured with the endorsement “insufficient funds”. Thereafter, the complainant served a statutory legal notice upon the accused on 24.05.2017 demanding payment. Despite such notice, the accused failed to make the payment within the statutory period. Consequently, the complainant instituted C.R. Case No. 211 of 2017 (Gomostapur) before the learned Magistrate, Cognizance Court, ‘Gha’ Anchal, Chapainawabganj on 05.07.2017. The learned Magistrate took cognizance of the offence and

transmitted the case to the Court of learned Sessions Judge, Chapainawabganj. Subsequently, the learned Sessions Judge, Chapainawabganj transferred the case to the learned Additional Sessions Judge, Chapainawabganj which was registered as Sessions Case No.704 of 2018. The charge was framed under Section 138 of the Negotiable Instruments Act, 1881(the Act, 1881) against the accused on 10.09.2018. At the time of framing of the charge the accused remained absconding. In course of trial, the prosecution examined 01(one) witness whereas the defence examined none. The accused could not be examined under Section 342 of the Code of Criminal Procedure as he remained absconding.

Upon conclusion of the trial and hearing of the parties, the learned Additional Sessions Judge, Chapainawabganj convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 01 (one) year and to pay a fine of Taka 12,00,000/- by judgment and order dated 14.03.2019.

Being aggrieved by and dissatisfied with judgment and order dated 14.03.2019, the appellant preferred the instant

Criminal Appeal having deposited Taka 6,00,000/- before the Court below.

Ms. Ismath Ara, the learned Advocate appearing on behalf of the appellant submits that the appellant does not dispute the issuance of the cheque but owing to severe financial hardship, he could not make the payment of the cheque amount following receipt of the notice sent by the complainant after dishonour of the cheque. She highlights that the appellant has already deposited Taka 6,00,000/- before the trial Court through T.R. Challan, which constitutes more than 50% of the dishonoured cheque amount.

She further submits that the fine imposed is overly burdensome given the appellant's current financial insolvency as such the fine merits reduction. She prays for reduction of the fine to the actual cheque amount, alongside an extension of 06(six) months to clear the remaining dues. She prays for the appeal to be allowed with necessary modification.

Per contra, Mr. Rashedul Haque, the learned Advocate appearing on behalf of the respondent no. 1 submits that there is no illegality, impropriety or infirmity in the impugned

judgment and order. He contends that the prosecution successfully proved all the legal ingredients required under Section 138 of the Negotiable Instruments Act, 1881. The trial Court rightly convicted the accused and sentenced him to suffer imprisonment. Finally, he prays for the dismissal of the appeal.

I have considered the submissions of the learned Advocates for both sides, perused the evidence, impugned judgment and order passed by the trial Court and the materials on record.

On perusal of the evidence it is found that the accused issued cheque No. IBQ-2934159 dated 13.04.2017 in favour of the complainant for Taka 11,60,000/- which was dishonoured.

The record shows that the complainant has duly complied with 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 as PW 1 proved consideration against which the cheque was drawn and that it is the holder of the cheque in due

course. It reveals that the signature on the cheque in question belongs to the appellant. The Court below rightly found the appellant 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 it has been held that the sentence of imprisonment would be a harsh sentence having no penal objective to be achieved. I have no disagreement with the *ratio* passed in the above-mentioned case.

Considering the facts and circumstances of the case, this Court is of the view that the ends of justice would be best served if the sentence of imprisonment is modified by setting aside the term of imprisonment and reduce the amount of fine from Taka 12,00,000/- to Taka 11,60,000/- matching the exact value of the dishonoured cheque.

In view of the foregoing discussions and *ratio* the order of the Court is as follows:

The conviction of the appellant under Section 138 of the Negotiable Instruments Act, 1881 is hereby affirmed. However, the sentence of 01(one) year simple imprisonment is set aside. The sentence of fine of Tk. 12,00,000/- is reduced to Taka 11,60,000/- which is the value of cheque amount. It appears that the convict-appellant has already deposited Taka 6,00,000/- before the trial Court prior to filing the appeal. The Court concerned is directed to disburse the said deposited Taka 6,00,000/- to the complainant-respondent no. 1 forthwith upon proper identification. The convict-appellant is directed to pay the remaining balance of the value of the dishonoured cheque amounting to Taka 5,60,000/- to the complainant-respondent No. 1 through the trial Court within 03 (three) months from the date of receipt of this order, in default he will suffer simple imprisonment for 01(one) month. If the convict-appellant 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 appeal is dismissed with modification of sentence and with directions made above. The convict-appellant is released from his 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)