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

<u>Present:</u>
Mr. Justice Md. Bashir Ullah

<u>Criminal Revision No. 6169 of 2024</u>

<u>In the matter of:</u>
An application under section 439 read with 435 of the Code of Criminal Procedure
-And-
<u>In the matter of:</u>
Md. Iqbal Al-Faruk
... Convict-Appellant-Petitioner
-Versus-
The State and another
...Complainant-Respondent-Opposite Parties

Mr. Ashok Kumar Banik, Advocate
... For the Convict- Petitioner

Mr. Md. Shofiul Aziz, Advocate
... For the Complainant- opposite party No. 2

Mr. Md. Shafiquil Islam, D.A.G with
Ms. Farhana Abedin, A.A.G with
Mr. Hemayth Uddin, A.A.G and
Mr. K. M. Saiful Islam, A.A.G
… For the State

<u>Heard on: 13.07.2026 and 20.07.2026</u>
<u>Judgment on: 21.07.2026</u>

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 23.10.2024 passed by the learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram in Criminal Appeal No. 667 of 2023 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 16.11.2022 passed by the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram in Sessions Case No. 455 of 2020 arising out of C.R Case No. 277 of 2019 (Panchlaish) convicting the petitioner 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 11,25,500/- (eleven lac twenty-five thousand and five 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.

The facts relevant for disposal of the Rule, in brief, are that, the accused obtained credit facilities of Taka 11,25,500/- (eleven lac twenty-five thousand and five hundred) from the complainant-bank. In discharge of the said debt, he issued cheque No. IBV 1094524 on 23.08.2018 for Taka 11,25,500/- (eleven lac twenty-five thousand and five hundred) drawn on Islami Bank Bangladesh PLC, O.R. Nizam Road Branch, Chattogram in favour of the complainant. The complainant presented the cheque to the concerned bank on 05.02.2019 but it was dishonoured endorsing “insufficiency of funds”. Thereafter, the complainant-bank served statutory legal notice upon the accused on 07.02.2019 which was returned on 18.02.2019. Despite expiry of the statutory period the petitioner failed to make payment of the cheque amount. Consequently, the complainant instituted C.R. Case No. 277 of 2019 (Panchlish) before the learned Chief Judicial Magistrate, Chattogram. The learned Magistrate took cognizance and transmitted the case record to the Court of Metropolitan Sessions Judge, Chattogram. The learned Metropolitan Sessions Judge, Chattogram transferred the case record to the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram and was registered as Sessions Case No. 455 of 2020. Charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881 on 05.03.2020. The accused remained absconding at the time of framing of charge.

In course of trial, the prosecution examined 01(one) witness while the defence examined none to prove his respective case.

Upon conclusion of the trial, the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 01 (one) year and a fine of Taka 11,25,500/- by judgment and order dated 16.11.2022.

Challenging the conviction and sentence the petitioner filed Criminal Appeal No. 667 of 2023 before the learned Metropolitan Sessions Judge, Chattogram having deposited 50% of the cheque amount in compliance with the statutory requirement. Thereafter, the appeal was transferred to the learned Additional Metropolitan Sessions Judge, 3rd Court, Chattogram who upon hearing the parties dismissed the same by judgment and order dated 23.10.2024, thereby affirming the judgment and order of conviction and sentence.

Being aggrieved by and dissatisfied with judgment and order dated 23.10.2024, the petitioner preferred the instant

Criminal Revision before this Court and obtained Rule. This Court enlarged the petitioner on bail on 26.11.2024.

Mr. Ashok Kumar Banik, the learned Advocate appearing on behalf of the petitioner submits that both the Courts below failed to apply their judicial mind and committed error of law in passing the impugned judgments and orders of conviction and sentence and the prosecution has failed to prove the case beyond reasonable doubt against the petitioner.

He further submits that the petitioner has already deposited 50% cheque amount before the trial Court and has subsequently paid the remaining 50% directly to the complainant-bank. So, he prays for discharge of the Rule.

Per contra, Mr. Md. Shofiul Aziz, the learned Advocate appearing on behalf of the opposite party no. 2 fairly submits that the petitioner has already deposited the remaining 50% of the cheque amount directly to the concerned Bank and there is no liability against the cheque. In this regard learned Advocate has produced a certificate dated 16.07.2026 issued by Islami Bank Bangladesh PLC, O.R. Nizam Road Branch, Chattogram.

I have heard the learned Advocates for the respective parties, perused the revisional application, the impugned judgment of the Courts below and the materials on record.

It appears from the petition of complaint, the deposition of PW1 (complainant) and the documentary evidence that the convict-petitioner obtained credit facilities from the complainant-bank. In discharge of the said debt, he issued cheque No. IBV 1094524 on 23.08.2018 for Taka 11,25,500/- (eveven lac twenty-five thousand and five hundred) drawn on Islami Bank Bangladesh PLC, O.R. Nizam Road Branch, Chattogram in favour of the complainant. The complainant presented the cheque to the concerned bank on 05.02.2019 but it was dishonoured endorsing “insufficiency of funds”. Thereafter, the complainant served statutory legal notice upon the accused on 07.02.2019 which was returned on 18.02.2019, but the petitioner failed to make payment. Consequently, the case was filed on 18.04.2019. PW 1 successfully proved the prosecution case.

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 also proved consideration against which the cheque was drawn and that 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 regards 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 observed that in a case instituted under Section 138 of the Negotiable Instruments Act, the sentence of imprisonment would be a harsh sentence having no penal objective to be achieved. I respectfully concur with the principle enunciated therein.

In a prosecution under Section 138 of the Negotiable Instruments Act, the primary object of the legislation is to ensure payment of the cheque amount to the payee rather than incarcerate the drawer. Consequently, where the entire cheque amount has already been paid, insistence upon custodial sentence may not subserve any meaningful penal objective.

In the instant case, it is an admitted position that the petitioner has already deposited 50% of the cheque amount before the trial Court and has subsequently paid the remaining 50% directly to the complainant-bank. The complainant has acknowledged full satisfaction of its claim and no outstanding liability remains.

Considering the facts and circumstances of the case and payment made by the petitioner, this Court is of the view that the substantive sentence of imprisonment should be set aside in the interest of justice.

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 hereby affirmed. However, the sentence is modified. The sentence of 01(one) year simple imprisonment is set aside. The sentence of fine of Tk. 11,25,500/- is maintained. It appears that the convict-petitioner has already deposited 50% of the cheque amount before the trial Court prior to filing the appeal and has subsequently paid the remaining 50% of the cheque amount directly to the concerned Bank. The Court concerned is directed to disburse the said lying deposited money being 50% of the cheque amount to the complainant-opposite party No. 2 forthwith.

In the result, the Rule is disposed of with the modification of sentence of imprisonment and with directions made above. The convict-petitioner is discharged from the 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*)

Md. Ariful Islam Khan
Bench Officer