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

**Present:**
**Mr. Justice Md. Bashir Ullah**

**Criminal Appeal No. 8525 of 2025**

**In the matter of:**
An Appeal under Section 410 of the Code of Criminal Procedure

**-And-**

**In the matter of:**
Golam Muhiuddin Selim and another
... Appellants

**-Versus-**

Abu Saeem Md. Tofazzal Hossain and another
... Respondents

Mr. Md. Al Mottaqi Billah, Advocate
... For the Appellant

Mr. A.K.M. Rezaul Karim Khandaker, Advocate
… For the Respondent No.1

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

**Heard on: 21.07.2026, 23.07.2026, 30.07.20026 and 16.08.2026**
**Judgment on: 17.08.2026**

This appeal, preferred under Section 410 of the Code of Criminal Procedure, 1898 is directed against the judgment and order dated 17.04.2016 passed by the learned Additional

Metropolitan Sessions Judge, 4th Court, Dhaka in Metropolitan Sessions Case No. 3100 of 2015 arising out of C.R. Case No. 237 of 2014 convicting the accused-persons under Section 138 of the Negotiable Instruments Act, 1881 and sentencing them to suffer simple imprisonment for 04(four) months and to pay a fine of Taka 30,50,000/- (thirty lac fifty thousand) only.

The prosecution case, in short, is that the accused-persons obtained a loan of Taka 30,00,000/- from the complainant. In discharge of the said debt, the accused-persons issued cheque No. IBG 6244006 dated 28.05.2014, drawn on Islami Bank Bangladesh Limited, Dhaka. The complainant presented the cheque to the concerned bank for encashment through Pubali Bank Limited, Peelkhana Branch, Dhaka on 23.07.2014 but the same was dishonoured with the endorsement “insufficient funds”. Thereafter, the complainant served a statutory legal notice upon the accused-persons on 20.08.2014 demanding payment and the accused-persons received the legal notice on 21.08.2014, but they failed to make the payment within the statutory period. Consequently, the complainant instituted C.R. Case No. 237 of 2014 before the learned Chief Metropolitan Magistrate, Dhaka on 28.09.2014. The learned Magistrate took cognizance of the offence and transmitted the case to the Court of learned Metropolitan Sessions Judge, Dhaka. Subsequently, the learned Metropolitan Sessions Judge, Dhaka transferred the case to the learned Additional Metropolitan Sessions Judge, $4^{th}$ Court, Dhaka which was registered as Metro. Sessions Case No. 3100 of 2015. The charge was framed under Section 138 of the Negotiable Instruments Act, 1881(the Act, 1881) against the accused-persons on 09.04.2015. At the time of framing of the charge the accused-persons were remained absconding.

In course of trial, the prosecution examined 01(one) witness whereas the defence examined 3(three) witnesses. The accused-persons were examined under Section 342 of the Code of Criminal Procedure and pleaded not guilty.

Upon conclusion of the trial and hearing of the parties, the learned Additional Metropolitan Sessions Judge, $4^{th}$ Court, Dhaka convicted the accused-persons under Section 138 of the Negotiable Instruments Act, 1881 and sentenced them to suffer simple imprisonment for 04 (four) months and to pay a fine of Taka 30,50,000/- by judgment and order dated 17.04.2016.

Being aggrieved by and dissatisfied with judgment and order dated 17.04.2016, the appellants preferred this instant Criminal Appeal having deposited Taka 15,00,000/- before the Court below.

Mr. Md. Al Mottaqi Billah, the learned Advocate appearing on behalf of the appellants submits that the appellants do not dispute the issuance of the cheque but owing to severe financial hardship, they could not make the payment of the cheque amount following receipt of the notice sent by the complainant after dishonour of the cheque. He highlights that the appellants have already deposited Taka 15,00,000/- before the trial Court through T.R. Chalan and during pendency of the appeal they paid further Taka 10,00,000/- in cash to the complainant-respondent No. 1 directly.

He further submits that the fine imposed is overly burdensome given the appellants current financial insolvency as such the fine merits reduction. He prays for reduction of the fine to the actual cheque amount, alongside an extension of 02(two) months to clear the remaining dues. He prays for the appeal to be allowed with necessary modification.

*Per contra,* Mr. A.K.M. Rezaul Karim Khandaker, 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 established all the legal ingredients required under Section 138 of the Negotiable Instruments Act, 1881. The trial Court rightly convicted the accused-persons and sentenced them to suffer imprisonment. He admitted that the respondent No. 1 has already received Taka 25,00,000/- from the appellant and he has no objection if the sentence of imprisonment is set aside. 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. IBG 6244006 dated 28.05.2014 in favour of the complainant for Taka 30,00,000/- 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 he is the holder of the cheque in due course. It reveals that the signature on the cheque in question belongs to the appellants. The Court below righty found the appellants 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 gravity of the offence and the facts and circumstances of the case, I am of the view that the ends of justice would be best served if the sentence of imprisonment passed by the trial Court is set aside and sentence of fine is reduced from Taka 30,50,000/- to Taka 30,00,000/-.

In view of the foregoing discussions, the order of the Court is as follows:

The conviction of the appellants under Section 138 of the Act, 1881 is affirmed, but the sentence of 04 months simple imprisonment is set aside. The sentence of fine of Taka 30,50,000/-(thirty lac fifty thousand) is reduced to Taka 30,00,000/=(thirty lac) which is equivalent to the value of the cheque. The convict-appellants have already paid Taka 25,00,000/-. The convict-appellants are directed to pay the remaining portion of the value of the dishonoured cheque amounting to Taka 5,00,000/- to the complainant-respondent No.1 within 2(two) months from the date of receipt of this order, in default they shall suffer simple imprisonment for

01(one) month. If the convict-appellants 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 realize the fine under the provisions of Section 386 of the Code of Criminal Procedure.

In the result, the appeal is dismissed with modification of the sentence.

The convict-appellants are released from the bail bond.

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

(Md. Bashir Ullah, J.)

**Md. Ariful Islam Khan**
**Bench Officer**