

Present:

Mr. Justice Md. Salim

Criminal Revision No. 2770 of 2025

S.S.M Jaker Ullah

..... Convict-Petitioner.

-Versus-

The State and another

..... Opposite parties.

No one appears

..... For the petitioner.

Mr. Muhammad Tawhidul Islam, Advocate

..... For the Opposite party No.2

Ms. Syeda Shajia Sharmin, D.A.G. with

Mr. Md. Rejaul Islam, A.A.G.

Mr. Khan Mahfuzun Noor, A.A.G.

..... For the State.

Heard on 07.01.2026, 02.02.2026

and 15.02.2026

Judgment on 23.02.2026

By this Rule, the opposite parties were called upon to show cause as to why the Judgment and order dated 15.05.2025, passed by the learned Additional Metropolitan Sessions Judge, 7th Court, Chattogram, in Criminal Appeal No.1099 of 2024 dismissing the appeal and affirming the Judgment and order of conviction and sentence dated 14.08.2024 passed by the learned Joint Metropolitan Sessions Judge, 1st Court, Chattogram in

Sessions Case No.3031 of 2012 arising out of C.R. No.2135 of 2021 (Kotwali) convicting the accused petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentenced to suffer simple imprisonment for 01(one) year and to pay Tk.20,00,000/- should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The prosecution case in brief is that the present-opposite party No.2, as complainant, initially filed a petition of complaint under section 138 of the Negotiable Instruments Act, before the learned Metropolitan Magistrate, 2nd Court, Chattogram, against the convict-petitioner, alleging, inter alia, that the petitioner on 19.05.2021 issued a cheque in favour of the complainant for the purpose of payment of loan amount of Tk.20,00,000/-. In order to encash the said cheque, the complainant-opposite party No.2 then presented the cheque on 10.10.2021 to the Bank, but on that very date, the cheque was dishonoured with an endorsement of insufficient funds. Finding no other alternative, the opposite party No.2 then served a legal notice on 26.10.2021, through a newspaper, namely the Daily

Songgram, requesting him to repay the amount. As the accused petitioner failed to comply with the request made in the legal notice, the complainant-opposite party was constrained to file the petition. In view of the said petition of complaint, the learned Metropolitan Magistrate, Chattogram, then examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance of the said case. Since the case is triable by the Metropolitan Sessions Judge, the learned Metropolitan Magistrate then transferred the case to the learned Metropolitan Sessions Judge, Chattogram, for trial. In the meantime, the accused petitioner surrendered before the courts below and obtained bail.

Subsequently, the learned Joint Metropolitan Sessions Judge, 1st Court, Chattogram, framed the charge against the accused-petitioner under section 138 of the Negotiable Instruments Act, which was not read over and explained to the accused-petitioner due to his absence from the court.

During the trial, the prosecution examined one witness and produced several documents. On the contrary, the defence examined none.

After the conclusion of the taking of evidence, the accused-petitioner was also not examined under section 342 of the Code of Criminal Procedure due to his continued absence from the court.

However, after the conclusion of the trial, the learned Joint Metropolitan Sessions Judge, 1st court, Chattogram vide Judgment and order dated 14.08.2024, convicted the accused petitioner under section 138 of the Negotiable Instruments Act, sentenced to suffer simple imprisonment for 01 (one) year and to pay Tk. 20,00,000/- as has been stated above.

It is worth noting that at the time of the pronouncement of the Judgment, the accused petitioner was remain absent from the court.

Being aggrieved by and dissatisfied with the above Judgment and order of conviction and sentence, the convict-petitioner, as appellant, on surrender before the Joint Metropolitan Sessions Judge, 1st Court, Chattogram, and after depositing 50% of the cheque amount, preferred the appeal, which has been registered as Criminal Appeal No.1099 of 2024 before the Metropolitan Sessions Judge, Chattogram.

Eventually, the learned Metropolitan Sessions Judge, Chattogram, by the Judgment and order dated 15.05.2025, disallowed the appeal and affirmed the Judgment and order of conviction and sentence passed by the trial court below.

Being aggrieved by and dissatisfied with the said concurrent Judgment and order of conviction and sentence, the convict, as petitioner, then came before this court and obtained the instant Rule and order of bail.

Despite the matter appearing in the cause list for hearing with the name of the learned advocate for the petitioner on consecutive dates, no one appears on behalf of the petitioner to press the Rule. However, in the presence of Ms. Syeda Shajia Sharmin, the learned Deputy Attorney General appearing on behalf of the state, we are inclined to dispose of the Rule on its merits.

Ms. Syeda Shajia Sharmin, the learned Deputy Attorney General, appearing on behalf of the state, submits that the learned Judge of both the courts below considered the evidence on record very judiciously, found the accused-petitioner guilty, and thereby convicted under section 138 of the Negotiable Instruments Act.

Hence, the Judgment and order of conviction and sentence as a whole is maintainable in law.

Mr. Muhammad Tawhidul Islam, the learned advocate appearing on behalf of the opposite party No.2, submits that the accused petitioner took the loan amount of Taka 20,00,000/- through the bank channel and for payment of the said amount the accused issued the cheque and after dishonoured of the said cheque the complainant served the legal notice by the news paper in accordance with the law. He then submits that the learned Judge, both the court below, properly analyzing the evidence on record, very judiciously found the accused petitioner guilty and thereby convicted under section 138 of the Negotiable Instruments Act. Therefore, the Judgment and order of conviction and sentence as a whole are maintainable in law, and the instant Rule may be liable to be discharged.

We have considered the submission taken by the petitioner in the Criminal Revisional application and the learned Deputy Attorney General and the learned advocate for the complainant-opposite party No. 2. It appears that in order to bring home the charge, the complainant himself examined as P.W. 1, who stated in

his evidence in line with the petition of the complaint and adduced the materials evidence that is the petition of complaint, cheque, dishonoured sleep, a copy of notice, a news paper namely the daily shongram where the the notice has been published.

Considering the above, we find that P.W. 1's testimony supports the assertion made in the petition of complaint. Moreover, we find that the documents, namely, the disputed cheque, a return memo, a legal notice, and the Daily Songram in which the legal notice was published, have been exhibited by the complainant without objection from the accused petitioner, which also proves that those documents have rightly been taken into evidence.

Be that as it may, if the legal notice is found to have been served by a daily newspaper without exhausting other service modes, then the trial is vitiated or not. To substantiate the question of mode of service of notices in a case under section 138 of the Negotiable Instruments Act, we may quote Sub-section (1A) of section 138 of the Act, which provides 3 (three) modes of service, which run as under:-

"138. Dishonour of cheque for insufficiency, etc. of funds in the account-(1).....

[(1A) The notice required to be served under clause (b) of sub-section (1) shall be served in the following manner-

(a) by delivering it to the person on whom it is to be served; or

(b) by sending it by registered post with acknowledgement due to that person at his usual or last known place of abode or business in Bangladesh; or

(c) by publication in a daily Bangla national newspaper having wide circulation....."

It manifests that service of notice upon the drawer of the cheque shall be deemed to have been duly served if: (a) it has been delivered to the person on whom it is to be served; or (b) that the notice has been sent to that person by registered post with acknowledgement due at his usual or last known place of abode or business in the country; or (c) by publication in a daily bangla national newspaper having wide circulation.

Service of notice under clause (b) of sub-section (1) of section 138 of the Act means any of the 3(three) modes as provided under clause (a),(b), and (c) of sub-section

(1A) of section 138 of the Act. The legislature, while prescribing the above three (3) modes of service of notice, has used the word "or," and thus makes each clause disjunctive. The duty of the payee is discharged once he served notice either under clause (a), (b), or (c) of sub-section (1A) of section 138 of the Act.

In the instant case, the complainant has served legal notice upon the accused petitioner under clause (c) of sub-section (1A) by paper publication without complying with the proviso under clause (a) or (b) of sub-section (1A) of section 138 of the Act. We have already noticed that no where within the four corners of sub-section (1A) has the legislature put a burden upon the payee to after exhausting the mode of service of notice under clause (a) or (b) of sub-section (1A) of the Act only then the payee can exhaust the mode of service of notice as prescribed under clause (c) of sub-section (1A) by paper publications.

In view of the above, there is no doubt that both the court rightly found the legal notice of the instant case deemed to have been duly served.

Further, if the cheque is found to have issued by the drawer and it was dishonoured in that event, there

has been no scope for the drawer of the cheque to exonerate himself in committing an offense triable under section 138 (1) of the Negotiable Instruments Act,1882. Moreover, if the legal requirements provided in various clauses of section 138(1) of the Act are found to have been fully complied with, there is no scope to acquit the accused of the charge leveled against him.

Moreover, on going through the Judgments passed by both the courts, we find that the courts below have very exhaustively and vividly discussed the evidence adduced and produced by the opposite party No.2, which has been marked as exhibits on the part of the complainant.

It appears that the learned Judge of the Court of Appeal, after critical examination and analysis of the above evidence and other materials brought on record, found that the prosecution has been able to prove the charge beyond a reasonable doubt under section 138 of the Negotiable Instruments Act against the convict petitioner.

Further, a careful analysis of the oral and documentary evidence adduced by the prosecution as well as the defence side and on examination of those

documents, we find that this very case was filed in total compliance with the provisions enumerated in section 138 of the Negotiable Instruments Act, having no scope to interfere with the Judgment. However, considering the above facts and circumstances of the case, we are inclined to modify the sentence with the effect that the sentence of the accused petitioner is to pay Tk. 20,00,000/-, i.e., the cheque amount, instead of suffering simple imprisonment for 1 (one) year, and to pay Tk. 20,00,000/-.

Considering the above facts and circumstances, we do not find any merit in interfering with the Judgment and order passed by the courts below.

As a result, the Rule is discharged with a modification to the sentence.

The sentence of the convict-petitioner is to pay Tk. 20,00,000/-, i.e., the cheque amount, instead of suffering simple imprisonment for 1 (one) year, and to pay Tk.20,00,000/-.

The convict petitioner is directed to deposit the 50% of the remaining cheque amount within 02 (two) months from the date of receipt of this Judgment by the trial court. In default, the complainant is at liberty to take the

necessary steps as per the provisions enumerated in Section 386 of the Code of Criminal Procedure.

The learned Judge of the trial court is directed to take the necessary steps so that the complainant can recover the amount deposited by the petitioner to the Government exchequer through chalan within 1(one) month from the date of receipt of this Judgment.

Communicate the Judgment and send down the lower court records.

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(MD. SALIM, J).

Rakib(ABO)