Present:
Mr. Justice Md. Shohrowardi

Criminal Revision No. 5296 of 2025
Mohammad Ali Munshi
...Convict-petitioner
-Versus-
The State and another
...Opposite parties
Mr. Sujit Chatterjee, Advocate with
Mr. Asikur Rahman, Advocate
...For the convict-petitioner
Mr. Mohammad Ali, Advocate with
Mr. Md. Harun-Or-Rashid, Advocate
...For the complainant-opposite party No. 2
Heard on 17.02.2026, 24.02.2026, 01.03.2026, 09.03.2026 and 03.05.2026
Judgment delivered on 04.05.2026

On an application under section 439 read with section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order of conviction and sentence dated 21.09.2025 passed by the Additional Sessions Judge, Court No. 7, Dhaka in Criminal Appeal No. 807 of 2024 affirming the judgment and order of conviction and sentence dated 31.07.2024 passed by the Joint Sessions Judge, Court No. 1, Dhaka in Sessions Case No. 607 of 2020 arising out of C.R. Case No. 738 of 2018 convicting the petitioner under section 138 of the Negotiable Instrument Act 1881 and sentencing him thereunder to suffer imprisonment for 8(eight) months and fine of Tk. 48,00,000 (forty-eight lakh) 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's case, in short, is that the complainant Md. Kamruzzaman Liton and the accused Mohammad Ali Munshi are cousins who used to lead their family life very closely. The accused Mohammad Ali Munshi used to take loans from the complainant for business and used to refund the loan by issuing post-dated cheques. Amongst those cheques, the accused Mohammad Ali Munshi issued cheque No. 3240507 drawn on his Account No. 33006231 maintained with Sonali Bank Ltd, Madaripur Branch, Madaripur on 19.07.2018 for payment of Tk. 48,00,000 in favour of the complainant Md. Kamruzzaman Liton. He presented the cheque on 13.09.2018 through the Sonali Bank Ltd, Madaripur Branch, but the said cheque was dishonoured with the remark 'insufficient funds'. On 07.10.2018, he sent a legal notice to the accused, but the said notice was returned on 15.10.2018 to his learned Advocate due to refusal to receive the said notice by the accused. Thereafter, he filed the case on 22.11.2018.

After filing the complaint petition, the complainant was examined under section 200 of the Code of Criminal Procedure, 1898 and the Chief Judicial Magistrate, Madaripur was pleased to take cognizance of the offence against the accused under section 138 of the Negotiable Instruments Act, 1881. Thereafter, the accused surrendered and obtained bail on 10.01.2019. After that, the case was sent to the Sessions Judge, Madaripur who by order dated 30.01.2019 took cognizance of the offence against the accused under section 138 of the Negotiable Instruments Act, 1881 and framed charge by order dated 12.02.2019 which was read over and explained to the accused and he pleaded not guilty to the charge and claimed to be tried following law. After that, the case was transferred to the Joint Sessions Judge, Court No.2, Madaripur.

The prosecution examined 1 P.W. to prove the charge against the accused, and the defence cross-examined P.W. 1. After examination of the prosecution witness, the accused was examined under section 342 of the Code of Criminal Procedure, 1898, and the defence examined 6 D.Ws. After concluding the trial, the Joint Sessions Judge, Court No. 1, Dhaka, by judgment and order dated 31.07.2024, convicted the accused under section 138 of the Negotiable Instruments Act, 1881, and sentenced him thereunder to suffer imprisonment for 8(eight) months and fine of Tk. 48,00,000 (forty-eight lakh) against which the convict-petitioner filed Criminal

Appeal No. 807 of 2024 in the Court of the Sessions Judge, Dhaka. The Additional Sessions Judge, Court No. 7, Dhaka heard the appeal and by the impugned judgment and order dated 21.09.2025, affirmed the judgment and order passed by the trial Court against which the convict-petitioner obtained the Rule.

P.W. 1 Md. Kamruzzaman Liton is the complainant. He stated that the accused Mohammad Ali Munshi issued a cheque on 19.07.2018 for payment of Tk. 48,00,000, which was dishonoured on 13.09.2018. He sent a legal notice on 7.10.2018, but the accused did not pay the cheque amount. Consequently, he filed the case. He proved the complaint petition as exhibit 1 and his signature on the complaint petition as exhibit 1/Ka, disputed cheque as exhibit 2, legal notice and the postal receipt as exhibits 3 and 3Ka, dishonour slip as exhibit 4. During cross-examination, he stated that the accused is the Chairman of Khoajpur Union Parishad and his cousin and resides in the same house. Abdul Mannan Kobiraj, wife of his sister Parvin Begum, is the brother of one Motaleb Kobiraj who is the postal peon of the post office. He is now posted at the local Mather Bazaar post office. He admitted that he is a businessman and deals with share and supply business. He resides in Dhaka, but he could not show any papers regarding his business. He affirmed that the accused received Tk. one crore seventeen lakh from him. He paid the said amount on different dates at Dhaka and at his village home. He could not say the exact date and amount. The accused issued cheque after each transaction. Subsequently, stated that the accused did not issue a cheque after each transaction. The accused issued total thirteen cheques of different banks. He filed eight cases regarding 10 cheques. Amongst the other three cheques, two cheques of Sonali Bank and Krishi Bank were issued. Four cases are pending at Dhaka, and four cases are pending at Madaripur. He filed cases against the accused under sections 406/420 at Dhaka and Madaripur. The cheque number of this case is 3240507. Nothing has been written in the complaint petition as to the place of transaction. There is no document regarding the transaction between him and the accused. He paid the amount in cash. He used to supply the goods to different government offices. He got the supply license from the City Corporation. He conducted the election on behalf of his cousin. The legal notice was issued through the learned Advocate from Madaripur Post Office. The information has been submitted to the Court; he received notice from the accused. He admitted that he was the Chief Election Agent of the accused during the last election. The part election cost of the accused was paid through him. He denied the suggestion that at the time of election, all cheques of the accused were kept in his custody. He is not aware of the handwriting on the cheque. The signature of the accused is known to him, and he signed the cheque. He denied the suggestion that he wrote the cheque. No account is maintained in his name at Madaripur. He maintained accounts with Shahjalal Bank, Dutch-Bangla Bank and Brac Bank. He could not remember the highest amount of transaction that took place through his account. He denied the suggestion that the accused did not sign and write the cheque or that when he was the election agent of the accused, the cheque books of the accused were kept in his custody or that he filled up the blank cheque. He forged the signature of the accused on the cheque. He denied the suggestion that no notice was sent to the accused under the Negotiable Instruments Act, 1881. Nothing has been written in the complaint petition in whose presence the money was paid to him. Before filing the case, there was a good family relation between him and the accused. A civil case is pending between the accused and his brother regarding the land of his house. He denied the suggestion that at the time of election, taking advantage of the good relation, he had stolen the cheques. He denied the suggestion that the notice had been shown to have been served through his relation, peon Motaleb Kobiraj. He denied the suggestion that the accused did not receive the legal notice or that he deposed falsely.

D.W. 1 Mohammad Ali Munshi is the accused. He stated that he is a former Chairman and cousin of the complainant. There was a good relationship between the accused and him. At the time of the election, the signed cheque was kept in the custody of the complainant, and the accused used to pay the election costs as and when required but dishonestly kept two cheques in his custody secretly. Subsequently, two false cases were filed using the two cheques. This is one of the cases. He only singed cheque. The amount or other handwriting was not written by him. During cross-examination, he affirmed that at the time of election of 2016, bonafide he kept the cheques with the complainant. He denied the suggestion that on 19.08.2018, he issued the cheque. He affirmed that no written complaint was filed regarding the cheque or that he lodged a GD. He did not submit the copy of the GD. He denied the suggestion that the cheque was not issued to pay the election expenditure or that he deposed falsely.

D.W. 2 Abdul Mannan Howlader stated that the accused and the complainant are cousins and known to him. The accused contested the election in 2015/2016. The accused used to pay the expenditure of the election expenses on behalf of the accused. The accused kept the cheque in the custody of the complainant to pay the election costs. The accused secretly kept the cheque and, after many days, filed the case using the said cheque. During cross-examination, he stated that he deals with the medicine business at Shariatpur. He admitted that at the time of handing over the cheque, he was not present. He heard about the handing over the cheque by the accused. He denied the suggestion that under the influence of the accused, he deposed falsely or cheque was not issued to pay the election expenses. He admitted that he and the accused belonged to the same political party.

D.W. 3 Abdur Rob Bepary stated that the accused and the complainant are cousins and neighbours. They are known to him as locals. The accused contested in the election in 2016 for the post of

Chairman. The complainant discharged his duty to pay the expenses of the election. For convenience, the signed cheque was kept in the custody of the complainant. Cash was also paid to him. Subsequently, using the said cheques filed a false case. A salish took place in the locality, but no compromise took place. The complainant had no income. There is no written document regarding the salish. He could not remember the date of the salish. He affirmed that in 2017-18 salish took place. He denied the suggestion that he is a tutor witness.

D.W. 4 Abu Naser Matabbar stated that the accused and the complainant are cousins and known to him as neighbours. The accused was a candidate in the 2016 election for the post of Chairman. For convenience, he kept the cheque in the custody of the complainant. Subsequently, a dispute arose regarding the land, and thereafter, using the blank cheque filed a false case. During cross-examination, he stated that he is not aware of the transaction between the accused and the complainant. He denied the suggestion that under the influence of the accused, he deposed falsely.

P.W. 5 Delowar Sarder stated that the accused and the complainant are known to him as local. The accused was a candidate for the post of Chairman in 2016. The complainant was his election agent. The accused kept the blank cheque in the custody of the complainant to pay the election expenses. Subsequently, using the said cheque, the complainant filed a false case. He affirmed that he cast his vote in favour of the accused. A salish took place regarding the matter, but no compromise took place. He denied the suggestion that under the influence of the accused, he deposed falsely.

D.W. 6 Mozammel Haque Khan stated that the accused and the complainant are known to him as locals. The accused and the complainant are cousins. The accused used to deal with public welfare. He was Chairman for 17 years. The complainant was responsible for the payment of the election costs of the accused in 2016. For convenience, a cheque was kept in the custody of the complainant. He is not aware whether transaction took place between the accused and the complainant. The complainant used to deal with manpower business. A dispute arose regarding the land between the complainant and the accused. Subsequently, this case was filed. He admitted that he was an accused in a kidnapping case. He is not aware whether there was any transaction between the accused and the complainant. He denied the suggestion that he deposed falsely under the influence of the accused.

The learned Advocate Mr. Sujit Chatterjee appearing along with learned Advocate Mr. Asikur Rahman on behalf of the convict-petitioner submits that the complainant and the accused Mohammad Ali Munshi are cousin and in 2016, the accused contested the local Union Parishad election for the post of Chairman and the complainant was his chief election agent and at that time, signed cheque was kept in the custody of the complainant and after a land dispute between the accused and the complainant, the complainant filed the false case using the cheque kept in his custody. He further submits that before filing the case, the cheque was not presented following the provision made in clause (a) of the proviso to section 138 of the Negotiable Instruments Act, 1881 and notice under clause (b) of the proviso to section 138 of the said Act was not sent following the provision made in section 138(1)(1A) of the Negotiable Instruments Act, 1881 and the prosecution failed to prove the cause of action for filing the case and both the Courts below failed to interpret the mandatory provisions made in clauses (a) to (c) of the proviso to sections 138, 138(1A) and 141(b) of the Negotiable Instruments Act, 1881. He prayed for setting aside the impugned judgments and orders passed by the Courts below.

The learned Advocate Mr. Mohammad Ali, appearing along with learned Advocate Mr. Md. Harun-Or-Rashid on behalf of the complainant-opposite party No. 2, submits that the accused Mohammad Ali Munshi admitted that he signed the cheque and the defence by cross-examining P.W. 1 and adducing evidence failed to rebut the presumption under section 118(a) of the Negotiable Instruments Act, 1881 that the cheque was issued for consideration. He further submits that since the notice was sent through registered post in view of the provision made in section 27 of the General Clauses Act, 1897, it is to be presumed that the said notice was duly served upon the accused and during trial, the prosecution proved the charge against the accused beyond all reasonable doubt and both the Courts arrived at a concurrent finding of fact that the accused issued the cheque for consideration and the complainant filed the case complying with the procedures provided in clauses (a) to (c) of sections 138 and 141(b) of the Negotiable Instruments Act, 1881. He prayed for discharging the Rule.

The learned Advocate Mr. Mohammad Ali, having filed an application sworn in on 08.03.2026 for taking additional evidence, submits that the learned lawyer of the petitioner sent a legal notice on 07.10.2018 to the accused through registered post with AD, but the recipient did not receive the envelope and the concerned postman returned the same on 10.2018. He prayed for taking additional evidence.

I have considered the submission of the learned Advocate Mr. Sujit Chatterjee, who appeared along with the learned Advocate Mr. Asikur Rahman on behalf of the convict-petitioner, and the learned Advocate Mr. Mohammad Ali, who appeared along with the learned Advocate Mr. Md. Harun-Or-Rashid on behalf of the complainant-opposite party No. 2, perused the evidence adduced by both the parties, impugned judgments and orders passed by the Courts below, and the records.

In the complaint petition, it has been stated that the accused is the cousin of the complainant and used to lead their personal life along with the accused as a brother, and there was a good relation between the accused and the complainant. During cross-examination, P.W. 1 admitted that he worked in the election of Union Parishad on behalf of his cousin (accused) and the election expenditure of the Chairman (accused) was paid through him. D.W. 1 stated that he kept the signed cheque book to the complainant to pay the election expenses, and P.W. 1 paid the election expenses on his behalf as and when required using the said cheque. By cross-examining D.W. 1, the prosecution affirmed that bona fide D.W. 1 handed over the cheque at the time of the election held in 2016 and he also lodged a GD regarding the matter. D.Ws. 2 to 6 stated that the accused kept several cheques in the custody of the complainant to pay the election expenses, which has not been denied by the prosecution. By cross-examining D.Ws. 2 and 5, the prosecution affirmed that in 2017-18 a salish took place regarding the dispute.

On perusal of the evidence reveals that accused Mohammad Ali Munshi is the cousin of the complainant Md. Kamruzzaman Liton and during election in 2016, he used to keep signed cheques in the custody of the complainant to pay the election expenses and the complainant as election agent of the convict-petitioner used to pay the election expenses as and when required. From the evidence of D.W. 1, it appears that he signed the disputed Cheque No. 3240507 (exhibit 2).

On perusal of the disputed cheque (exhibit 2), reveals that two different inks have been used on the cheque and the date '১৯.০৭.২০১৮', name of the payee 'কামরুজ্জামান লিটন' and the amount 'আটচল্লিশ লক্ষ মাত্র' were written by same inks or pen but ink of speciman signature of the drawer is not identical with the ink or pen used for writing the date, name of payee and amount of the cheque. During cross-examination, P.W. 1 admitted that he is not aware of the handwriting on the cheque. Nothing has been stated by P.W. 1 that the accused wrote or filled up the cheque. By cross-examining D.W. 1, the prosecution affirmed that he signed a blank cheque.

On scrutiny of the disputed cheque (exhibit 2), it further reveals that the counterpart of exhibit 2 is blank. There is no seal of the bank on the cheque regarding the presentation of the cheque (exhibit 2). At the time of presentation of the cheque, an officer of the bank put the seal of the concerned branch of the bank on the presented cheque and an officer of the bank also signed the cheque, but there is no seal of the bank and signature of any officer of the bank on the cheque (exhibit 2) regarding the presentation of the cheque. No explanation has been given by the prosecution as to why there is no seal of the bank and signature of any officer of the bank on the disputed cheque. The deposit slip of the disputed cheque (exhibit 2) is not proved in the case. To prove an offence under section 138 of the Negotiable Instruments Act, 1881, the presentation of the cheque within the specified time as mentioned in clause (a) of the proviso to section 138 of the said Act is mandatory. No evidence was adduced by the prosecution that the cheque was presented for encashment. Unless the cheque is presented to the bank for encashment, the question of dishonour will not arise at all.

On scrutiny of the legal notice dated 07.10.2018 (exhibit 3/Ka) reveals that it is a photocopy. No reason has been assigned by the prosecution as to why the original legal notice was not proved. Although it has been affirmed that the legal notice sent to the accused was returned as unserved to the learned Advocate for the complainant.

On perusal of the postal receipt dated 07.10.2018 (exhibit 3) reveals that a notice or a letter was sent to the accused Mohammad Ali Munshi by registered post. Nothing has been written on the postal receipt (exhibit 3) that the notice was sent with AD. No AD is proved in the case. In the application sworn in on 08.03.2026, it has been stated that the notice was sent on 07.10.2018 to the accused through registered post with AD but the AD is not annexed with the application dated 08.03.2026. Therefore, I am of the firm view that the alleged notice dated 07.10.2018 was not sent to the accused through registered post with AD.

The Negotiable Instruments Act, 1881 is a special law and not compoundable. In the case of Md. Idris Chowkder @ Idris Vs the State and another, reported in 3 LM (AD) (2017) (2) 560, judgment dated 03.07.2014, in which, our Apex Court opined that;

> "An offence under section 138 of the Negotiable Instruments Act is not compoundable, it being a special law."

In the case of Mamunur Rashid @ Abdullah Al Mamun Vs. the State and another, passed in Criminal Revision No. 278 of 2023, judgment dated 26.01.2026, this bench opined that;

> "Provisions made in a special law are mandatory and shall prevail over general law when both deal with the same subject matter. This is based on the legal principle "generalia specialibus non derogant," which states that a special law that relates to a specific subject takes precedence over a general law. When a conflict arises, or even in scenarios where both laws could apply, the Court will follow the special statute designated for that particular situation."

Although in the complaint petition, it has been alleged that the legal notice dated 07.10.2018 was returned unserved to the learned Advocate for the complainant, the said original legal notice sent to the accused was not proved in the case. Therefore, it cannot be said that the legal notice dated 07.10.2018 was returned unserved.

In Mary Seward vs owner of 'Vera Cruz', (1884) 10 AC 59, it has been opined that;

> "Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially

> dealt with by an earlier legislation, you are not to hold, that the earlier and the special legislation is indirectly repealed, altered, or derogated from merely by force of such general words without any indication of a particular intention to do, so."

At the time of enactment of the Negotiable Instruments Act, 1881, the present section 138 was not there. Subsequently, on 12.09.1994, by way of amendment, "Chapter XVII" was substituted in the said Act in place of "Chapter XVII" by Act No. XIX of 1994, but at the time of said amendment no provision was made in the said Act regarding the manner of service of notice upon the accused to ascertain the cause of action as stated in clause (c) of the proviso to section 138 of the Negotiable Instruments Act, 1881. In view of the provision made in section 27 of the General Clauses Act, 1897, when a letter has been sent to the correct address of the addressee, it is to be presumed that the notice has been served upon the notice receiver or addressee. Nothing has been stated in section 27 of the General Clauses Act, 1897, as to the determination of the date of service of notice upon the addressee (accused) as stated in clause (c) of the proviso to section 138 of the Negotiable Instruments Act, 1881. In the above scenario, the Parliament inserted sub-section (1A) in section 138 of the Negotiable Instruments Act, 1881, by Act No. III of 2006 on 09.02.2006. Despite the provision made in section 27 of the General Clauses Act, 1897, the legislature inserted the said provision not without any purpose. Any provision made in a special law on a particular issue shall prevail over any other provision made in a general law on the same issue. Therefore, there is no scope to depart from the legislative intent as to the insertion of sub-section (1A) of section 138 of the Negotiable Instruments Act, 1881.

Nothing has been stated in the complaint petition and by P.W. 1 that the notice was sent to the accused through registered post with

AD. No AD is annexed with the said application dated 08.03.2026. Therefore, the statement made by the complainant in the application sworn in on 08.03.2026 that the notice was sent to the accused through registered post with AD is subsequent embellishment.

On perusal of the evidence of both the prosecution and the defence, reveals that there was a very fiduciary relation between the accused Mohammad Ali Munshi and the complainant Md. Kamruzzaman Liton, who are cousins, and the complainant discharged his duty on behalf of the accused in the election of Union Parishad held in 2016. Therefore, the defence case that the accused kept several signed cheques in the custody of the accused at the time of the Union Parishad election 2016 to pay the legal expenses cannot be ruled out.

In view of the provision made in clause (c) of the proviso to section 138 of the said Act, the drawer of the cheque is entitled to get thirty days to pay the cheque amount from the date of receipt of notice and if the drawer of the cheque fails to pay the cheque amount within the said period, the payee shall file the case within next thirty days in view of the provision made in section 141(b) of the said Act. In the instant case, the complainant failed to prove that before filing the case the notice was served upon the accused Mohammad Ali Munshi. Nothing has been stated by the P.W. 1 that the accused received the notice or notice was served upon the accused.

The provisions made in clauses (a) to (c) of the proviso to section 138(1), sections 138(1)(1A) and 141(b) of the said Act are cumulative. During trial, the prosecution shall prove the case following the said provisions. In the instant case, the prosecution failed to prove that the dispute cheque was presented and dishonoured on 13.09.2018 and the notice was served upon the accused before filing the case. From the evidence adduced by the prosecution, the cause of action for filing the case as stated in clause (c) of the proviso to section 138 of the Negotiable Instruments Act, 1881 could not be ascertained. Both the Courts below failed to interpret the said cumulative provisions in their true perspective and, in the absence of any cause of action for filing the case under section 138 of the Negotiable Instruments Act, 1881 the Courts below illegally convicted the accused Mohammad Ali Munshi.

I find merit in the Rule.

In the result, the Rule is made absolute.

The application sworn in on 08.03.2026 is hereby rejected.

The impugned judgments and orders of conviction and sentence passed by both the Courts below against the convict-petitioner Mohammad Ali Munshi are hereby set aside.

The accused Mohammad Ali Munshi is entitled to get 50% of the cheque amount deposited by him in the trial Court before filing the appeal.

The trial Court is directed to refund 50% of the cheque amount to Mohammad Ali Munshi.

However, there will be no order as to costs.

Send down the lower Court’s records at once.