

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Revisional Jurisdiction)**

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 951 of 2007

**Md. Abdul Malek Sareng@Malek @
Malek Sareng**

...Petitioner

-Versus-

The State and another

.....Opposite parties.

None appears

...For the petitioner

None appears

...For the Opposite party No.2

Mr. Md. Anichur Rahman, DAG with

Mr. Mir Moniruzzaman, AAG with

Mr. Md. Sarwar Alam Khan, AAG with

Ms. Nargis Parvin (Alija), AAG

.....For the State.

Heard on 13.01.2026

Judgment delivered on 22.01.2026

On an application under section 439 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 23.10.2006 passed by Nari-O-Shishu Nirjatan Daman Tribunal No.1, Dhaka in Criminal Appeal No. 67 of 2005 affirming the judgment and order of conviction and sentence dated 18.10.2004 passed by the Metropolitan Magistrate, Dhaka in C.R. Case No. 681 of 2003 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 1(one) year and fine of Tk. 800,000, in default, to suffer imprisonment for 03(three) months should not be set aside and/or such other or further order or orders passed as to this court may seem fit and proper.

The prosecution's case, in short, is that the complainant Mokhles Banu entered into an agreement with the convict-petitioner Md. Abdul Maleque on 10.09.2002 to send her grandson, Md. Mahfuzul Haque alias Sumon, to Australia. Following the agreement, the convict petitioner received Tk. 400,000 from her through a cheque. When he failed to send her grandson to Australia, he issued cheque No. 8131430 dated 25.11.2002 drawn on his Account No. 33000218 maintained with Al-Arafah Islami Bank Ltd for payment of Tk. 400,000. The complainant presented the cheque for encashment, which was dishonoured on 05.02.2003 with the remark "insufficient funds". After that, the complainant sent a legal notice on 08.02.2003 through registered post with AD to the convict-petitioner, and he received the said notice on 16.02.2003, but he did not pay the cheque amount in time. Consequently, the complainant filed the complaint petition on 11.03.2003.

After filing complaint petition, the Chief Metropolitan Magistrate, Dhaka, took cognizance of the offence against the accused Md. Abdul Maleque under section 138 of the Negotiable Instruments Act, 1881. Subsequently, the case was transferred to the Court of Metropolitan Magistrate, Dhaka for trial, who framed charge under section 138 of the Negotiable Instruments Act, 1881. During the trial, the prosecution examined 01(one) witness to prove the charge against the accused. Since the accused was absconding, he was not examined under section 342 of the Code of Criminal Procedure, 1898. After concluding the trial, the trial court by impugned judgment and order, convicted the accused and sentenced him as stated above, against which he filed Metropolitan Criminal Appeal No. 860 of 2004 in the Metropolitan Sessions Judge, Dhaka.

P.W. 1 Moklesh Banu is the complainant. She stated that on 10.09.2002, she paid Tk. 400,000 by cheque to send her grandson abroad. Thereafter, the accused issued cheque No. 8131430 dated 25.11.2002 drawn on his Account No. 33000218 maintained with Al-

Arafah Islami Bank Ltd for payment of Tk. 400,000. The complainant presented the cheque for encashment, which was dishonoured on 05.02.2003 with the remark “insufficient funds”. After that, the complainant sent a legal notice on 08.02.2003 to the accused, and he received the said notice on 16.02.2003, but the accused did not pay the cheque amount in time. She proved the cheque as exhibit-1, dishonoured slips as exhibit-Ka/1, Ka/2, Ka/3, and Ka/4, the legal notice as exhibit-2, postal receipt as exhibit-Kha, and AD as exhibit-ga.

No one appears on behalf of either party.

On perusal of the evidence, it appears that the complainant Mokhles Banu entered into an agreement with the convict-petitioner Md. Abdul Maleque Sareng on 10.09.2002 to send her grandson, Md. Mahfuzul Haque alias Sumon, to Australia. The accused received Tk. 400,000 from her through a cheque. When he failed to send her grandson to Australia, he issued cheque No. 8131430 dated 25.11.2002 drawn on his Account No. 33000218 maintained with Al-Arafah Islami Bank Ltd for payment of Tk. 400,000 in favour of the complainant. The complainant presented the cheque for encashment, which was dishonoured on 05.02.2003 with the remark “insufficient funds”. After that, the complainant sent a legal notice on 08.02.2003 through registered post with AD to the accused, and the accused received the said notice on 16.02.2003, but he did not pay the cheque amount in time. The complaint was filed on 11.03.2003, complying with the procedure under section 138(1) and 141(b) of the said Act.

Until the contrary is proved, there is a presumption under section 118(a) of the Negotiable Instruments Act, 1881 that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. The presumption under Section 118 (a) is rebuttable. The accused did not cross-examine P.W. 1. Therefore, I am of the view that the accused issued the cheque in favour of the payee complainant for

consideration. After service of notice on 16.02.2003, the accused did not pay the cheque amount within 15(fifteen) days, and the complainant filed the case on 11.03.2003, complying with the procedure under section 138 of the said Act. Thereby, the accused Md. Abdul Maleque Sharang @ Maleque Sharang committed an offence under Section 138 of the Negotiable Instruments Act, 1881.

Because of the above evidence, findings, observation and proposition, I am of the view that the complainant proved the charge against the accused under section 138 of the Negotiable Instruments Act, 1881 to the hilt beyond all reasonable doubt and both the courts below on correct assessment and evaluation of the evidence legally passed the impugned judgment and order of conviction.

Considering the gravity of the offence, I am of the view that ends of justice would be best served if the sentence passed by the trial court is modified as under;

The accused Md. Abdul Maleque Sharang @ Maleque Sharang is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and he is sentenced thereunder to suffer imprisonment for 03 (three) months and fine of Tk. 400,000.

In the result, the Rule is disposed of with a modification of sentence.

The complainant opposite party No. 2 is entitled to get the fine amount awarded by this Court.

The accused Md. Abdul Maleque Sharang @ Maleque Sharang is directed to surrender before the trial court forthwith and pay the fine.

Send down the lower Court's records at once.