

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

Present:

Mr. Justice Md. Shohrwardi

Criminal Revision No. 08 of 2007

Shamimur Rahman

-Vs-

The State and another

Mr. Mohammad Monirul Islam,
Advocate

....For the petitioner
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 19.01.2026

Judgment on 20.01.2026

On an application under sections 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 dated 04.07.2005 passed by the Additional Metropolitan Sessions Judge, Court No.1, Dhaka In Criminal Appeal No. 859 of 2004 affirming the judgment and order dated 29.05.2004 passed by the Metropolitan Magistrate, Dhaka in C.R. No. 1718 of 2002 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 6(six)

months and fine of Tk. 500,000 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's case, in short, is that the accused Shamimur Rahman and the complainant Mahbubur Rahman were known to each other. The accused received Tk. 175,000 in cash and Tk. 1,25,000 through cheque No. 5904663 dated 06.04.2002 to send the complainant to Canada, but ultimately, he did not send the complainant to Canada. On 23.06.2002, he issued cheque No. 2082231 drawn on his Account No. 34027706 maintained with Al-Baraka Bank Bangladesh Ltd, Mirpur Road Branch, Dhaka for payment of Tk. 300,000 in favour of the complainant. On 25.06.2002, the complainant presented the said cheque, but it was dishonoured with the remark "insufficient funds". On the request of the accused, he again presented the cheque on 27.06.2002, but on the same date it was dishonoured with the remark "insufficient funds". On 01.07.2002, the complainant sent a legal notice to the accused to pay the cheque amount within 15 days from the date of receipt of the notice, but in connivance with the employee of the postal department, the accused refused to receive the notice, and the said notice was returned to the learned Advocate for the complainant as unserved. Consequently, he filed the case on 25.07.2002.

During trial, charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881, which was read over and explained to the accused, and he pleaded not guilty

to the charge. During trial, the prosecution examined 3 witnesses to prove the charge against the accused. During the trial, the accused was absconding and did not cross-examine the prosecution witnesses. After concluding the trial, the trial court, by impugned judgment and order dated 29.05.2004, was pleased to convict the petitioner under section 138 of the Negotiable Instruments Act, 1881, and sentenced him thereunder to suffer imprisonment for 06 months and a fine of Tk. 500,000.

Being aggrieved by, and dissatisfied with the said judgment and order passed by the trial court, the accused filed Criminal Appeal No. 859 of 2004 before the Sessions Judge, Dhaka. The appeal was heard by the Additional Sessions Judge, Court No. 1, Dhaka, who, by the impugned judgment and order dated 04.07.2005, affirmed the judgment and order passed by the trial court against which the convict petitioner obtained the Rule.

P.W. 1 Mahabubur Rahman is the complainant. He stated that the accused received Tk. 300,000 in cash and by cheque from him to send him to Canada, but he did not send him to Canada. The accused issued a cheque on 23.06.2002 drawn on his Account No. 2082231 maintained with Al Baraka Bank Ltd, Mirpur Road Branch, Dhaka, for payment of the Tk. 300,000. He presented the cheque on 25.06.2002, but it was dishonoured with the remark "insufficient funds". He again presented the cheque on 27.06.2002, but on that day the said cheque was also dishonoured. He proved the cheque as exhibit-1 and his signature as exhibit-1/1, the dishonoured slips as exhibits-2 and 3. He

proved the legal notice dated 01.07.2002 as exhibit-4, postal receipt as exhibit-5. Since the accused did not pay the cheque amount following the legal notice dated 01.07.2002, he filed the complaint petition on 25.07.2002. He affirmed that the accused paid Tk. 15,000 on 05.07.2003 and Tk. 50,000 on 06.10.2003.

P.W. 2 Saidul Islam stated that the accused issued a cheque on 23.06.2002 for payment of Tk. 300,000 in favour of the complainant, who presented the cheque on 25.06.2002 and 27.06.2002, but on those dates it was dishonoured. The accused also paid Tk. 65,000.

P.W. 3 Md. Nizam Uddin stated that the accused issued a cheque on 22.06.2002 for payment of Tk. 300,000 in favour of the complainant, and it was dishonoured on 25.06.2002 and 27.06.2002. The complainant sent the legal notice to the accused, and he paid Tk. 65,000.

Learned Advocate Mr. Md. Monirul Islam appearing on behalf of the convict petitioner submits that before filing the case under section 138 of the Negotiable Instruments Act, 1881 no notice was served upon the accused for payment of the cheque amount and the prosecution failed to prove the cause of action for filing the case and the courts below illegally passed the impugned judgment and order convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881. He prayed for setting aside the impugned judgment and order passed by the trial court.

No one appears on behalf of the opposite party No. 2.

I have considered the submission of the learned Advocate Mr. Monirul Islam, who appeared on behalf of the convict petitioner, the impugned judgment and order by the courts below, the evidence adduced by the prosecution, and the records.

On perusal of the evidence, it reveals that the accused issued cheque No. 2082231 on 23.06.2002 drawn on his Account No. 34027702 maintained with Al-Baraka Bank Ltd, Mirpur Road Branch, Dhaka for payment of Tk. 300,000. He presented the said cheque on 27.06.2002, but it was dishonoured with the remarks “insufficient funds”. P.W. 1 proved the cheque as exhibit-1, the cheque return memo as exhibit-2. After that, he sent a legal notice on 01.07.2002 to the accused. P.W. 1 proved the legal notice as exhibit-4 and the postal receipt as exhibit-5. He filed the complaint petition on 25.07.2002. Nothing has been stated by P.W. 1 as to the date of service of notice upon the accused or receipt of notice by the accused.

Mere presentation of a cheque within the specified time mentioned in clause (a) of the proviso to Section 138 of the Negotiable Instruments Act, 1881 and sending the notice in writing to the drawer of the cheque making a demand for the payment of the cheque amount by the payee within fifteen days(now thirty days) from the date of receipt of information by him from the bank regarding the return of the cheque as unpaid does not constitute an offence under Section 138 of the Negotiable Instruments Act, 1881 unless the cheque is issued for

consideration and the said notice is served upon the drawer of the cheque and he/she failed to pay the cheque amount within fifteen days from the date of receipt of said notice and the complaint is made within fifteen days of the date on which the cause of action arises under clause (c) of the proviso to Section 138 of the said Act.

On perusal of the judgments and orders passed by the courts below, it is revealed that no finding has been arrived at by the courts below as to the date of service of notice upon the accused or the date of receipt of notice by the accused. From the evidence discussed hereinabove, the cause of action for filing the case under section 138 of the Negotiable Instruments Act, 1881 could not be ascertained. The prosecution failed to prove the cause of action for filing the case on 25.07.2002 under section 138 of the Negotiable Instruments Act, 1881, and both the courts below, without arriving at any finding as to the cause of action for filing the case illegally passed the impugned judgment and order.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgment and order passed by the courts below against the convict petitioner Shamimur Rahman are hereby set aside.

The accused Shamimur Rahman is entitled to get the 50% of the cheque amount deposited by him before filing appeal. The trial court is directed to do the needful.

Send down the lower Court's records at once.