

**Present:**

Mr. Justice Raziuddin Ahmed

**Criminal Revision No.212 of 2007**

Md. Parvez @ Shahin Parvez

----- Petitioner

**-Vs-**

The State

---- Opposite Parties

Mr.Sarwar Ahmed, Senior Advocate with

Mr. Sudhendu Kumar Biswas, Advocate

with

Mr. A. K. M. Mamunur Rashid, Advocate

----For the Petitioner

Mr. Md. Badrul Anwar, D.A.G

Mr. Md. Taherul Islam (Tawhid), D.A.G

---- For the State

**Heard on 02.02.2026 , 15.02.2026**

**and Judgment on 22.02.2026**

On an application filed under section 439 of the Code of Criminal Procedure Rule, 1898 was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 15.02.2007 passed by the learned Sessions Judge, Khulna dismissing the Criminal Appeal No. 07 of 2007 upholding the Judgment and order of conviction and sentence dated 02.10.2005 passed by the learned Metropolitan

Magistrate, Khulna in C.R. Case No. 1308C of 2004 should not be set aside and/or such other or further order or orders as this Court may deem fit and proper.

The prosecution case, in substance, is that the complainant and the accused-petitioner were involved in trading business. In course of such business, the complainant purchased scrap iron from Khulna Shipyard on 19.05.2004 through tender and thereafter sold the same to the accused-petitioner. For the said transaction the complainant claimed to be entitled to receive Tk. 2,70,000/- from the accused-petitioner. In part payment of the alleged dues the accused-petitioner issued a cheque for Tk 2,00,000/-. The complainant presented the cheque on 28.06.2004 in the concern bank for encashment but the same was dishonored for insufficient fund. Thereafter, on 11.07.2004 the complainant sent a legal notice to the accused petitioner by registered post with acknowledgement. It is stated that the accused petitioner received the said notice on 13.07.2004, but did not make payment; hence the complaint was filed under section 138 of the Negotiable Instrument Act, 1881.

The case was transferred to the Court of learned Metropolitan Magistrate, Khulna. Charge was framed against

the accused petitioner on 03.03.2005 under section 138 of the Negotiable Instrument Act, 1881 which was read over to him; the accused-petitioner pleaded not guilty and claimed to be tried. The prosecution examined five witnesses and the defence adduced none.

Upon Consideration of the evidence on record, the learned Metropolitan Magistrate, Khulna by judgment and order `dated 02.10.2005, convicted the accused-petitioner under section 138 of the Negotiable Instrument Act, 1881 and sentenced him to suffer simple imprisonment for one year and to pay fine of Tk. 6,00,000/- (Tk. 2,00,000/- x 3) in default to suffer simple imprisonment for three months more.

It is also stated that although the accused-petitioner had been enlarged on bail by the trial court, he could not remain present at the time of pronouncement of judgment due to his physical illness; the judgment dated 02.10.2005 was pronounced in his absence. Thereafter he was arrested on 10.12.2006.

The accused-petitioner preferred an appeal on 08.01.2007 before the Court of learned Sessions Judge, Khulna being Criminal Appeal No.07 of 2007, along with an

application under section 5 of the Limitation Act, 1908 for condonation of delay of 462 days. At the time of filing the appeal the accused-petitioner did not deposit any amount. The learned Appellate Court, by order dated 08.01.2007, directed the accused-petitioner to deposit 50% of the cheque amount within 15.02.2007 purportedly under section 138A of the Negotiable Instruments Act, 1881. The accused-petitioner did not deposit the said amount within the specified time. Consequently, the learned Sessions Judge, Khulna by judgment and order dated 15.02.2007, rejected the appeal, holding the view that deposit of 50% of the cheque amount is mandatory and cannot be overlooked.

Being aggrieved by and dissatisfied with the judgment and order dated 15.02.2007 passed by the sessions Judge, Khulna in Criminal Appeal No. 07 of 2007, the accused-petitioner filed this revisional application and obtained a Rule on 12.03.2007.

Mr. Sarwar Ahmed, learned Senior Advocate, appearing with Mr. Sudhendu Kumar Biswas and Mr. A.K.M. Mamunur Rashid, learned Advocates, on behalf of the accused petitioner submits that section 138A of the Negotiable Instruments Act, 1881 is not applicable to the present case

because the cheque was dishonored on 28.06.2004 and the complaint was filed on 08.08.2004, whereas section 138A was inserted by Act No. 03 of 2006 with effect from 09.02.2006. The provision contains no indication of retrospective effect; therefore the appellate court erred in insisting upon deposit of 50% of the cheque amount before entertaining the appeal.

The learned Advocate also submits that there was a delay of 462 days in filling of the appeal and the appellant filed an application for condonation of delay under section 5 of the Limitation Act, 1908 contending inter-alia that the petitioner was suffering from Seronegative Rh. Arthritis (SNRA) and Respiratory distress, medical prescriptions and reports were submitted about the said diseases but the learned Appellate Court without considering those documents rejected the application for condonation of delay. The learned Advocate finally submits that the date of receipt of the legal notice has not been mentioned as such the mandatory provision of section 138 of the Negotiable Instruments Act, 1881 has not been complied with at all as such the impugned judgment and order dated 15.02.2007 is liable to be set aside.

Mr. Md. A.S.M. Badrul Anwar, learned Deputy Attorney General appearing on behalf of the state strongly

opposes the Rule and submits that both the court below acted in accordance with law and there is no reason for interference in this revisional application.

I have heard the learned advocates of both the sides and perused the application and evidence on record.

On perusal of the impugned judgment and order dated 15.02.2007 passed by the learned Sessions Judge, Khulna it appears that the main issue to determine in this case is whether section 138A of the Negotiable Instruments Act, 1881(inserted with effect from 09.02.2006) is applicable to an appeal arising out of a complaint case instituted in 2004, and whether the appeal could lawfully be rejected solely for non-deposit of 50% of the cheque amount under that provision.

Section 138A, inserted in the Negotiable Instruments Act, 1881with effect from 09.02.2006 reads as follows:

*“Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no appeal against any order of sentence under sub-section (1) of section 138 shall lie, unless an amount of not less than fifty per cent of the amount of the dishonoured cheque is deposited*

*before filing the appeal in the court which awarded the sentence''*

It appears from the plain reading of the aforesaid provision that there is no express stipulation that the requirement shall operate retrospectively so as to govern appeals arising out of a proceedings instituted before the provision came into force. In the absence of express words or necessary implication, a provision which imposes a new condition affecting the exercise of an appellate remedy cannot ordinarily be applied to defeat or burden a pre-existing proceeding.

In this regard, the principle embodied in section 6 of the General Clauses Act, 1897 is relevant. In *Sakya Pada Barma vs State* reported in 38 DLR 86 it was held that,

“In view of provisions of section 6, the General Clauses Act only pendency cases of which a competent Court had already taken cognizance shall be continued to be tried in the forum before amending or repealing enactment came into force unless contrary intention has been expressly stated in the amending or repealing legislation.”

Applying the above principle, where cognizance had already been taken and the proceeding had proceeded to trial

and conviction before the introduction of section 138A, and where the amending legislation does not disclose a contrary intention giving the provision retrospective effect, the amended condition of deposit cannot be pressed into service to summarily shut out the appellate remedy in such a case.

In the present matter, the complaint was instituted in 2004, charge was framed in 2005 and conviction was recorded on 02.10.2005, all prior to the coming into force of section 138A on 09.02.2006. The learned Sessions Judge, Khulna rejected the appeal on 15.02.2007 solely on the ground of non-deposit of 50% of the cheque amount under section 138A. In view of the foregoing discussion, the said approach is found to be *ex facie* untenable in law.

Since the impugned order rejecting the appeal cannot be sustained on the point of law as discussed above, the same calls for interference in revisional jurisdiction. All other questions raised (including delay condonation and merits of the appeal) are matters for the appellate Court to consider in accordance with law once the appeal is admitted and entertained without insisting upon an inapplicable statutory pre-condition.

In the result, the Rule is made absolute.

The impugned judgment and order dated 15.02.2007 passed by the learned Sessions Judge, Khulna in Criminal Appeal No. 07 of 2007, rejecting the memo of appeal for non-deposit of 50% of the cheque amount, is hereby set aside.

The learned Sessions Judge, Khulna is directed to admit the appeal and thereafter to hear and dispose of the same expeditiously, preferably within one month from receipt of this judgment and order, in accordance with law, keeping in view the observations made herein on the inapplicability of section 138A to the present case.

Communicate this order at once.