

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CRIMINAL REVISIONAL JURISDICTION)**

**Present:**

**Mr. Justice Md. Bashir Ullah**

**Criminal Revision No. 4455 of 2023**

**In the matter of:**

An application under section 439 read with  
435 of the Code of Criminal Procedure

**-And-**

**In the matter of:**

Mst. Nurjahan

... Convict-Petitioner

**-Versus-**

The State and another

...Complainant-Opposite Parties

Ms. Shairin Sultana, Advocate

... For the Convict- Petitioner

Mr. Shafique Raihan Shawon, Advocate

... For the Complainant- opposite party No. 2

Mr. Md. Shafiquil Islam, D.A.G with

Ms. Farhana Abedin, A.A.G with

Mr. Hemaith Uddin, A.A.G and

Mr. K. M. Saiful Islam, A.A.G

... For the State

**Heard on: 16.06.2026 and 24.06.2026**

**Judgment on: 25.06.2026**

This Rule was issued at the instance of the petitioner,  
calling upon the opposite parties to show cause as to why the  
judgment and order dated 20.08.2023 passed by the learned

Senior Sessions Judge, Dhaka in Criminal Appeal No. 843 of 2022, dismissing the appeal and affirming the judgment and order dated 12.05.2022 passed by the learned Joint Sessions Judge, 7<sup>th</sup> Court, Dhaka in Sessions Case No. 295 of 2022 arising out of Keranigonj C.R Case No. 163 of 2021 convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing her to suffer simple imprisonment for 06(six) months and to pay a fine of Tk. 11,00,000/- (eleven lac) should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

The facts, relevant for disposal of the Rule, in brief, are that the accused-petitioner obtained a loan of Taka 11,00,000/- from the complainant. In discharge of the said loan, the accused-petitioner issued 3 separate cheques being Nos. 0134448 dated 08.12.2020 for Taka 2,00,000/-, Cheque No. 0134450 dated 08.12.2020 for Taka 5,00,000/- and cheque No. 0134438 dated 08.12.2020 for Taka 4,00,000/- drawn on Pubali Bank Limited, Johnson Road Branch, Dhaka. The complainant presented the said cheques for encashment to the concerned bank on 08.12.2020 but the

same were dishonoured on 13.12.2020 with the endorsement “Advice not received”. Thereafter, the complainant served a statutory legal notice upon the petitioner on 27.12.2020 which was received by the petitioner on 28.12.2020. Despite the receipt of the notice, the petitioner failed to make payment within the stipulated period. Consequently, the complainant filed Keranigonj C.R. Case No. 163 of 2021 before the learned Chief Judicial Magistrate, Dhaka on 18.02.2021. The learned Magistrate took cognizance of the offence and subsequently transmitted the case file to the Court of Sessions Judge, Dhaka. The learned Sessions Judge, Dhaka transferred the case to the learned Joint Sessions Judge, 7<sup>th</sup> Court, Dhaka for disposal and was registered as Sessions Case No. 295 of 2022. Charge was framed on 28.03.2022 under Section 138 of the Negotiable Instruments Act, 1881 against the accused. The accused was absconding at the time of the framing of the charge.

In course of the trial, the prosecution examined 01(one) witness while the defence examined none. The accused could not be examined under Section 342 of the Code of Criminal Procedure as she remained absconding.

Upon conclusion of the trial and hearing the parties, the learned Joint Sessions Judge, 7<sup>th</sup> Court, Dhaka convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (the Act, 1881) and sentencing her to suffer simple imprisonment for 06(six) months and to pay a fine of Taka 11,00,000/- (eleven lac) by judgment and order dated 12.05.2022.

Challenging the conviction and sentence, the petitioner filed Criminal Appeal No. 843 of 2022 before the learned Sessions Judge, Dhaka. Upon hearing the parties, the learned Sessions Judge, Dhaka dismissed the appeal by judgment and order dated 20.08.2023, affirming the order of conviction and sentence.

Being aggrieved by and dissatisfied with judgment and order dated 20.08.2023, the petitioner preferred the instant Criminal Revision before this Court and obtained the Rule.

Ms. Shairin Sultana, the learned Advocate appearing on behalf of the petitioner, submits that the Courts below failed to properly appreciate the evidence on record and did not apply their judicial minds in passing the impugned judgments

and orders of conviction and sentence and as such the same are liable to be set aside.

She further submits that the petitioner has already paid Taka 1,00,000/- (one lac) in cash directly to the complainant and 5,00,000/- to the trial Court through Treasury Challan. She submits that the petitioner is currently enduring severe financial distress and requires a period of 6(six) months to pay the rest amount. She finally prays for making the Rule absolute, setting aside the sentence of imprisonment.

*Per contra*, Mr. Shafique Raihan Shawon, the learned Advocate appearing on behalf of the opposite party no. 2, submits that there is no illegality, impropriety or infirmity in the impugned judgments and orders. The Courts below have rightly convicted and sentenced the petitioner and as such the Rule is liable to be discharged.

I have heard the learned Advocates for both parties, perused criminal revision and scrutinized the materials on record.

It appears from the petition of complaint, the deposition of PW1 (complainant) and the documentary evidence that the accused-petitioner obtained a loan of Taka 11,00,000/- from

the complainant. In discharge of the said loan, the accused-petitioner issued 3 separate cheques. The complainant presented the said cheques to the concerned bank on 13.12.2020 but the same were dishonoured. Thereafter, the complainant served a statutory legal notice on 27.12.2020 and the accused received the notice on 28.12.2020, however, the petitioner failed to make payment within the stipulated period. Consequently, the case was filed on 18.02.2021. P.W-1 has successfully proved the prosecution case.

The record shows that the complainant has duly complied with the mandatory provisions and procedures laid down in Section 138 of the Act, 1881 in filing the case. The case was filed upon accrual of the cause of action under clause (c) of the proviso to Section 138 of the Act. The complainant has also proved the existence of consideration against which the cheque was drawn and he is the holder of the cheque in due course. The Courts below rightly found the petitioner guilty of the charge. Hence, the impugned judgment and order of conviction does not suffer from any illegality, impropriety or infirmity.

However, with regard to the sentence, reliance may be placed upon the decision passed in *Aman Ullah Vs. State*, reported in 73 DLR (2021) 541, wherein this Court set aside the sentence of imprisonment holding that the sentence of imprisonment would be a harsh sentence having no penal objective to be achieved. I have no disagreement with the *ratio* passed in the above-mentioned case.

Considering the financial hardship of the petitioner and the facts and circumstances of the case this Court is of the view that the ends of justice would be best served if the substantive sentence of imprisonment is modified and set aside while preserving the financial penalty.

In view of the foregoing discussions and *ratio* the order of the Court is as follows:

The conviction of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 is hereby affirmed. However, the sentence of 06(six) months simple imprisonment is set aside. The sentence of fine to the tune of Taka 11,00,000/- is upheld. It appears that the convict-petitioner has already deposited 5,00,000/- via Treasury Challan before the trial Court prior to filing the appeal. So,

the Court concerned is directed to disburse the said deposited amount of Taka 5,00,000/- to the complainant-opposite party No. 2 forthwith. Taking note of Taka 1,00,000/- (one lac) paid directly in cash, the convict-petitioner is directed to deposit the remaining balance of the value of the dishonoured cheque amounting to Taka 5,00,000/- to the complainant-opposite party No. 2 through the trial Court within 04 (four) months from the date of receipt of this order, in default she shall suffer simple imprisonment for 01(one) month. If the convict-petitioner does not pay the remaining portion of the fine as ordered or opts to serve out the period of imprisonment in lieu of payment of fine, she is not exempted from paying the same. In that event, the Court concerned shall realise the fine under the provisions of Section 386 of the Code of Criminal Procedure.

In the result, the Rule is discharged with modification of sentence and with directions made above.

The convict-petitioner is released from her bail bond.

Let a copy of the judgment along with the lower Court records (LCR) be transmitted to the Court concerned forthwith.

***(Md. Bashir Ullah, J.)***

Md. Ariful Islam Khan  
Bench Officer