

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 4428 of 2025

In the matter of:

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

-And-

In the matter of:

Shamol Mondol

... Convict-Appellant-Petitioner

-Versus-

The State and another

...Complainant-Respondent-Opposite Parties

Mr. Mohammad Asadullah, Advocate

... For the Convict- Petitioner

Mr. Mohammad Afroz Hossain, Advocate

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

Mr. S.M. Aminul Islam Sanu, D.A.G with

Mr. Md. Nasimul Hasan, A.A.G with

Mr. Md. Golamun Nabi, A.A.G and

Ms. Farhana Abedin, A.A.G

... For the State

Heard on: 29.01.2026, 02.02.2026,

08.02.2026 and 16.02.2026

Judgment on: 04.03.2026

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 18.05.2025 passed by the learned Additional Sessions Judge, 1st Court, Chuadanga in Criminal Appeal No. 263 of 2023 dismissing the appeal affirming the judgment and order of conviction and sentence dated 17.05.2023 passed by the learned Joint Sessions Judge, 2nd Court, Chuadanga in Sessions Case No. 379 of 2021 arising out of C.R Case No. 98 of 2021 (Damurhuda) convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 01(one) year and also to pay a fine of Tk. 4,80,000/- (four lac eighty thousand) 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.

Facts relevant for disposal of the Rule, in brief, are that, the accused was friend of the complainant and he obtained a loan amounting to Taka 4,80,000/-. In order to refund the loan, the accused issued cheque No. $\frac{SB-10}{FN}$ 3359549 on 20.01.2021 drawn on Janata Bank Limited, Carpash Danga Branch, Chuadanga for Taka 4,80,000/- in favour of complainant. The complainant presented the cheque to the concerned bank on 20.01.2021 but it was dishonoured

endorsing “insufficiency of funds”. Then he served legal notice on 01.02.2021 which was received by the accused but the petitioner failed to make payment. Consequently, the complainant filed C.R. Case No. 98 of 2021 before the Cognizance Court, Dhamurhuda, Chuadanga on 14.03.2021. The cognizance Court took cognizance and sent the case to the Court of Sessions Judge, Chuadanga. The learned Sessions Judge, Chuadanga transferred the case to the learned Joint Sessions Judge, 2nd Court, Chuadanga and was registered as Sessions Case No. 379 of 2021. Charge was framed on 15.02.2022 under Section 138 of the Negotiable Instruments Act, 1881. The accused was absconding at the time of framing of charge. The accused was examined under section 342 of the Code of Criminal Procedure on 23.06.2022.

In course of trial, prosecution examined 01(one) witness while defence examined 02(two) witnesses to prove their respective case.

Upon hearing, the learned Joint Sessions Judge, 2nd Court, Chuadanga convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him

to suffer simple imprisonment for 01 (one) year and fine of Taka 4,80,000/- by judgment and order dated 17.05.2023.

Challenging the conviction and sentence the petitioner filed Criminal Appeal No. 263 of 2023 before the learned Sessions Judge, Chuadanga. Thereafter, the appeal was transferred to the learned Additional Sessions Judge, 1st Court, Chuadanga who upon hearing dismissed the same by judgment and order dated 18.05.2025 affirming the order of conviction and sentence.

Being aggrieved by and dissatisfied with judgment and order dated 18.05.2025, the petitioner preferred the instant Criminal Revision before this Court and obtained Rule. This Court enlarged the petitioner on bail on 31.08.2025.

Mr. Mohammad Asadullah, the learned Advocate appearing on behalf of the petitioner submits that both the Courts below have failed to apply their judicial mind and committed error of law in passing the impugned judgments and orders of conviction and sentence and the prosecution has miserably failed to prove his case beyond reasonable doubt against the petitioner.

He further submits that the petitioner is in financially distressed circumstances and is not in a position to pay the rest amount within one year as such he prays for one year time to repay the same.

He finally prays for making the Rule absolute.

Per contra, Mr. Mohammad Afroz Hossain, 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 rightly convicted and sentenced the petitioner and as such the Rule is liable to be discharged.

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

It appears from the petition of complaint, the deposition of PW1 (complainant) and the documentary evidence that the convict-petitioner issued the cheque in question for Taka 4,80,000/- in favour of the complainant-opposite party on 20.01.2021 to repay the loan amount which was received by him. It was dishonoured by the bank concerned on 20.01.2021 due to insufficiency of funds. The complainant-opposite party sent statutory legal notice to the convict-petitioner on

01.02.2021. Despite receipt of the notice, the petitioner failed to make the payment. Consequently, the case was filed on 14.03.2021. P.W.1 successfully proved the prosecution case.

Defence Witness 1(DW-1) Shamol Mondol deposed in his evidence that the complainant stole the cheque book. However, in cross-examination he admitted that he did not file any case or lodge any General Diary (GD) entry regarding the alleged theft of the cheque book. Consequently, the trial Court rightly disbelieved the testimony of the accused.

The record shows that the complainant has duly complied with the procedures laid down in Section 138 of the Act, 1881 in filing the case. The case was filed within one month of the date on which the cause of action had arisen under clause (c) of the proviso to Section 138. The complainant also proved consideration against which the cheque was drawn and that it 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 regards 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 by this Court in the above-mentioned case.

Considering the financial hardship of the petitioner, this Court is of the view that the petitioner should be given a few months to pay the rest amount and the sentence of imprisonment should be set aside in the interest of justice.

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 Act, 1881 is affirmed, however the sentence of imprisonment is modified. The sentence of 01(one) year simple imprisonment is set aside. The sentence of fine of Tk. 4,80,000/- which is equivalent to the cheque amount is upheld. The convict-petitioner has already deposited Tk. 2,40,000/- before the trial Court prior to filing the appeal. The Court concerned is directed to disburse the said deposited

money to the complainant-opposite party No.2 forthwith. The convict-petitioner is directed to deposit the remaining portion of the dishonoured cheque *i.e.* Tk.2,40,00/- to the complainant-opposite party No. 2 through trial Court within 6(six) months from the date of receipt of this judgment, in default he shall suffer simple imprisonment for 03(three) months. 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, he 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 of imprisonment and with directions made above. The convict-petitioner is released from the bail bond.

Send down the lower Court's records (LCR) at once. Communicate the judgment and order to the Court concerned forthwith.

(Md. Bashir Ullah, J.)