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

Present:
Mr. Justice Md. Bashir Ullah

Criminal Revision No. 2570 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:
Kamal Pradhan
... Convict-Petitioner

-Versus-

Md. Shohel Rana Pradhan and another
...Complainant-Opposite Parties

Mr. Md. Robiul Karim, Advocate
... For the Convict- Petitioner

Mr. Sakayat Hossan, Advocate
... For the Complainant- opposite party No. 1

Mr. Md. Mizanur Rahman, D.A.G with
Mr. Md. Sirajul Karim (Rabi), A.A.G and
Mr. Md. Nurul Karim (Biplob), A.A.G
… For the State

Heard on: 19.07.2026, 22.07.2026
02.08.2026, 16.08.2026
Judgment on: 17.08.2026

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 05.11.2024, passed by the learned

Additional Sessions Judge, 3rd Court, Narayangonj in Criminal Appeal No. 538 of 2023, dismissing the appeal and affirming the judgment and order dated 31.05.2023, passed by the learned Joint Sessions Judge, 3rd Court, Narayangonj in Sessions Case No. 886 of 2019, arising out of C.R Case No. 789 of 2019, convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 08(eight) months and to pay a fine of Tk. 5,00,000/- (five 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 5,00,000/- from the complainant. In discharge of the said loan, the accused-petitioner issued cheque being No. SBLR 2839743 dated 31.05.2018 for Taka 5,00,000/-, drawn on Rupali Bank Limited, Nitaigonj Branch, Narayangonj. The complainant presented the said cheque for encashment to the concerned bank on 07.06.2018 but the same was dishonoured on the same day with the endorsement “insufficiency of fund”. Thereafter, the complainant served a statutory legal notice upon the petitioner on 11.06.2018. The petitioner failed to make payment within the stipulated period. Consequently, the complainant instituted C.R. Case No. 789 of 2018 before the learned Magistrate, Cognizance Court, 'Ka' Anchal, Narayangonj on 22.07.2018. The learned Magistrate took cognizance of the offence and subsequently transmitted the case file to the Court of Sessions Judge, Narayangonj. The learned Sessions Judge, Narayangonj transferred the case to the learned Joint Sessions Judge, 3rd Court, Narayangonj for disposal and was registered as Sessions Case No. 886 of 2019. Charge was framed under Section 138 of the Negotiable Instruments Act, 1881 against the accused. The accused remained absconding at the time of hearing of the charge.

In course of the trial, the prosecution examined 02(two) witnesses, while the defence examined 01(one) witness. The accused was examined under Section 342 of the Code of Criminal Procedure and reiterated his innocence.

Upon conclusion of the trial and hearing the parties, the learned Joint Sessions Judge, 3rd Court, Narayangonj convicted the petitioner under Section 138 of the Negotiable

Instruments Act, 1881 (the Act, 1881) and sentencing him to suffer simple imprisonment for 08(eight) months and to pay a fine of Taka 5,00,000/- (five lac) by judgment and order dated 31.05.2023.

Challenging the conviction and sentence, the petitioner filed Criminal Appeal No. 538 of 2023 before the learned Sessions Judge, Narayangonj who transferred the case record to the learned Additional District and Sessions Judge, 3rd Court, Narayangonj. Upon hearing the parties, the learned Additional District and Sessions Judge, 3rd Court, Narayangonj dismissed the appeal by judgment and order dated 05.11.2024, affirming the judgment and order of conviction and sentence.

Being aggrieved by and dissatisfied with the judgment and order dated 05.11.2024, the petitioner preferred the instant Criminal Revision before this Court and obtained the Rule.

Mr. Md. Robiul Karim, 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.

He further submits that the petitioner attempted to deposit 50% of the cheque amount through his conducting lawyer, but it was later discovered that the money was not deposited properly. In this regard, learned Advocate rendered an unconditional apology. He also submits that the petitioner subsequently paid Taka 2,50,000/- directly to the complainant during the hearing of the Rule.

He submits that the petitioner is currently enduring severe financial distress and requires a period of 6(six) months to pay the rest amount. He finally prays for making the Rule absolute, setting aside the sentence of imprisonment.

Per contra, Mr. Sakayat Hossan, the learned Advocate appearing on behalf of the complainant-opposite party no. 1 by filing a counter affidavit submits that the appellate Court below permitted the complainant to withdraw the deposited money amounting to Taka 2,50,000/- deposited by the accused through Sonali Bank, Narayangonj. However, when the complainant approached Sonali Bank to collect the deposited money, the Bank informed him that the TR chalan was forged and fabricated and no money was actually deposited against the TR Chalan. Subsequently, the petitioner paid Taka 2,50,000/- directly to the complainant-opposite party No. 1. He further submits that since the petitioner has paid 50% of the cheque amount directly to the complainant, he has no objection if 4 (four) months is granted to clear the rest amount and no objection if the sentence of imprisonment is set aside. He further 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 depositions of PW1 (complainant) and PW 2 and the documentary evidence that the accused-petitioner obtained a loan of Taka 5,00,000/- from the complainant. In discharge of the said loan, the accused-petitioner issued cheque. The complainant presented the said cheque to the concerned bank on 07.06.2018 but the same was dishonoured. Thereafter, the complainant served a statutory legal notice on 11.06.2018, however, the petitioner failed to make payment within the stipulated period. Consequently, the case was filed on 22.07.2018. PW 1 and PW 2 have successfully established the prosecution case beyond reasonable doubt.

The record further 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 righty found the petitioner guilty of the charge. I find no misreading or non reading of material evidence. Hence, the impugned judgment and order of conviction does not suffer from any illegality, impropriety or infirmity.

It appears from the record that the accused-appellant submitted a chalan before the appellate Court below showing that he deposited Taka 2,50,000/-. The learned Additional

Sessions Judge, 3rd Court, Narayangonj in his judgment and order dated 05.11.2024, permitted the complainant-respondent to withdraw the deposited money amounting to Taka 2,50,000/-. Accordingly, the complainant approached to Sonali Bank PLC, Narayangonj Corporate Branch, Narayangonj to withdraw the deposited money. However, the bank authority informed that no money was deposited by the accused-appellant through chalan. This fact was confirmed by the Assistant General Manager, Sonali Bank PLC through a certificate dated 19.07.2026 issued under Memo No. এসবিপিএলসি/নাকশা/সংস্থাপন/১৫৪২।

The petitioner however, has since paid Taka 2,50,000/- directly to the complainant during the pendency of the Rule. The learned Advocate for the complainant admitted the receipt of the amount and stated that he has no objection if the petitioner is not sentenced to imprisonment. The learned Advocate for the petitioner rendered an unconditional apology for the previous irregularity concerning the fraudulent deposit.

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 observed that the sentence of imprisonment in a case instituted under Section 138 of the Negotiable Instruments Act, 1881 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, the fact that 50% of the cheque amount has already been paid directly to the complainant and the overall 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 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 08(eight) months simple imprisonment is set aside. The sentence of fine to the tune of Taka 5,00,000/- is affirmed. It is admitted that the appellant-petitioner has already paid Taka 2,50,000/- directly to the complainant, he is directed to pay the balance amount of Taka 2,50,000/- to the complainant-opposite party No. 1 within 05 (five) months from the date of receipt of this order, in default he will suffer simple imprisonment for 01(one) month. If the convict-petitioner does not pay 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 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