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

Present:
Mr. Justice Md. Bashir Ullah

Criminal Revision No. 726 of 2026

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

-And-

In the matter of:
Md. Abu Tayebur Rahman
... **Convict-Petitioner.**

-Versus-

Md. Ataur Rahman and another
... **Complainant-Opposite Parties.**

Mr. Sk. Shaifuzzaman, Advocate with
Mr. Md. Abdul Aziz Masud, Advocate with
Ms. Kazi Momitun Nahar, Advocate
... For the Petitioner

None represented for the opposite party No.1.

Ms. Farhana Abedin, A.A.G with
Mr. K. M. Saiful Islam, A.A.G and
Mr. Md. Farid Uddin, A.A.G
… For the State

Heard on: 28.07.2026, 30.07.2026 and 04.08.2026
Judgment on: 06.08.2026

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 07.10.2025, passed by the learned Additional Metropolitan Sessions Judge, 2nd Court, Dhaka in Criminal Appeal No. 878 of 2025, dismissing the appeal and thereby affirming the judgment and order dated 17.03.2025, passed by the learned Joint Metropolitan Sessions Judge, 2nd Court, Dhaka in Metro Sessions Case No. 11973 of 2016 arising out of C.R. Case No. 119 of 2016, convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 01(one) month and also to pay a fine of Taka 1,50,000/-(one lac fifty 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.

The facts relevant for disposal of the Rule, in brief, are that opposite party No. 1, Md. Ataur Rahman, as complainant instituted C.R. case No. 119 of 2016 before the Court of the learned Chief Metropolitan Magistrate, Dhaka against the accused alleging *inter alia* that the accused obtained a loan of Taka 1,50,000/-(one lac fifty thousand). In discharge of the said liability, the accused issued cheque No. SB-10/FE 7475601 dated 26.01.2016 for an amount of Taka 1,50,000/- (one lac fifty thousand) in favour of the complainant. The cheque was presented for encashment on 27.01.2016 and the same was dishonoured by the bank concerned. Subsequently, the cheque was presented on 31.03.2016 but again the same was dishonoured endorsing “payment stopped by drawer”. The complainant served a statutory legal notice upon the accused on 03.04.2016. Despite receipt of the notice, the petitioner failed to make payment of the cheque amount within the stipulated time. Consequently, C.R case No. 119 of 2016 was filed on 09.05.2016. The learned Magistrate took cognizance of the offence against the accused and transferred the case record to the learned Metropolitan Sessions Judge, Dhaka. Subsequently, the case was transferred to the learned Joint Metropolitan Sessions Judge, 2nd Court, Dhaka and was registered as Metropolitan Sessions Case No. 11973 of 2016. The charge was framed under Section 138 of the Negotiable Instruments Act, 1881 against the accused on 03.05.2017. The accused pleaded not guilty and claimed to be tried when the charge was readout and explained to him. During trial, the prosecution examined 01 witness while the defence examined 01 witness. The accused was examined under Section 342 of the Code of Criminal Procedure and reiterated his innocence.

Upon conclusion of trial and hearing of the parties, the learned Joint Metropolitan Sessions Judge, 2nd Court, Dhaka convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for a period of 01(one) month and a fine of Taka 1,50,000/-(one lac fifty thousand) equivalent to the cheque amount by judgment and order dated 17.03.2025.

Against the said judgment and order the convict-petitioner preferred Criminal Appeal No. 878 of 2025 before the learned Metropolitan Sessions Judge, Dhaka and upon transfer the learned Additional Metropolitan Sessions Judge, 2nd Court, Dhaka heard the appeal and dismissed the same by judgment and order dated 07.10.2025.

Being aggrieved by and dissatisfied with the judgment and order dated 07.10.2025 passed by the learned Additional Metropolitan Sessions Judge, 2nd Court, Dhaka, the petitioner preferred this Criminal Revision before this Court and obtained Rule and bail.

Mr. Sk. Shaifuzzaman, learned Advocate appearing on behalf of the petitioner submits that the petitioner has already paid Taka 1,47,500/- towards the loan transaction, leaving an alleged outstanding balance of merely Taka 2,500/-. However, the accused-petitioner deposited Taka 75,000/- being 50% of the cheque amount before filing the appeal in compliance with the provision of Section 138 of the Negotiable Instruments Act, 1881. He further submits that both the Courts below failed to properly appreciate the evidence of DW1 rendering the impugned judgments and orders unsustainable. He further prays the deposited money refunded to the accused-convict-petitioner. Finally, he prays for making the Rule absolute.

No one represents on behalf of the opposite party No. 1.

Per contra, Ms. Farhana Abedin, the learned Assistant Attorney General appearing on behalf of the state-opposite party No. 2 submits that there is no patent illegality, impropriety or infirmity in the judgments and orders passed by the Courts below and the charge brought against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 has been established beyond reasonable doubt and therefore, the Rule is liable to be discharged.

I have heard the learned Advocates for the respective parties and perused the revisional application along with the materials on record.

Upon careful examination of the evidence, it appears that DW1, namely Md. Abu Tayebur Rahman admitted that he had obtained a loan of Taka 1,50,000/-. He however, subsequently had paid Taka 1,47,500/-. In this regard, he produced a written acknowledgment signed by the complainant as Exhibit 'Ka'. Moreover, he had been paying Taka 7,500/- per month as interest. When he requested the complainant to return the cheque, the complainant informed him that the cheque had been lost. Accordingly, the accused-petitioner lodged General Diary Entry (GDE) No. 13, dated 01.05.2015. The accused produced the GDE as Exhibit ‘Kha’. He further deposed that only Taka 2,500/- remained outstanding.

It is however, necessary to observe that the evidence concerning the alleged payments does not clearly establish the precise manner in which the payments made by the petitioner were appropriated towards the principal liability or interest. DW1 stated that Taka 1,47,500/-(one lac forty-seven thousand five hundred) had been paid, allegedly in 39 installments. However, the evidence does not disclose with sufficient precision how much of the said amount was adjusted towards the principal and how much towards interest. Therefore, the exact amount legally recoverable under the cheque cannot be conclusively determined merely from the oral testimony of DW1.

During the hearing of the Rule, the learned Advocate for the petitioner submits that although the petitioner's case only Taka 2500/- (two thousand five hundred) remains payable to the complainant, the petitioner is willing to forgo his claim over the balance amount of Taka 72,500/- out of the deposited Taka 75,000/- which was deposited before filing the appeal for the purpose of bringing the litigation to an end, provided the sentence is modified.

While the underlying transaction involved informal interest payments, the record establishes substantial monetary restitution by the accused. Although, the exact allocation between principal and interest lacks mathematical precision, the evidentiary weight of Exhibits 'Ka' and 'Kha' was overlooked by both Courts below during the quantum of sentence determination.

Having considered the above, this Court is of the considered view that the aforesaid subsequent payment and the petitioner's willingness to permit disbursement of the deposited money of Taka 75,000/- to the complainant-opposite party No. 1 are relevant circumstances to be taken into consideration while determining the appropriate sentence.

It is a settled legal principle that where substantial or near-total satisfaction of the debt has occurred, insisting on custodial sentence fails to serve any meaningful penal objective. The interests of justice are best sub served by modifying the penal severity while securing restitution for the remaining liability.

Considering the facts and circumstances of the case, the nature of the offence and the extent of payment made by the petitioner, this Court is of the considered view that the ends of justice would be best served if the substantive sentence of imprisonment is modified by setting aside the same and reduced the fine from Taka 1,50,000/- to Taka 75,000/-.

In view of the foregoing discussions, 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 is modified. The sentence of simple imprisonment for 01(one) month is set aside. The sentence of fine is reduced from Taka 1,50,000/- to Taka 75,000/-. It appears from the record that the convict-petitioner has already deposited being 50% of the cheque amount, Taka 75,000/- before the trial Court at the time of preferring the appeal. The Court concerned is directed to disburse the said deposited Taka 75,000/- to the complainant-opposite party No.1, if not already disbursed, upon proper identification and in accordance with law.

Upon disbursement, the petitioner shall stand fully discharged of all legal liabilities and penal consequences in respect of this proceeding, and no further recovery shall be executed against him.

In the result, the Rule is disposed of with modification of sentence and directions as above.

The convict-petitioner is discharged from his bail bond.

Let a copy of this judgment along with the Lower Court Records (LCR) be transmitted to the Court concerned forthwith.

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

Md. Sabuj Akan
Assistant Bench Officer