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

Present:
Mr. Justice Md. Bashir Ullah

Criminal Revision No. 313 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. Rabiul Islam Sumon
... Convict-Appellant-Petitioner

-Versus-

The State and another
...Complainant-Respondent-Opposite Parties

Mr. Md. Akramul Haque Baki, Advocate
... For the Convict- Petitioner

Mr. Amit Das Gupta, Advocate
... For the Complainant- opposite party No. 2

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: 04.08.2026 and 06.08.2026
Judgment on: 16.08.2026

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 26.02.2023 passed by the learned Sessions Judge, Cumilla in Criminal Appeal No. 600 of 2022 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 01.06.2022 passed by the learned Joint Sessions Judge, 1st Court, Cumilla in Sessions Case No. 344 of 2022, arising out of C.R. Case No. 231 of 2021 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for 06(six) months and to pay a fine of Tk. 9,50,000/- (nine 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, the accused obtained a loan of Taka 9,50,000/-(nine lac fifty thousand) from the complainant. In discharge of the said liability, he issued 02(two) cheques being Nos. $\frac{CB}{CD}$ 8043915 dated 15.02.2021 for Taka 4,50,000/-(four lac fifty thousand) and $\frac{CB}{CD}$ 8043916 dated 15.02.2021 for Taka 5,00,000/-(five lac) both drawn on City Bank Limited, Cumilla in favour of the complainant. The complainant presented the cheques for encashment to the concerned bank on 17.06.2021, however both were dishonoured with the endorsement "insufficiency of funds" on 20.06.2021. Thereafter, he served statutory legal notice upon the accused on 22.06.2021 which was duly received by the accused on 25.06.2021 but the petitioner failed to make payment within the statutory period. Consequently, the complainant instituted C.R. Case No. 231 of 2021 before the learned Senior Judicial Magistrate, Cognizance Court No. 8, Cumilla on 19.08.2021. The learned Magistrate took cognizance of the offence and sent the case record to the Court of Sessions Judge, Cumilla. The learned Sessions Judge, Cumilla transferred the case to the learned Joint Sessions Judge, 1st Court, Cumilla and was registered as Sessions Case No. 344 of 2022. Charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881 on 27.04.2022 to which the accused pleaded not guilty and claimed to be tried when the charge was read out and explained before him.

In course of trial, the prosecution examined 01(one) witness. The accused could not be examined under Section

342 of the Code of Criminal Procedure as he remained absconding.

Upon conclusion of the trial, the learned Joint Sessions Judge, 1st Court, Cumilla convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer simple imprisonment for 06 (six) months and fine of Taka 9,50,000/- by judgment and order dated 01.06.2022.

Challenging the conviction and sentence the petitioner filed Criminal Appeal No. 600 of 2022 before the learned Sessions Judge, Cumilla without depositing the 50% of the cheque amount. The learned Sessions Judge upon hearing the parties dismissed the same by judgment and order dated 26.02.2023 affirming the judgment and order of conviction and sentence.

Being aggrieved by and dissatisfied with judgment and order dated 26.02.2023, the petitioner preferred this instant Criminal Revision before this Court and obtained Rule. The petitioner deposited 50% of the cheque amount amounting to Taka 4,75,000/- on 25.01.2026 before the trial Court before preferring this instant revisional application. Pending hearing of the Rule, this Court enlarged the petitioner on bail on 01.02.2026.

Mr. Md. Akramul Haque Baki, the learned Advocate appearing on behalf of the petitioner submits that both the Courts below failed to apply their judicial minds and committed error of law in passing the impugned judgments and orders of conviction and sentence and the prosecution has failed to prove her case beyond reasonable doubt against the petitioner.

He further submits that the petitioner had already deposited 50% of the cheque amount. He further submits that the petitioner is in financial distressed circumstance and seeks reasonable time to discharge the remaining liability.

He finally prays for making the Rule absolute.

Per contra, Mr. Amit Das Gupta, 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 the revisional application and the materials on record.

It appears from the petition of complaint, the deposition of PW1 (complainant) and the documentary evidence that the accused obtained a loan of Taka 9,50,000/-(nine lac fifty thousand) from the complainant. In discharge of the said liability, he issued 02(two) cheques being Nos. $\frac{CB}{CD}$ 8043915 dated 15.02.2021 for Taka 4,50,000/-(four lac fifty thousand) and $\frac{CB}{CD}$ 8043916 dated 15.02.2021 for Taka 5,00,000/-(five lac) drawn on City Bank Limited, Cumilla in favour of the complainant. The complainant presented the cheque for encashment to the concerned bank on 17.06.2021 but it was dishonoured with the endorsement “insufficiency of funds” on 20.06.2021. Thereafter, he served statutory legal notice upon the accused on 22.06.2021 which was received by the accused on 25.06.2021 but the petitioner failed to make payment within the statutory period. Consequently, the case was filed on 19.08.2021. PW1 successfully established the prosecution case.

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 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.

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 observed that in prosecution under Section 138 of the Negotiable Instruments Act, the sentence of imprisonment would be a harsh sentence having no penal objective to be achieved. I respectfully concur with the principle enunciated therein. The principal object of the Negotiable Instruments Act is to ensure recovery of the cheque amount rather than to incarcerate the drawer and that imprisonment should ordinarily be resorted to only in appropriate circumstances.

It appears from the order sheet of Joint Sessions Judge, 1st Court, Cumilla vide order No. 14 dated 25.01.2026, the petitioner deposited 50% of the cheque amount, Taka 4,75,000/-.

Considering the facts and circumstances of the case, 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 06(six) months simple imprisonment is set aside. The sentence of fine of Taka 9,50,000/- which is equivalent to the cheque amount is upheld. The convict-petitioner has already deposited Taka 4,75,000/- before the trial Court. 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.* Taka 4,75,000/- to the complainant-opposite party No. 2 through trial Court within 03(three) months from the date of receipt of this judgment, in default he 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, he is not exempted from paying the same. In that event, the Court concerned shall recover 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 his 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*)

Md. Ariful Islam Khan
Bench Officer