

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 1754 of 2023

In the matter of:

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

And

In the matter of:

Md. Mofiz Ali

...**Convict-Petitioner.**

-Versus-

The State and another

... **Opposite Parties.**

None appears

... For the petitioner.

Mr. Md. Shofiul Aziz, Advocate

...For the Opposite Party No. 2.

Mr. Md. Mizanur Rahman, D.A.G with

Mr. Md. Sirajul Karim (Rabi), A.A.G

... For the State

Heard on: 08.09.2026 and 09.09.2026

Judgment on: 13.09.2026

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 22.03.2020 passed by the learned
Additional Sessions Judge, 3rd Court, Sylhet in Criminal

Appeal No. 33 of 2020, dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 28.07.2019 passed by the learned Joint Sessions Judge, 2nd Court, Sylhet in Sessions Case No. 1051 of 2017, arising out of C.R Case No. 100 of 2017, convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 03(three) months and to pay a fine of Tk. 1,33,000/- (one lac thirty-three 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. 2, Islami Bank Bangladesh Limited, Biswanath Branch, Sylhet as complainant instituted C.R. Case No. 100 of 2017 before the Court of the learned Senior Judicial Magistrate, 3rd Court, Sylhet against the present petitioner, alleging *inter alia* that the accused obtained loan from the complainant-bank amounting to Taka 1,33,000/- (one lac thirty-three thousand). In discharge of the said liability, the accused issued cheque No. IBA 4165991 dated

10.01.2017 in favour of the complainant for Taka 1,33,000/- (one lac thirty-three thousand). Upon presentation, the said cheque was dishonoured by the concerned bank on 19.01.2017 with the endorsement 'insufficiency of funds'. Thereafter, a statutory legal notice was served on 29.01.2017 upon the petitioner demanding payment of the cheque amount, and the same was received by the accused. Despite receipt of the notice, the accused failed to comply with the same. Consequently, the complainant instituted the case.

Upon receipt of the complaint petition, the learned Magistrate took cognizance of the offence and thereafter transmitted the case record to the learned Sessions Judge, Sylhet. Subsequently, the same was transferred to the learned Joint Sessions Judge, 2nd Court, Sylhet and the case was registered as Sessions Case No. 1051 of 2017. The charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881 on 29.03.2018, to which the accused pleaded not guilty and claimed to be tried, when the charge was read out and explained to him. During trial, the prosecution examined 01(one) witness while the defence

examined none. The accused was examined under Section 342 of the Code of Criminal Procedure and reiterated innocence.

Upon conclusion of the trial and after hearing the parties, the learned Joint Sessions Judge, 2nd Court, Sylhet convicted the petitioner under Section 138 of the Negotiable Instruments Act of 1881 and sentenced him to suffer simple imprisonment for a period of 03(three) months and to pay a fine of Taka 1,33,000/- (one lac thirty-three thousand) by judgment and order dated 28.07.2019.

Challenging the conviction and sentence, the petitioner filed Criminal Appeal No. 33 of 2020 before the learned Sessions Judge, Sylhet. On transfer and upon hearing the parties, the learned Additional Sessions Judge, 3rd Court, Sylhet dismissed the same by judgment and order dated 22.03.2022, affirming the judgment and order of conviction and sentence.

Being aggrieved by and dissatisfied with the judgment and order dated 22.03.2022, the petitioner preferred the

instant Criminal Revision before this Court and obtained the Rule.

None appears for the petitioner to support the Rule, although the matter has been appearing in the daily cause list for several days with the name of the learned Advocate.

Mr. Md. Shofiul Aziz, the learned Advocate appearing on behalf of the opposite party No. 2, submits that the convict-petitioner has already paid the entire cheque liability to the concerned bank directly and in proof thereof the bank has issued a certificate dated 09.09.2026, under Memo No. IBBL/Biswanath Br., Sylhet/2026.

He further submits that the bank has no objection if the substantive sentence of imprisonment imposed upon the petitioner is set aside.

I have considered the submissions of the learned Advocate for the opposite party No. 2, perused the impugned judgments and orders, and materials on record.

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 do not suffer from any illegality, impropriety or infirmity.

It is an admitted position that during the pendency of the proceedings the petitioner has paid the entire cheque liability directly to the bank-opposite party No. 2. The complainant-bank has acknowledged receipt of the entire outstanding amount and has categorically stated that no amount remains due from the petitioner in respect of the cheque in question. The bank has also expressed no objection to the setting aside of the substantive sentence of imprisonment imposed upon the petitioner.

However, concerning 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 a 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. In a prosecution under Section 138 of the Negotiable Instruments Act, the primary object of the legislation is to ensure payment of the cheque amount to the payee rather than incarcerate the drawer. Consequently, where the entire cheque amount has already been paid, insistence upon a custodial sentence may not sub serve any meaningful penal objective.

Considering the facts and circumstances of the case, the nature of the offence, this Court is of the view that the ends of justice would be best served if the sentence is modified by setting aside the substantive sentence of imprisonment.

In view of the foregoing discussions and the principle enunciated in the above-mentioned decision, 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 03(three) months simple imprisonment is set aside.

In the result, the Rule is disposed of with modification of the sentence. The convict-petitioner is released from his bail bond.

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

(Md. Bashir Ullah, J)

Md. Sabuj Akan
Assistant Bench Officer