

In the Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)

Present:

Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 10102 of 2015

In the matter of:

An Appeal under section 410 of the Code of
Criminal Procedure

-And-

In the matter of:

Md. Tarikul Islam (Faruque)

... Convict-Appellant

-Versus-

The State and another

...Complainant-Respondent.

Ms. Tasmia Prodhan, Advocate with

Ms. Turin Sifat, Advocate

... For the Convict-Appellant

Mr. Mohsin Jamadder, Advocate

... For the Complainant-Respondent 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 and 03.02.2026

Judgment on: 17.02.2026

This appeal preferred under section 410 of the Code of
Criminal Procedure, 1898 is directed against the judgment

and order of conviction and sentence dated 15.03.2015 passed by the learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka in Metropolitan Sessions Case No. 1153 of 2013 arising out of C.R Case No. 657 of 2011 convicting the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer imprisonment for a period of 4 (four) months and pay fine of Tk. 55,000/- (fifty five thousand).

The prosecution case, in short, is that the accused obtained a loan from the complainant amounting to Taka 55,000/-. In order to refund the loan the accused issued cheque No. 1408455 dated 13.05.2011 in favour of the complainant for Taka 55,000/- drawn on Dutch Bangla Bank Ltd., Dhaka. The complainant presented the cheque on 24.07.2011 but the same was dishonored with the endorsement of 'insufficient funds'. On 07.08.2011, the complainant sent a legal notice through registered post with AD to the accused demanding payment of the cheque amount but he failed to pay the cheque amount. Consequently, on 20.09.2011, the complainant filed C.R Case No. 657 of 2011.

Subsequently, the case was transferred to the Court of the learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka and was registered as Metropolitan Session Case No. 1153 of 2013. Upon taking cognizance of the offence charge was framed against the accused under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act'). The accused was absconding at the time of framing of charge.

The prosecution examined 01 (one) witness in order to prove the charge brought against the accused while the defence examined none. The accused was not examined under section 342 of the Code of Criminal Procedure as he was absconding. After concluding the trial and considering the evidence the learned Additional Metropolitan Sessions Judge, 7th Court, Dhaka by judgment and order dated 15.03.2015 convicted the accused under section 138 of the Act and sentenced him there under to suffer simple imprisonment for 4 (four) months and fine of Tk. 55,000/- (fifty five thousand).

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 15.03.2015, the convict preferred appeal before this Court.

Ms. Tasmia Prodhan, learned Advocate on behalf of the appellant submits that the appellant failed to refund the loan amount timely due to his illness. Nevertheless, the appellant has paid 50% amount prior to filing the appeal and he is willing to pay the rest amount but he requires 6 (six) months time to pay the rest amount.

Per Contra, Mr. Mohsin Jamadder, the learned Advocate appearing on behalf of the respondent No. 2 contends that the accused issued the cheque but it was dishonoured on 24.07.2011 due to 'insufficient funds'. The complainant sent a legal notice through registered post with AD and despite the service of notice upon the accused, he did not pay the cheque amount. He next contends that during the trial, the prosecution proved the charge against the accused beyond all reasonable doubt, and the trial Court legally passed the impugned judgment and order convicting and sentencing the accused.

He further contends that, there is no illegality, impropriety or infirmity in the impugned judgment and order and as such the appeal will be dismissed.

I have considered the submissions of the learned Advocates for the respective parties, perused the evidence, impugned judgment and order passed by the trial Court and the materials on record.

On perusal of the evidence it is found that the accused issued cheque No. 1408455 dated 13.05.2011 in favour of the complainant for Taka 55,000/- which was dishonoured.

The record shows that the complainant has duly complied with the procedure 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 of the Act. The complainant also proved consideration against which the cheque was drawn and that it is the holder of the cheque in due course. The trial Court rightly found the accused guilty of the charge. Hence, the impugned judgment and order of conviction does not suffer from any illegality or infirmity.

However, as regards to the sentence, reference may be made to the decision passed in *Aman Ullah Vs. State*, reported in 73 DLR (2021) 541, wherein this Court observed

that in cases instituted under Section 138 of the Negotiable Instruments Act, the imposition of sentence of imprisonment would be a harsh having no penal objective to be achieved. I find no reason to take a different view from the *raito* laid down in the decision passed in the said case.

Considering the gravity of the offence and the facts and circumstances of the case, I am of the view that the ends of justice would be best served if the sentence of imprisonment passed by the trial Court is set aside.

The complainant Md. Nazrul Islam is entitled to receive the 50% of the cheque amount deposited by the accused in the trial Court prior to filing the appeal.

In view of the foregoing discussions, the order of the Court is as follows:

The conviction of the appellant under Section 138 of the Act, 1881 is affirmed, but the sentence of 04 months simple imprisonment is set aside. The sentence of fine of Taka 55,000/=(fifty five thousand) which is equivalent to the value of the cheque, is maintained. The convict-appellant has already deposited 50% of the cheque amount before the trial

Court prior to filing the appeal. The Court concerned is directed to disburse the said deposited amount to the complainant-respondent No. 2 forthwith. The convict-appellant is directed to pay the remaining portion of the value of the dishonoured cheque to the complainant-respondent No.2 within 3(three) months from the date of receipt of this order, in default he will suffer simple imprisonment for 02(two) months. If the convict-appellant 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 realize the fine under the provisions of Section 386 of the Code of Criminal Procedure.

In the result, the appeal is dismissed with modification of the sentence.

The convict-appellant 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.)