

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

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 4084 of 2016

Md. Riaz alias Riaz

...Appellant

-Versus-

The State and another

...Respondents

None appears

...For the appellant

Mr. Md. Tarik Alam, Advocate

.....For the respondent No. 2

Mr. Akhtaruzzaman, DAG with

Mr. Sultan Mahmood Banna, AAG
with

Mr. Mir Moniruzzaman, AAG

.....For the State.

Heard on 25.05.2025 and 01.06.2025

Judgment delivered on 02.06.2025

This appeal under Section 410 of the Code of Criminal Procedure, 1898 is directed against the impugned judgment and order of conviction and sentence dated 02.09.2015 passed by the Additional Sessions Judge, Court No.1, Kushtia in Sessions Case No. 34 of 2015 arising out of C.R. Case No. 577 of 2014, convicting the accused Md. Riaz @ Riaz under section 138 of the Negotiable Instruments Act, 1881, and sentencing him thereunder to suffer rigorous imprisonment for 01 (one) year and fine of Tk. 12,10,000.

The prosecution's case, in short, is that the accused Md. Riaz@Riaz is the Proprietor of Mukti Bread and Biscuit Factory,

and the complainant Fazle Rahman Rony is the Proprietor of MS Rahman Trading and a retail businessman. The accused purchased a few goods from the complainant on credit. The accused issued cheque No. 4270804 on 10.07.2014 drawn on his Account No. 110411100000030 maintained with Islami Bank Ltd, Kushtia Branch in favour of the complainant for payment of Tk. 12,10,000. The complainant presented the cheque on 10.07.2014 for encashment, but the said cheque was dishonoured on the same date with the remark “account closed, dormant/blocked”. The Islami Bank Ltd issued the dishonour slip on 13.07.2014. After that, the complainant sent a legal notice on 23.07.2014 through registered post with AD to the accused, which was received by the accused on 27.07.2014. Despite the service of notice upon the accused on 27.07.2014, he did not pay the cheque amount. Consequently, the complainant filed the complaint petition on 26.09.2014. The complainant stated that the cause of action arose on 26.08.2014 and he filed the case on 16.09.2014.

At the time of filing the complaint petition, the learned Magistrate was pleased to take cognizance of the offence against the accused under section 138 of the Negotiable Instruments Act, 1881. Thereafter, on 11.01.2015, the case was transferred to the Sessions Judge, Kushtia for trial and the case was renumbered as Sessions Case No. 34 of 2015. On 13.01.2015, the case was transferred to the Additional Sessions Judge, Court No.1, Kushtia for trial and disposal. On 18.03.2015, the Additional Sessions Judge, Court No. 1, Kushtia framed charge against the accused under section 138 of the Negotiable Instruments Act, 1881. The prosecution examined one witness to prove the charge against the accused. The accused was absconding. After concluding the trial,

the trial court by impugned judgment and order convicted the accused and sentenced him as stated above, against which he filed the instant appeal.

P.W. 1 Md. Fazle Rahman is the complainant. He proved the complaint petition as exhibit-1 and his signature as exhibit-1/1. He stated that there were business transactions between him and the accused. He supplied the wheat to the accused and the total dues were Tk. 12,10,000. The accused issued cheque No. 4270804 on 10.07.2014 drawn on his Account No. 110411100000030 maintained with Islami Bank Ltd, Kushtia Branch in favour of the complainant for payment of Tk. 12,10,000. He proved the cheque as exhibit-2, the dishonoured slip as exhibit-3, the legal notice dated 23.07.2014 as exhibit-4, and the postal receipt as exhibit-5 and AD as exhibit-5/1.

No one appears on behalf of the appellant.

The learned Advocate Mr. Md. Tarik Alam, appearing on behalf of respondent No. 2, submits that the accused issued cheque No. 4270804 on 10.07.2014 drawn on his Account No. 110411100000030 maintained with Islami Bank Ltd, Kushtia Branch in favour of the complainant for payment of Tk. 12,10,000, which was dishonoured on 10.07.2014 with the remark “account closed, dormant/blocked” and after complying with all the procedures provided in section 138 and 141(b) of the Negotiable Instruments Act, 1881 filed the case and P.W. 1 proved the charge against the accused beyond all reasonable doubt. He prayed for dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Md. Tarik Alam, who appeared on behalf of respondent No. 2,

perused the evidence, the impugned judgment and order passed by the trial court, and the records.

On perusal of the evidence, it appears that the accused issued cheque No. 4270804 on 10.07.2014 drawn on his Account No. 110411100000030 maintained with Islami Bank Ltd, Kushtia Branch in favour of the complainant for payment of Tk. 12,10,000, which was dishonoured on 10.07.2014 with a remark “account closed, dormant/blocked.” After that, the complainant sent a legal notice on 23.07.2014 through registered post with AD to the accused, which was received by the accused on 27.07.2014, but he did not pay the cheque amount within the time. Consequently, the complainant filed the complaint petition on 16.09.2014. P.W. 1 proved the cheque as exhibit-2, dishonoured slip as exhibit-3, legal notice as exhibit-4, and postal receipt as exhibit-5, and the AD as exhibit-6. I am of the view that the accused Md. Riaz @ Riaz issued the cheque in favour of the payee complainant for consideration. It is found that after service of notice upon the accused Md. Riaz @ Riaz, he did not pay the cheque amount and after complying with all the procedures under sections 138 and 141(b) of section 138 of the Negotiable Instruments Act, 1881 complainant filed the case. Thereby, the accused Md. Riaz @ Riaz committed offence under Section 138 of the Negotiable Instruments Act, 1881.

Because of the above evidence, findings, observation and proposition, I am of the view that the complainant proved the charge against the accused under section 138 of the Negotiable Instruments Act, 1881 to the hilt beyond all reasonable doubt and the trial court, on correct assessment and evaluation of the

evidence, legally passed the impugned judgment and order of conviction.

Considering the gravity of the offence, I am of the view that ends of justice would be best served if the sentence passed by the trial court is modified as under;

The accused Md. Riaz alias Riaz is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881, and he is sentenced thereunder to suffer imprisonment for 04 (four) months and a fine of Tk. 12,10,000.

The complainant respondent No. 2 is entitled to get the fine amount.

The accused Md. Riaz alias Riaz is directed to surrender before the trial court forthwith.

The accused Md. Riaz @ Riaz is further directed to pay the remaining 50% of the cheque amount within 30 days from the date.

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

Send down the lower Court's records at once.