

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

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 4443 of 2016

Md. Asad Ali

..... appellant

-Vs-

The State and another

....respondents

Mr. Md. Shariful Islam, Advocate

....For the appellant.

Mr. Md. Jahidul Islam, Advocate

.....For the respondent No.2

Mr. Sultan Mahmood Banna, AAG with

Mr. Mir Moniruzzaman, AAG

... For the State

Judgment delivered on: 08.05.2025

This appeal under section 410 of the Code of Criminal Procedure, 1898 is directed challenging the legality and propriety of the impugned judgment and order dated 27.04.2016 passed by Additional Sessions Judge, Court No. 3, Rajshahi in Sessions Case No. 103 of 2015 arising out of C.R. Case No. 393 of 2014 (Bagha) convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer imprisonment for 03(three) months and fine of Tk. 90,000.

The prosecution's case, in short, is that the accused Md. Asad Ali issued cheque No.9686254 on 15.01.2014 drawn on his Account No.15655 maintained with Agrani Bank Ltd, Bajubagha Branch,

Rajshahi for payment of Tk. 45,000 in favour of the complainant Md. Fejor Ahmed. The complainant presented said cheque on 10.08.2014 for encashment, but the same was dishonoured with a remark “insufficient funds”. He sent a legal notice on 20.08.2014 to the accused by registered post with AD for payment of the cheque amount, and the accused received the same on 27.08.2014, but he did not pay the cheque amount within 30 days from the date of receipt of the notice. Consequently, the complainant filed the case on 15.10.2014.

After filing the complaint petition, the complainant was examined under section 200 of the Code of Criminal Procedure, 1898 and the learned Senior Judicial Magistrate, Rajshahi, was pleased to take cognizance of the offence against the accused under section 138 of the Negotiable Instruments Act, 1881. The learned Sessions Judge, Rajshahi, by order dated 17.08.2013, sent the case to the Additional Sessions Judge, Court No. 3, Rajshahi for trial.

During trial, charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881 which was read over and explained to him, and he pleaded not guilty to the charge. The prosecution examined 02(two witnesses to prove the charge against the accused, and the defence cross-examined them. After examination of the prosecution witnesses, the accused was examined under section 342 of the Code of Criminal Procedure, 1898. After concluding the trial, the trial court by impugned judgment and order convicted the accused and sentenced him as stated above, against which the accused filed the instant appeal.

P.W. 1 Md. Firoj Ahmed stated that the accused Md. Asad Ali issued a cheque on 15.01.2014 drawn on his account maintained

with Agrani Bank, Bajubagha Branch, Rajshahi, for payment of Tk. 45,000 in favour of the complainant. The complainant presented the cheque on 10.08.2014 for encashment, which was dishonoured for “insufficient funds”. The complainant sent a legal notice on 20.08.2014 through registered post with AD for payment of the cheque amount, but after service of notice, he did not pay the cheque amount within the time. After that, he filed the complaint petition on 15.10.2014. P.W. 1 proved the complaint petition and his signature on the complaint petition as exhibit-1, 1/1, 1/2, the disputed cheque as exhibit-2, dishonour slip as exhibit-3, legal notice as exhibit-4, postal receipt as exhibit-5, and the AD as exhibit-6.

P.W. 2 Md. Ashraful Islam is the Senior Officer, Agrani Bank, Bajubagha Branch, Rajshahi. He stated that the complainant presented the cheque on 10.08.2014 for encashment which was dishonoured for “insufficient funds”. Thereafter, the bank issued a dishonoured slip.

The learned Advocate Mr. Md. Shariful Islam, appearing on behalf of the appellant, submits that the accused issued the cheque on 15.01.2014 in favour of the complainant for payment of Tk. 45,000 which was dishonoured for “insufficient funds”. The complainant sent a legal notice on 20.08.2014, but after service of notice the accused could not pay the cheque amount due to financial hardship. He further submits that the accused settled the dispute out of court with the complainant and deposited 50% of the cheque amount before filing the appeal and 50% of the cheque amount was paid to the complainant in cash. He prayed for setting aside the impugned judgment and order.

Learned Advocate Mr. Md. Jahidul Islam appearing on behalf of respondent No. 2 submits that the accused issued the cheque for payment of Tk. 45,000. The complainant presented the said cheque for encashment, but the same was dishonoured with a remark “insufficient funds”. After complying with all the procedures under section 138 of the said Act he filed the complaint petition. However, he submits that both the accused and the complainant settled the dispute between them out of court and the complainant received 50% of the cheque amount Tk. 22,500 in cash, and he is willing to withdraw 50% of the remaining cheque amount deposited by the accused in the trial court. He prayed for acceptance of the compromise made between the accused and the complainant.

I have considered the submission of the learned Advocates of both parties, perused the evidence, impugned judgment and order passed by the trial court, and the records.

On perusal of the records, it appears that a joint application for compromise sworn in on 13.03.2025 has been filed by the complainant respondent No. 2 and the appellant Md. Asad Ali stating that the accused paid Tk. 22,500, i.e., 50% of the cheque amount to the complainant in cash and he also received the said amount. The Negotiable Instruments Act, 1881 is a special law and the offence under section 138 of the said Act is not compoundable. Therefore, the appeal cannot be disposed of considering the compromise between the parties. After filing a case under section 138 of the said Act the court shall dispose of the case considering the merit of the case. There is no scope to accept the compromise made between the parties.

It is admitted that the accused issued the cheque (exhibit-2) in favour of the complainant and the notice sent by the complainant on 20.08.2014 was served upon the accused before filing the case. By filing a joint application, the accused stated that he settled the dispute with the complainant out of court.

There is a presumption under section 118(a) of the Negotiable Instruments Act, 1881 that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated, or transferred, was accepted, indorsed, negotiated, or transferred for consideration. The presumption under Section 118 (a) is rebuttable. The accused did not cross-examine P.W.1. The evidence of P.W.1 as regards issuance of the cheque (exhibit-2) for payment of Tk. 45,000 remains uncontroverted by the defence. Furthermore, the accused admitted that he issued the cheque in favour of the complainant. The cheque was dishonoured for insufficient funds. After service of notice on 27.08.2014, the convict petitioner did not pay the cheque amount due to hardship. Thereby, he committed offence under Section 138 of the Negotiable Instruments Act, 1881 and the complainant filed the case following the procedures of Section 138 of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the convict petitioner beyond all reasonable doubt, and the trial Court on correct assessment and evaluation of evidence legally passed the impugned judgment and order.

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 passed by the trial court is modified as under;

The accused Md. Asad Ali is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and he is sentenced thereunder to pay a fine of Tk. 45,000.

The complainant is entitled to get the fine amount.

The complainant admitted that he received 50% of the cheque amount from the accused Md. Asad Ali in cash. He is entitled to withdraw the remaining 50% of the cheque amount, i.e., Tk. 22,500 deposited in the trial court by the accused before filing the appeal.

The trial court is directed to allow the complainant to withdraw 50% of the cheque amount, i.e., 22,500 deposited by the accused before filing the appeal.

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

Send down the lower Court's records at once.

