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"Cheque Dishonour and Legal Remedies": A case Analysis of Md. Abul Kaher Shahin vs. Emran Rashid

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The dissertation titled "Cheque Dishonour and Legal Remedies: A Case Analysis of Md. Abul Kaher Shahin vs. Emran Rashid," submitted by Ferdoushi Jahan Mim (ID: 2020-2-66-001), has been prepared in partial fulfillment of the requirements for Course 406 (Supervised Dissertation) under the LL.B. (Hons.) program at the Department of Law, East West University. This dissertation has been reviewed and approved for submission by Mohammad Shahjalal, Senior Lecturer, Department of Law, East West University.

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DECLARATION

I, Ferdoushi Jahan Mim, bearing ID: 2020-2-66-001, hereby declare that the thesis titled *"Cheque Dishonour and Legal Remedies: A Case Analysis of Md. Abul Kaher Shahin vs. Emran Rashid"* is the result of my own work, except where due acknowledgment has been made. This thesis has not been submitted, either in whole or in part, for any academic qualification at any other institution.

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TABLE OF CONTENTS

ABSTRACT

This cheque dishonor explores the social, economic and other implications of the under section 138 of the Negotiable Instrument Act, 1881, this is specifically focusing on section 138. A cheque is widely transferred and usable for commercial transactions, but its exploitation or the abuse damages trust in corporate or financial dealings. Cheque dishonors happen when the bank refuses to honor a cheque due to the insufficient funds and signature doesn't match the discontinuation of account or the termination of account. This research analyses the legal framework regulating the dishonored cheques, examines the overall historical judgement and discusses the commencement procedures for criminal litigation. It also emphasized the faced by Couts in the handling the issues and estimate the usefulness of current laws in inhabiting misconduct.

This research further elaborates reforms to ensure the legal settlement of the transparency in financial transaction.

KEYWORDS: ***Cheque dishonor, financial misconduct, Legal framework, Criminal litigation, Commercial transaction,. Negotiable Instrument.***

Chapter-1

INTRODUCTION

1.1BACKGROUND

In the current economic landscape, cheque dishonor plays a vital role in commercial transactions, transaction between individuals and businesses. However, cheque dishonored, commonly known as a non-sufficient funds' cheque, has developed into a significant legal issue, particularly in common dealings. A cheque dishonored not only the obstruction in transaction processes but also the matter of trust issue between parties. To approach such issues, most legal systems, including that Bangladesh, have implement legal regulations to penalized or punished cheque dishonor occurs under certain conditions.

The primary and basic legal remedies against the cheque dishonor is mentioned under Section 138 of NI (Negotiable Instruments) Act,1881. This section criminalizes the act of a cheque rejected for specific reasons such as insufficient or inadequate funds. The aggrieved party can institute legal proceedings seeking compensation and ensure sufficient funds in the account.

In Bangladesh, bank cheques have long been a trusted method for carrying out commercial and financial transactions based on mutual agreement. However, when a cheque is dishonored, it often leads to legal disputes. Such matters are governed by the **Negotiable Instruments Act, 1881**, which outlines the legal framework for dealing with cheque-related offenses. The main aim of this Act is to hold the issuer accountable, ensuring penalties and fines are imposed for any fraudulent actions that arise from the dishonor of a cheque.[1]

Section 138 of the Negotiable Instruments Act, 1881 makes it a punishable offense if a cheque is dishonored due to insufficient funds or exceeding the agreed payment amount. The drawer

This thesis discovered the legal remedies and principles enclosing the cheque dishonor in the revelation through his precedent. The judicial interpretation of section 138 and how the Court stability to evaluate the remedies and the strict liability with the underlying debt or obligatory geniuses.

1.2 RESEARCH OBJECTIVES

The research to evaluate the legal perspective on cheque dishonor remedies in Bangladesh, examining the legal framework regulating cheque dishonor in Bangladesh. To measure and discover legal remedies under the current law for the parties.

THE SPECIFIC ONBJECTIVES OF THESE PAPER ARE TO:

- To analyze the scope and limitations of Section 138 of Negotiable Instrument Act, 1881.
- To understand judicial reasoning in determining criminal liability for cheque bounce.
- To investigate the functional limitations in the enforcement of cheque related claims.

[1] Md. Abdul Mannan Bhuyean, 'Practice of cheque dishonor cases in Bangladesh: Legal framework, judicial developments, and analytical review' (2025) 5(1) IJLE <Practice of cheque dishonor cases in Bangladesh: Legal framework, judicial developments, and analytical review > accessed 18 February 2025

1.3 RESEARCH QUESTION

A) What are the legal principles established in the case of Md. Abul Kaher Shahin vs. Emran Rashid regarding cheque dishonor?

1.4 RESEARCH METHODOLOGY

To fulfill the aim of this dissertation, this chapter takes a closer look at research using that qualitative research method. This thesis is supported by literature review, journals, reports, articles, newspapers etc. This thesis is based on primary and secondary sources as well. Domestic laws, international law, regulations as primary sources, on the other hand the secondary sources are collected from national and international journals, newspaper, articles, online journal, websites etc. It's beneficial to gather knowledge about cheque bounce in Bangladesh. Comparative research will function as the basis of the study. Finally, the research follows the OSCOLA references system for referring to the citation and Bibliography.

1.5 RESEARCH LIMITATIONS

One significant limitation is the time restraint is one of them. Due to the time constraints, the research had to be carried out quickly, which affected how thoroughly some components could be explored. component of the cheque dishonor cases, and other materials remain unfinished. Due to the narrow research window, a holistic treatment of all analytical dimensions was not feasible for the legal right of the cheque dishonor in Bangladesh. Other limitations in the limited scope. The thesis is limited to the legal framework and judicial explanation in Bangladesh.

1.6 LITERATURE REVIEW

The topic of this research is based on a very vital topic financial and commercial sectors in Bangladesh, but this topic is very unexplored and less discussed in this country. But several books and journal articles are written regarding the cheque bounce or cheque dishonor.

A.R. Masud in his book ***"Law Relating to Dishonor of Cheques"*** 2022 is the legal procedures, implications, and remedies related to the dishonor of cheques under Bangladeshi law. It focuses on various cases that are handled in criminal and civil courts. [2]

The book ***"Digest on Dishonor of Cheque with 400 Case Laws"*** written **by Md. Shafiqur Rahman** provides a comprehensive collection related to cheque dishonor. [3]It focuses on the legal provisions under the Negotiable Instruments Act, 1881 focusing on judicial understanding, practical guidance, and an authoritative example in handling such cases. The book serves as a key reference for legal professionals dealing with cheque dishonor disputes.

The journal article discovers and elaborated an **in-depth examination of the legal and procedural aspects** of **cheque dishonor** in Bangladesh, offering both **critical analysis** and **recommendations for reform** based on judicial trends and practical issues in the enforcement of the law or the regulations. It basically focuses on **Sections 138-141** of the **Negotiable Instruments Act, 1881** and discovered the **influence of judicial rulings** and **alternative dispute resolution** litigation methods for enriching the legal system.[4]

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[2] A.R. Masud, *Law Relating to Dishonor of Cheques* (11th edn, 2022)

[3] Md. Shafiqur Rahman, *Digest on Dishonour Of Cheque with 400 Case Laws* (1st edn, 2021)

[4] Md. Abdul Mannan Bhuyean, "Practice of cheque dishonor cases in Bangladesh: Legal framework, judicial developments, and analytical review" (2025) 5(1) IJLE < Practice of cheque dishonor cases in Bangladesh: Legal framework, judicial developments, and analytical review> accessed 12 May 2025

The books, article and papers i have reviewed regarding the issue and legal obligations of cheque dishonor in Bangladesh primarily focus on the procedural aspects and penal consequences under the existing legal provisions. However, they often overlook a critical analysis of the effectiveness of current legislation, the scope for legal reform, and the broader socio-economic implications for individuals and businesses. There is also limited discussion on the enforcement challenges, misuse of legal provisions, and the comparative perspective with other jurisdictions. Therefore, this thesis aims to identify the existing loopholes in the legal framework and practical enforcement of cheque dishonor laws in Bangladesh, with the objective of offering constructive suggestions for legal reform and contributing meaningfully to future research and policy development in this area.

1.7 CHAPTER OUTLINE

This paper will be carrying with five chapters. The first chapter carrying background of the topic, research of the objectives, research question, literature review, research limitations and research methodology. The second chapter is the conceptual and legal framework of cheque dishonor. The third chapter is legal remedies for cheque dishonor in Bangladesh. The four chapter is a brief discussion of Cheque Dishonor case and others case of the topic of Cheque Dishonor. The fifth chapter is critical evaluation of Cheque Dishonor. Lastly, Findings, Conclusion and Recommendations.

Chapter II

"Legal Framework of Cheque Dishonor"

2.1 INTRODUCTION

In this chapter, we are exploring the conceptual and legal framework surrounding cheque dishonor, focusing particularly Based on the statutory provisions of the Negotiable Instruments Act 1881, and how they govern cheque-related disputes in Bangladesh. Cheque dishonor is a critical issue in both commerce transactions and legal disputes, as it directly affects the smooth functioning of business transactions, financial security, and trust in the banking system. A cheque is one of the most broadly utilized debatable disobedient methods in money related transactions. It serves as a composed a cheque constitutes a formal instruction issued by an account holder authorizing the bank to disburse a specified sum to the payee, directing it to pay an indicated sum of cash to an assigned beneficiary. However, when a cheque is dishonored mostly due to inadequate capital of resources within the drawer account it can lead to both legitimate and money-related complications. The dishonoring of a cheque may result in critical commerce misfortunes, harm to reputations, and strained connections between the parties involved.

2.2 DEFINITION OF CHEQUES

Cheque could be a money-related instrument used in financial transactions. This can be the composed issues by an account holder and guideline the drawee to pay the instrument authorized payment of a predetermined sum to the payee of cash to a person substance particularly. [5]A cheque must carry specific details such as date, name of the payee, the specific amount, and the instrument is rendered valid upon the drawers an authenticated signature. The cheque will be valid if it is signed and properly filled out, and it must be presented to the bank within a specific period (A cheque is typically valid for a period of six months from the date of issuance indicated on its face) for it to be honored. Cheques are governed by legal provisions, this means this bank must pay the amount immediately when the cheque is presented, provided there are sufficient funds and no legal hindrance. The definition of cheque is interpreted under Section 6 of the Negotiable Instruments Act 1881 as: "A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand."[6]

2.3 NATURE OF CHEQUE

A cheque must be in written and the drawer's signature is essential, along with a clearly stated order for the bank to pay a designated amount that was not requested, and it must be unconditional. A cheque is always unpaid on demand and the consent of both parties, unlike a bill of exchange which may be owed at a future date. [7]The cheque Such an instrument is required to be issued against an established bank with which the drawer holds an account. The cheque must state a specific amount to be paid. [8]

[5] Negotiable Instrument Act, 1881

[6] Negotiable Instruments Act 1881, s 6.

[7]Bangladesh Law Commission's Report on the Negotiable Instruments Act,1881 (2017) BLCR <http://www.lc.gov.bd> accessed 12 april.

[8] Negotiable Instruments Act 1881, s 5 and s 6.

A cheque is a negotiable instrument, meaning it can be assigned to another party through a valid endorsement and subsequent delivery approval or by delivery alone. A cheque can be checked to restrict its negotiability and ensure it is deposited into a bank account only.

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The expression of negotiable instrument is statutorily which is defined in Section 13 of the Negotiable Instruments Act, 1881[10] as "A negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer."[11] Negotiable means which instrument is inherently transferable, allowing it to be conveyed from one individual to another. While the word *instrument* typically signifies a tool for performing a task, in this context, it specifically refers to a legally recognized document used to affect such transfers.

2.4 LEGAL PROBITION UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENT ACT, 1881

Globalization has contributed to the need for secure transactions, with negotiable instruments like cheques and other is bills of exchange revolutionizing trade. However, dishonoring cheques can lead to penalties. To combat this, additional criminal remedies were introduced under Sections 138 to 142 of the Banking[12], Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act of 1988. Section 138 ensures that the integrity, trustworthy and

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[9] Negotiable Instruments Act 1881, ss 123–131.
[10] Negotiable Instrument Act 1881
[11] Negotiable Instruments Act 1881, s 13.
[12] Tosikul Alam, " Critical Analysis of the Law Commission's Report on The Negotiable Instruments Act, 1881" (2022) FBL < (PDF) Critical Analysis of the Law Commission's Report on The Negotiable Instruments Act, 1881> accessed 3 May, 2025

dependability of the money transactions through cheques have been strengthened through legislative amendments in response to changes in the business environment.[13]

OBJCT BEHIND SECTION 138 OF NEGOTIABLE INSTRUMENT ACT, 1881

The objective behind Section 138 of the Negotiable Instruments Act, 1881 (NI Act) is primarily to protect the decency of the financial transactions involving negotiable instruments, particularly cheques. It points to address the issue of dishonored cheques by making a lawful system that penalizes the issuance of cheques that cannot be honored due to insufficient reserves or other reasons. Promote certainty utilize of cheque, discourage false practice, lawful responsibility, money related teachings, and discipline expedient determination. Section 138 of the Negotiable Instrument Act, 1881 solicits to guarantee that the cheques remain a reliable, easy and trustworthy mode of payment. By formulating dishonor of a cheque is a criminal offense, it encourages individuals to uphold the value of their investment commitments, subsequently maintaining certainty within the financial framework. It discourages the honor of issuing cheques without guaranteeing that there are adequate reserves to cover them.[14] The main purpose of the section 138 of the Negotiable Instrument Act, 1881 to promoting credibility in money related exchanges by empowering convenient and adequate installments. The information that dishonoring a cheque can result in criminal charges acting as a obstruction, empowering people to be more cautious and capable when issuing cheque.[15]

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[13] Isha Garg, "Section 138 Of the Negotiable Instrument Act,1881" (2024) CB <[Section 138 of Negotiable Instruments Act, 1881 - iPleaders]> accessed 3 May 2025

[14] ibid,2

[15] ibid, 3

2.5 COMPARATIVE OVERVIEW:LEGAL REMEDIES IN OTHER JURISDICTIONS

Dishonored cheques, also referred to as "bounced" cheques, are a common issue worldwide. Many countries have enacted laws to address this issue, with varying legal remedies depending on the jurisdiction. Below is a comparative overview of legal remedies in India, the United States, the UI and Australia, highlighting their approach to dishonored cheques.

INDIA NEGOTIABLE INSTRUMENT ACT, 1881 (SECTION 138)

In India, Section 138 of the Negotiable Instruments Act, 1881, criminalizes the dishonor of cheques. There's legal remedy that allows the payee to initiate a criminal case against the drawer of the dishonored cheque. A person whose cheque has been dishonored due to insufficient funds, or any other reason may file a sue in a Magistrate's Court. The penalty for dishonor includes Imprisonment up to two years, or the proportionate fine which may extend to twice the amount of the cheque, or Both imprisonment and fine.

The framework promotes quick legal action and as a legal safeguard intended to prevent the issuance of cheques without adequate funds.".[16]

U.S. UNIFORM COMMERCIAL CODE (UCC) – SECTION 3-515

In the U.S., dishonored cheques are controlled by the Uniform Commercial Code (UCC), specifically under Section 3-515. A dishonored cheque in the U.S. typically results in a civil action for the reclamation or the restore of the amount due. The remedy for dishonor may

[16] Negotiable Instruments Act, 1881, s 138 (India).

involve: A lawsuit to recover the value of the cheque. Additionally, the payee may recover damages if fraud or bad faith is involved.

Many states also impose criminal penalties for issuing bad checks, classified as misdemeanors or felonies depending on the amount of the cheque.[17]

In the UK, the legal remedy for dishonored cheques is largely civil. However, if fraud is involved, criminal penalties may apply under the Theft Act 1968. [18]The Bad Cheques Act 1983 specifically covers situations where the issuer knowingly draws a cheque without sufficient funds. If criminal intent is proven, the individual can face imprisonment or a fine. Civil remedies allow the payee to claim damages and initiate proceedings to recover the amount due, but there are no specific criminal penalties unless fraud is involved.[19]

AUSTRALIAN CRIMINAL CODE (SECTION 29 AND 30)

In Australia, dishonored cheques are another common and vital issues and the result in both Civil and Criminal activities under the Australian Criminal Code, in case a cheque is issued knowing that there are deficiently stores or the cheque is false, it can result in criminal charges **Section 29 of the Code Criminalizes** the issuing of dishonored cheques and gives. However, the payee can start Civil procedures under the significant state laws to recover the sum of the dishonored cheque, counting any related harms.[20]

[17] Uniform Commercial Code, s3-515 (U.S.).
[18] Theft Act 1968, s 3 (UK).
[19] Bad Cheques Act 1983 (UK).
[20] Criminal Code Act 1995, ss 29-30 (Australia).

UNITED KINGDOM THE BAD CHEQUE ACT 1983

Cheque dishonor remains a noteworthy challenge to the profound quality of budgetary exchanges and the belief set in managing an account framework. The Negotiable Instruments Act, 1881 in Bangladesh, especially Section 138, addresses this by penalizing dishonored cheques. This lawful provision fortifies the validity of cheque as an authentic installment and empowers financial discipline. A comparative examination of lawful remedies in purviews such as India, the other joined States is India emphasizes quick lawful plan of action through criminal punishments, whereas nations just like the UK by and large favor respectful remedies, saving criminal activity for cases including extortion. Despite these contrasts, all frameworks emphasize the worldwide significance of defending monetary integrity, advancing responsibility, and guaranteeing secure and dependable monetary exchanges.

2.6 CONCLUSION

In conclusion, Chapter two has provided a comprehensive summary detail of the legal and conceptual framework related to cheque dishonor, with a particular focus of the provisions of Negotiable Instruments. Cheques remain a vital instrument in financial transactions, offering a convenient and reliable mode of payment. However, the dishonor of cheques significant legal, financial, and reputational risks that undermine trust in the banking system and commercial activity. Through the analysis of Section 138, it is evident that the law serves as a crucial discouragement against the misuse of cheques and promotes financial accountability and discipline. The provision Treats the issuance of dishonored cheques due to insufficient funds as a criminal offence thereby reinforcing confidence in negotiable instruments. The comparative study of legal remedies in jurisdictions such as India, the United States, the UK, and Australia further highlights the universal recognition of this issue. While legal responses from criminal sanctions to civil remedies the core objective remains consistent to uphold the integrity of financial transactions and ensure secure, timely payments. Overall, this chapter establishes that an effective legal framework for addressing cheque dishonor is essential for maintaining financial order, deterring fraudulent practices, and fostering trust in commercial and banking relationships.

Chapter – III

"Legal Remedies for Cheque Dishonor in Bangladesh"

3.1 INTRODUCTION

Cheques are widely used in Bangladesh for financial transactions; however, cheque dishonor, often due to insufficient funds, has become an increasing concern. To approach this issue, the law gives both criminal and civil cures, looking for to maintain the validity concerning cheques and guarantee responsibility. Section 138 of the Negotiable Instruments Act, 1881, criminalizes cheque dishonor, whereas respectful laws allow the settlement of unpaid dues. These remedies require strict adherence to procedural steps, including timely issuance of legal notice and proper filing of cases. The courts Judicial bodies are instrumental in ensuring the implementation of legal norms in enforcing these legal provisions and maintaining trust in financial dealings. This chapter discusses the available legal remedies, the necessary procedural requirements, and the judiciary's role in resolving cheque dishonor cases in Bangladesh.

3.2 CRIMINAL LIABILITY UNDER SECTION 138

Section 138 of the NI (Negotiable Instrument) Act imposes criminal liability for cheque dishonor, promoting accountability and trust in financial transactions. Act XVII of the Negotiable Instruments Act, 1881 was described through an amendment tackling the growing issue of cheque dishonor. It specifically deals with the penal provisions. The most important section [21]under this chapter is Section 138, which criminalizes this provision of issuing a cheque that is returned unpaid total sum which is the insufficient funds. The chapter outlines the

[21] Negotiable Instrument Act,1881

conditions under which a person can be held liable, including the requirement of issuing of a legal notice within 30 days of dishonor under the provision of Negotiable Instrument Act,1881 and providing the if the drawer failed to pay within this time, the payee have to ability that initiate a criminal complaint within 30 days working days.[22] This chapter purpose to promote accountability and ensure the reliability of cheque-based transactions by attaching criminal liability to dishonor, thereby protect or safeguarding commercial confidence and financial discipline. However, due to the growing misuse of cheques and the inadequacy of existing civil and criminal remedies—particularly Section 420 of the Indian Penal Code [23] faith in cheque transactions began to erode.[24] The widespread use of cheques in commercial transactions has increased the risk of misuse necessitated stronger legal safeguards to prevent abuse. Recognizing this need, banking has a key role in cheque clearance side, Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 was introduced, adding act XVII to the NI act 1881. [25]

This chapter brought about a revolutionary change in cheque-related jurisprudence by introducing stringent penal provisions for cheque dishonor due to insufficient funds.

Among the ten sections introduced, Section 138 is the most crucial. [26]It imposes criminal liability on a person who issued a cheque without maintaining the capacity of the amount in the account, regardless of whether the dishonor was intentional or not. The purpose of this provision is

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[22] Ibid.

[23] Penal Ccode, 1860 S.420

[24] All Answers ltd, 'Criminal Liability Under Negotiable Instruments Act' (Lawteacher.net, May 2025) < https://www.lawteacher.net/free-law-essays/contract-law/criminal-liability-under-negotiable-instruments-act-contract-law-essay.php?vref=1> accessed 11 May 2025

[25] Ibid

[26] Sayeeda Anju, 'Laws and Practices in Bangladesh' (Cheque, January 2016) < w.researchgate.net/publication/342159904_Cheque_Laws_and_Practices_in_Bangladesh_In_Rajshahi_University_Journal_of_Arts_Law_Vol43_RU_Publication_No175_RUPO_Publication> accessed 11 May, 2025

deterrence—it compels individuals to ensure fund sufficiency before issuing cheques, reinforcing the credibility of cheque transactions. This legislative reform shifted the legal landscape from being merely compensatory to one with punitive consequences, thereby restoring public confidence in the use of cheque.[27]

In essence, the passage highlights how legislative intervention through Act XVII of the Negotiable Instruments Act strengthened this legal system with the introducing criminal penalties for cheque dishonor, thereby protecting the interests of the payees and reinforcing trust in cheque-based financial transactions.

3.3 CIVIL REMEDIES AVAILABLE

In addition to criminal prosecution, the payee can also aspire to the civil action to recover the cheque amount. Common Civil Remedies is the money suit under the Code of Civil Procedure, 1908, for recovery of dues. Summary Suit under Order XXXVII CPC, which provides a faster track for recovering money based on negotiable instruments. Injunctions or attachments before judgment to secure the claim.[28]

Civil remedies provide monetary compensation but lack the deterrent effect of criminal proceedings. According to Section 138(1) of this Act, If the accused is found guilty and liable to meaning the commission of the offence has been duly established he This provision shall apply to dishonored cheques without affecting the applicability of any other existing legal provisions contained in this Act, be liable to punishment with imprisonment for a term which may extend up to one year, or with a fine that may amount to three times the value of the cheque in question, or with both such imprisonment and fine. It is to be clarified, however, that the payee shall not be

[27] Anuja Saraswat, "Liability of Directors In Case Of Dishonor of Cheque" (LDCDC, February 2022) < Dishonor of Cheque under Section 138 of NI Act, 1881> accessed 11 May 2025

[28] The Code of Civil Procedure, 1908 Order XXXVII

entitled to receive thrice the cheque amount; rather, only the amount specified in the cheque shall be recoverable by the payee, and any amount exceeding that shall accrue to the government.[29].

3.4 PROCEDURAL ASPECT

In Bangladesh, dishonor a cheque due to insufficient case or other valid reasons is produced by Section 138 of the Negotiable Instruments Act, 1881[30]. However, enforcement under this section requires strict compliance with procedural steps. Failure to follow these steps can make a complaint invalid, even if the dishonor is genuine. The process begins with the dishonor of cheques by the bank. Upon dishonor, the payee (or holder of the cheque) must issue a notice to that drawer. [31]This written legal notice mandatorily sent within the time of payment must be made within 30 days of the invoice date the payee receives information from the bank issuing the rule pertaining to the dishonor of cheques dishonor. The notice must clearly state the facts of dishonor and demand the full cheque amount to be paid within 30 days from the issuing date to submit the drawer receives the notice. The notice is a mandatory condition precedent for initiating any legal action.[32]

If the drawer does not make the charge within this 30days of period, the offence under Section 138 is said to be found to have perpetrated. The payee then has a window of one month from the date of expiry of the payment period to file a criminal complaint. This complaint might be filed

[29] Mehrab Hossain, "Cheque Dishonor or Bounce and Remedies Against it in Bangladesh" (CDBR, November 2024) < Blogs - AinPal> accessed 12 May 2025
[30] Section 138 of Negotiable Instruments Act,1881 s138
[31] Ibid
[32] RABI KR. PANDIT, "Section 138 of Negotiable Instruments Act, 1881 (138 Ni Act)" (NIA, March 2024) < www.barristery.in> accessed 13 May 2025

before a Judicial Magistrate of the First Class, and the territorial jurisdiction usually lies where the cheque was presented for the payment most often where the payee's bank is located.[33]

The next important aspect is the burden of proof. Initially, the complainant is required to prove: The fact that the cheque was drawn and issued by the accused. That it was issued in satisfaction of a legally enforceable debt or liability. That the cheque was presented for encashment within its period of validity. That the cheque was subsequently dishonored by the bank upon presentation. That a valid legal notice demanding payment was duly served, and the accused failed to make payment within the statutory timeframe.

Once these elements are proved, the court applies a presumption under Sections 118(a) and 139 of the Negotiable Instruments Act. These provisions presume the cheque was issued for recognized by the law dues or liability.

3.5 ROLE OF COURT'S

The Supreme Court (HCD) addressed two critical aspects in its analysis:

Representation by Authorized Agents: The court reaffirmed that a legal complaint was filed pursuant to Section 138 of the NI Act can be registered by an authorized agent of the payee, provided the representative has sufficient knowledge of the transaction. Relevance of Personal Knowledge: Referring to precedents like A.C. Narayanan v. State of Maharashtra [34]*and* TRL

[33] Ibid 1
[34] A.C. Narayanan vs State of Maharashtra [2007] CA 73

Kurosaki Refractories Ltd. v. SMS Asia Pvt. Ltd [35]the court held that explicit assertions regarding the agent's personal knowledge are sufficient, even if not stated in a specific manner.[36]

The proceedings under Section 138 of the Negotiable Instruments Act (NI Act) are designed to address the dishonor of cheques. These cases are to undergo trial summarily by a Judicial Magistrate of First Class or a Metropolitan Magistrate, following the provisions of the Code of Criminal Procedure (CrPC) as applicable to summary trials.[37] The proceedings under Section 138 of the Negotiable Instruments Act, 1881 are aimed at ensuring prompt and effective redress for dishonored cheques, thereby upholding commercial trust and financial discipline. The law entrusts the Judicial Magistrate of First Class or a Metropolitan Magistrate (MM) with the responsibility of trying these cases. As per the provisions of the Code of Criminal Procedure (CrPC), such cases are generally conducted under summary trial procedures, unless the magistrate decides otherwise due to the complexity of the case[38]. Summary trials are designed to ensure speedy justice, reducing the burden on courts and minimizing delays. In such trials, the number of witnesses is limited, and proceedings are streamlined to deliver judgments efficiently. However, if the magistrate finds the case to involve intricate questions of fact or law, they may convert it into a regular trial, following the procedure for summons or warrant cases as applicable.[39]

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[35] **admin**, "Supreme Court Clarifies Procedural Requirements Under Section 138 of the NI Act" (SCPR, January, 2025) <thelawmatics.in> accessed 13May 2025

[36] A.C. Narayanan v. State of Maharashtra, (2014) 11 SCC 790.

[37] RAJ KISHORE SHARMA VS STATE, "Steps of NI Act Proceedings in Court" <steps of NI Act proceeding in the court> accessed 13 May 2025

[38] The code of Criminal Procedure, 1898 ss **260-265**.

[39] RAJ KISHORE SHARMA VS STATE, "Steps of NI Act Proceedings in Court" <steps of NI Act proceeding in the court> accessed 13 May 2025

3.6 CONCLUSION

Dishonoring cheques undermines financial trust. Section 138 of the NI Act, along with civil remedies, provides an effective legal framework in Bangladesh. Strict procedural compliance and the active role of courts are essential for ensuring timely and fair justice.

Chapter – IV

"Case Analysis – Md. Abul Kaher Shahin vs. Emran Rashid"

4.1 INTRODUCTION

This chapter presents a detailed case analysis of Md. Abul Kaher Shahin vs. Emran Rashid Chowdhury[40], Md.Emran Rashid Chowdhury, which addresses key legal concerns arising from bounced cheques as per Section 138 of the Negotiable Instruments Act, 1881" 1881. The dispute revolves around complex matters such as conditional payments, contractual obligations, and the criminal liability of the cheque issuer. Through a detailed examination of the case's background, legal arguments, and judicial reasoning, this chapter explores how courts interpret Section 138 in the context of underlying agreements and the issuer's intent. The case stands as an important reference for understanding the scope and limitations of criminal prosecution in cheque related disputes in Bangladesh.

4.2 BRIEF SUMMARY OF THE FACTS

An advance payment of Tk 45.0 million was made to Md. Abul Kaher Shahin, with the understanding that he would secure a buyer within 90 days for the sale of a 30-katha plot of land

[40] 14 SCOB (2020) AD, 19 ALR (AD) 56-64

in Dhaka, Gulshan area. Despite this, he submitted the cheques to the bank for encashment. The bank later refused to honor the cheques as the drawer had issued a stop-payment instruction.[41] Based on these facts, Abul Kaher Shahin initiated four legal actions initiated in accordance with Section 138 of the Negotiable Instruments Act, 1881 [42]against Emran Rashid Chowdhury. Following trial, the Metropolitan Sessions Judge of Sylhet convicted Emran Rashid Chowdhury and gave him a straightforward prison sentence of four years or one year per charge" for the individual case and imposed a fine of Tk 90.0 million.[43] However, upon appeal by the cheque drawer, the High Court Division reversed the lower court's decision verdict and acquitted him of all charges. Subsequently, Criminal Appeal Nos. 63–66 of 2017 was brought forward by the cheque issuer to the Supreme Court's Appellate Division challenging the High Court's decision. Following the appeals, the Supreme Court confirmed the High Court's ruling judgment of the High Court Division, thereby confirming the acquittal.[44]

4.3 LEGAL ISSUED RAISED

Conditional Nature of Cheque Issuance and Criminal Liability under Section 138:

Issue: One of the most critical issues in this case was whether a cheque issued as part of a conditional agreement specifically, a condition that Md. Abul Kaher Shahin would arrange a land purchaser within a set time frame could still give rise to criminal liability under Section 138 of the Negotiable Instruments Act, 1881, if the condition (finding a purchaser) was not fulfilled.

[41] Bd Law Post, "Landmark Judgement of the Supreme Court on Dishonour of Cheque: Md. Abul Kaher Shahin Vs. Emran Rashid and another" (September, 2022) < Landmark Judgement of the Supreme Court on Dishonour of Cheque: Md. Abul Kaher Shahin Vs. Emran Rashid and another - BD Law Post> accessed 15 May 2025

[42] ibid

[43] The Negotiable Instrument Act, 1881

[44] Bd Law Post, "Landmark Judgement of the Supreme Court on Dishonour of Cheque: Md. Abul Kaher Shahin Vs. Emran Rashid and another" (September, 2022) < Landmark Judgement of the Supreme Court on Dishonour of Cheque: Md. Abul Kaher Shahin Vs. Emran Rashid and another - BD Law Post> accessed 15 May 2025

Section 138 applies to cases where a cheque is dishonored due to insufficient funds or when the drawer refuses payment. However, for criminal liability to arise, there must be an enforceable debt or liability. In this case, the cheque was issued as an advance payment based on a conditional agreement, meaning that the obligation to pay was contingent upon Shahin fulfilling his end of the contract (finding a buyer). Therefore, the key question was whether the failure to fulfill that condition would prevent the creation of a valid, legally enforceable debt, and whether Section 138 could still apply.[45]

SIGNIFICANTS

The decision in this regard is crucial because it determines whether conditional agreements, which involve cheques issued based on the fulfillment of future obligations, can be enforced under criminal law when conditions are unmet.

DISHONOR DUE TO PAYMENT STOPPED BY DRAWER

Another critical legal issue was whether the reason for dishonor, which in this case was "payment stopped by drawer," falls within the provisions of Section 138 of the NI Act. The drawer (Emran Rashid Chowdhury) had stopped payment on the cheques after they were issued. Section 138 specifically addresses dishonor due to insufficient funds or exceeding the amount arranged. However, this case involved a situation where the drawer, rather than having insufficient funds, actively stopped payment. The core question was whether stopping payment voluntarily could be considered as dishonor under the Act. If the cheque was dishonored due to

[45] 14 SCOB [2020] AD

the drawer's deliberate action, does this constitute a violation of the statutory provisions that would lead to criminal liability?[46]

This issue is significant because it highlights the broader interpretation of dishonor under the NI Act. Whether a drawer's action to stop payment constitutes dishonor might affect future cases where payment is halted for reasons beyond insufficient funds yet still resulting in dishonored cheques.

47

4.4 ARGUMENTS BY BOTH PARTIES

Arguments by Md. Abul Kaher Shahin (Complainant)

Existence of Debt: Shahin argued that Emran Rashid Chowdhury issued the cheques as an advance for the sale of land, creating a legally enforceable debt despite the condition of finding a purchaser not being fulfilled.[48] Dishonor of Cheques: He claimed the cheques were dishonored due to "payment stopped by drawer," which constitutes the alleged act constitutes a criminal offence as outlined in Section 138 of the Negotiable Instruments Act, leading to criminal liability.[49]

Criminal Liability: Shahin maintained that Section 138 applies whenever a cheque is dishonored, irrespective of the conditional nature of the agreement, and demanded Chowdhury's accountability.[50]

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[46] ibid

[47] M/S. VIF Airways ltd and another vs M/S. Aishu Finance Ltd. and another 2002 (2) Crimes 205(AP)

[48] ibid

[49] ibid

[50] ibid

Arguments by Emran Rashid Chowdhury (Cheque Drawer)

Conditional Nature of Cheques: Chowdhury defended that the cheques were issued based on a conditional agreement (finding a purchaser), and since the condition was unmet, there was no enforceable dues.[51] Stopping Payment: He argued that he had the right to stop payment since no valid debt existed, and thus, the dishonor of the cheque did not lead to criminal liability.[52]

No Criminal Liability: Chowdhury claimed that Section 138 only applies if there is a legally enforceable debt, and since the condition was not fulfilled, no liability existed to trigger criminal proceedings.[53]

4.5 COURT REASONING AND JUDGEMENT

The trial court initially convicted Emran Rashid Chowdhury based on the dishonor of the cheques, holding that they represented a valid debt under Section 138 of the Negotiable Instruments Act, [54]despite of the condition of that agreement. The court ruled that the failure to find a buyer did not invalidate the debt, and the dishonor of the cheques triggered criminal liability. However, the High Court Division overturned this conviction, concluding that the cheques were issued based on a conditional agreement (the condition being the sale of land). Since the condition was not met, there was no legally enforceable debt or liability, and therefore, no criminal offence under Section 138 could be established. The Supreme Court upheld the High Court's decision. It agreed that the cheques were not issued for a legally enforceable debt, as the

[51] ibid
[52] IBID
[53] 14 SCOB [2020] AD
[54] The Negotiable Instrument Act, 1881

underlying condition was not fulfilled. The court emphasized that Section 138 applies only when a genuine, enforceable debt exists, and the failure to meet the conditions made the cheques invalid for the purposes of criminal prosecution under the Act. Accordingly, the accused was acquitted, with the judgment emphasizing that the dishonor of a cheque issued subject to certain conditions does not, by itself, constitute criminal liability under Section 138 of the Negotiable Instruments Act.[55].

LEGAL SIGNIFICANCE AND PRECEDENT VALUE

The case of *Md.* Abul Kaher Shahin vs. Emran Rashid Chowdhury carries significant legal importance in interpreting the application of Section 138 of the Negotiable Instruments Act, 1881 in Bangladesh. The judgment established that a cheque issued pursuant to a conditional agreement does not, by default, give rise to criminal liability upon dishonor under Section 138. In this instance, the cheques were issued as part of a land sale agreement that ultimately failed to materialize. As the underlying condition was not fulfilled, the court held that no legally enforceable debt or liability had arisen. [56]Consequently, the dishonor of the cheques did not attract penal consequences under the Act.

[55] Bd Law Post, "Landmark Judgement of the Supreme Court on Dishonour of Cheque: Md. Abul Kaher Shahin Vs. Emran Rashid and another" (September, 2022) < Landmark Judgement of the Supreme Court on Dishonour of Cheque: Md. Abul Kaher Shahin Vs. Emran Rashid and another - BD Law Post> accessed 15 May 2025

[56] Bd Law Post, "Landmark Judgement of the Supreme Court on Dishonour of Cheque: Md. Abul Kaher Shahin Vs. Emran Rashid and another" (September, 2022) < https://www.bdlawpost.com/2022/09/landmark-judgement-on-dishonour-of.html>accessed 20May 2025

4.6 CONCLUSION

This case significantly shapes the interpretation of Section 138 of the Negotiable Instruments Act. It emphasizes the need for enforceable debt or liability before criminal action can be taken, protecting parties in conditional agreements and ensuring that criminal law is not misused in commercial or contractual matters. This ruling helps maintain the integrity and fairness of the legal framework governing cheque dishonor in Bangladesh.

Chapter – V

"Findings And Recommandation"

5.1 FINDINGS

Section 138 of the NI Act Requires Fulfillment of Legal Preconditions. The study found that mere dishonor of a cheque (even by stop-payment) is not automatically punishable under Section 138 unless all legal conditions are fulfilled such as legal debt/liability, issuance of notice, and non-payment within the statutory period. Presumption of Liability is Rebuttable, Although Section 118(a) and 139 of the NI Act create a statutory presumption exists that the cheque was issued in discharge of a legally enforceable debt consideration, the accused can rebut this by showing that there was no enforceable debt or liability especially in cases involving conditional agreements. Conditional Cheque Issuance Weakens Prosecution Under Section 138 In the case studied, the accused issued cheques based on a commission agreement where payment was contingent on the complainant successfully selling property. "Stop Payment" Instruction Does Not Automatically Exclude Criminal Liability the Supreme Court clarified that instructing the bank to stop cheque payment does not, by itself, protect the drawer from Section 138 liability unless the drawer successfully proves the absence of a legal obligation. High Court's Role in Evaluating Factual Background Is Crucial.

5.3 RECOMMENDATION

Clarity in Cheque Issuance: Cheques issued under conditional agreements should clearly mention the nature of the condition, possibly within the text or via annexed documentation. Public and Legal Awareness: Greater awareness should be promoted among the public and legal professionals regarding the implications of issuing and stopping payments on cheques under the NI Act. Strengthening Pre-litigation Procedures: Encourage mediation or pre-litigation notice clarification to reduce unnecessary litigation under Section 138 where conditions of agreements are in dispute. Legislative Clarity: Lawmakers should consider amending Section 138 to address stop-payment scenarios more explicitly and guide courts on weighing conditional obligations. Training for Judicial Officers: Specialized training on commercial law and the NI Act should be provided to judges handling such cases to ensure consistent interpretation.

5.4 CONCLUSION

The case of Md. Abul Kaher Shahin vs. Emran Rashid and Ors. serves as a valuable lens through which the practical challenges of enforcing Section 138 of the NI Act are examined. While the section aims to uphold the sanctity of cheques, its enforcement is often entangled in disputes over underlying agreements. The judiciary must balance strict liability and fairness, especially when cheques are issued conditionally. Through improved legal frameworks and better public understanding, the integrity of financial instruments can be preserved, contributing to a more robust commercial environment. Additionally, the study advocates strengthening pre-litigation mechanisms, such as encouraging mediation or comprehensive notice clarification processes. These steps could effectively reduce unnecessary litigation by resolving disputes over contractual conditions before escalating to criminal proceedings. From a legislative perspective, amending Section 138 to explicitly address the nuances arising from stop-payment instructions and conditional cheque issuance could provide clearer guidance to courts and litigants alike. This would help in harmonizing the statutory framework with contemporary commercial realities.

Finally, the study highlights the importance of specialized training programs for judicial officers handling negotiable instruments cases. Enhanced judicial education focusing on commercial laws and the specific provisions of the NI Act would ensure more consistent and informed interpretation, ultimately fostering greater legal certainty and predictability in this domain.

In conclusion, while Section 138 of the NI Act serves as a critical safeguard for financial transactions by deterring cheque dishonor, its practical enforcement must carefully navigate the complexities of contractual conditions and procedural nuances. The judiciary plays an indispensable role in maintaining this balance by ensuring that liability is imposed only where a genuine legal obligation exists, and not as a punitive tool for resolving civil disagreements. Through a combination of clearer legislative provisions, increased awareness, and judicial capacity-building, the law can better achieve its intended purpose: to uphold the sanctity of negotiable instruments, protect legitimate creditors, and foster trust in the commercial ecosystem. The case of *Md. Abul Kaher Shahin vs. Emran Rashid and Ors.* exemplifies these challenges and offers valuable lessons for future reforms and judicial practice.

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