

**14 SCOB [2020] HCD**

**HIGH COURT DIVISION**

**(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 11826 OF 2018  
WITH  
WRIT PETITION NO. 11827 OF 2018  
AND  
WRIT PETITION NO. 11828 OF 2018  
**Md. Golam Morshed**

.....Petitioner

(In all the Writ Petitions)

-Versus-

Mr. Taposh Kumar Dutta, Advocate  
...For the respondent no. 2 in all  
the Writ Petition Nos. 11826 of 2018,  
11827 of 2018 and 11828 of 2018

**Court of the Executive Magistrate and  
General Certificate Officer, Dhaka,  
Deputy Commissioner's Office Building,  
Dhaka and another**

..... Respondents

Heard on 31.10.2019 and 06.11.2019.  
Judgment on 13.11.2019.

**Present:**

**Mr. Justice Moyeenul Islam Chowdhury**

**-And-**

**Mr. Justice Khandaker Diliruzzaman**

**Sentence of Fine: whether it is a Public Demand;**

**Unquestionably the sentence of fine passed by any Criminal Court is not a “public demand” within the meaning of the Public Demands Recovery Act, 1913. As it is not a “public demand” within the meaning of the Public Demands Recovery Act, the question of realization of the fine amounts through initiation of the Certificate Case is out of the question. Such Certificate cases are an abuse of the process of law. ... (Para 14)**

**The realization of any fine amount under any sentence of fine of any Criminal Court cannot be effected by resorting to the provisions of the Public Demands Recovery Act, 1913. ... (Para 15)**

**JUDGMENT**

**MOYEENUL ISLAM CHOWDHURY, J:**

1. As the facts and circumstances of all the 3(three) Writ Petition Nos. 11826 of 2018, 11827 of 2018 and 11828 of 2018 are virtually one and the same, they have been heard together and are disposed of by this consolidated judgment.

2. In all the 3(three) Writ Petition Nos. 11826 of 2018, 11827 of 2018 and 11828 of 2018, Rules Nisi were issued calling upon the respondents to show cause as to why the initiation and continuation of the proceedings of the Certificate Case Nos. 427 (Fine) of 2015, 428 (Fine) of 2015 and 429 (Fine) of 2015, now pending before the Executive Magistrate and the

General Certificate Officer, Dhaka should not be declared to be without lawful authority and of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

3. Facts relevant to the disposal of all the 3(three) Rules Nisi may be, briefly, stated as follows:

The respondent no. 2 Md. Anowarul Kabir initiated C. R. Case Nos. 1228 of 2011, 1196 of 2011 and 1197 of 2011 against the petitioner under section 138 of the Negotiable Instruments Act, 1881 which were subsequently registered as Dhaka Metropolitan Sessions Case Nos. 3795 of 2012, 3797 of 2012 and 3798 of 2012 respectively. During the trial of all the 3(three) Metropolitan Sessions Cases, the petitioner was present and he cross-examined the prosecution witnesses; but at the time of pronouncement of judgments by the Metropolitan Joint Sessions Judge, 1<sup>st</sup> Court, Dhaka, the petitioner was absent. However, all the cases having been proved to the hilt, the Metropolitan Joint Sessions Judge, 1<sup>st</sup> Court, Dhaka by her judgments dated 27.08.2015 convicted the accused-petitioner under section 138 of the Negotiable Instruments Act and sentenced him thereunder to suffer simple imprisonment for 1(one) year and to pay fines of different amounts of money in each case. As the judgments of the Metropolitan Sessions Cases were pronounced in absentia, the convict-petitioner could not be sent to jail by the convicting Court along with warrants of commitment. Anyway, subsequently the convict-petitioner was hunted down by the police on 18.02.2016. From that date (18.02.2016), he started undergoing the sentences imposed upon him till he was granted bail by an order dated 14.08.2018 passed by the High Court Division in Writ Petition No. 10876 of 2018. Thereafter the legality of the order dated 14.08.2018 was challenged by the respondent no. 2 before the Appellate Division in Civil Petition For Leave To Appeal No. 4711 of 2018. The Appellate Division, by its order dated 24.01.2019, directed the petitioner Md. Golam Morshed to surrender before the 1<sup>st</sup> Court of Metropolitan Joint Sessions Judge, Dhaka within 2(two) weeks, failing which, the said Court could take appropriate steps to bring him in jail custody. In response to the direction dated 24.01.2019 given by the Appellate Division in Civil Petition For Leave To Appeal No. 4711 of 2018, the convict-petitioner did not surrender before the trial Court within 2(two) weeks; rather he is still on the run as a convict.

4. As admittedly the convict-petitioner is a fugitive from law till date, we cannot hear the learned Advocate Mr. M. Atikur Rahman engaged on his behalf.

5. Since the convict-petitioner flouted the order of the Appellate Division to surrender before the 1<sup>st</sup> Court of Metropolitan Joint Sessions Judge, Dhaka within 2(two) weeks as rendered in Civil Petition For Leave To Appeal No. 4711 of 2018, he cannot prosecute the Rules Nisi issued in all the 3(three) Writ Petitions, that is to say, Writ Petition Nos. 11826 of 2018, 11827 of 2018 and 11828 of 2018.

6. Be that as it may, since an important question of law has arisen in all the 3(three) Writ Petitions with regard to realization of fine in accordance with section 386 of the Code of Criminal Procedure, 1898, we are inclined to dispose of all the Rules on merit.

7. Indisputably the petitioner was convicted under section 138 of the Negotiable Instruments Act, 1881 and sentenced thereunder to suffer simple imprisonment for 1(one) year and to pay a fine of Tk. 2,00,00,000/- (two crore) in Metropolitan Sessions Case No.

3798 of 2012 by the 1<sup>st</sup> Court of Metropolitan Joint Sessions Judge, Dhaka on 27.08.2015. The petitioner was also convicted under section 138 of the Negotiable Instruments Act and sentenced thereunder to suffer simple imprisonment for 1(one) year and to pay a fine of Tk. 30,50,00,000/ (thirty crore fifty lac) in Metropolitan Sessions Case No. 3797 of 2012 by the same Court on the self-same date (27.08.2015). Besides, the petitioner was further convicted under section 138 of the Negotiable Instruments Act and sentenced thereunder to suffer simple imprisonment for 1(one) year and to pay a fine of Tk. 31,01,62,000/- (thirty-one crore one lac and sixty-two thousand) in Metropolitan Sessions Case No. 3795 of 2012 by the same Court on that very date (27.08.2015). Undeniably the judgments of the Metropolitan Joint Sessions Judge, 1<sup>st</sup> Court, Dhaka were pronounced in absentia. Anyway, the convict-petitioner was tracked down by the police on 18.02.2016 and produced before the convicting Court and the convicting Court sent him to jail in order to serve out the sentences imposed upon him in all the 3(three) Metropolitan Sessions Cases.

8. Mr. Taposh Kumar Dutta, learned Advocate appearing on behalf of the respondent no. 2-complainant, submits that for the purpose of realization of fine amounts from the convict-petitioner, the provisions of section 386(1)(b) and (3) of the Code of Criminal Procedure, 1898 are definitely attracted; but he candidly concedes that as the amounts of fine can be realized by execution according to the civil process against the moveable or immovable property, or both of the convict-petitioner, the impugned proceedings, that is to say, Certificate Case Nos. 427 (Fine) of 2015, 428 (Fine) of 2015 and 429 (Fine) of 2015 are *coram non judice* and as those Certificate Cases are ‘de hors’ the law, those are void and liable to be quashed.

9. We have heard the learned Advocate Mr. Taposh Kumar Dutta and perused the Writ Petitions, Supplementary Affidavits, Affidavits-in-Opposition and relevant Annexures annexed thereto. We have gone through the provisions of section 386 of the Code of Criminal Procedure with a fine tooth-comb.

10. It will be profitable for us if we quote the relevant provisions of section 386 (1)(b) and (3) of the Code of Criminal Procedure verbatim:

“386. (1) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(a) ...

(b) issue a warrant to the Collector of the District authorizing him to realize the amount by execution according to civil process against the movable or immovable property, or both of the defaulter.

(2) ...

(3) Where the Court issues a warrant to the Collector under sub-section(1), clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code as to execution of decree shall apply accordingly:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.”

11. Moreover, Rule 201(4) of the Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), 2009 provides that a warrant issued under clause (b), sub-section (1) of

section 386 of the Code of Criminal Procedure for the levy of a fine shall be directed to the Collector of the concerned district authorizing him to realize the amount by execution according to the civil process as provided by the Code of Civil Procedure, 1908.

12. Hence it leaves no room for doubt that when an offender has been sentenced to pay a fine, the Court passing the sentence may take action for recovery of the fine in either of the ways as stipulated in clause (a) or clause (b) of sub-section (1) of section 386. As the convicting Court issued warrants to the Collector of Dhaka authorizing him to realize the fine amounts by execution according to the civil process against the properties of the convict-petitioner, the warrants so issued, as per section 386(3) of the Code of Criminal Procedure, shall be deemed to be decrees and the Collector to be the decree-holder within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code as to execution of decrees shall apply accordingly.

13. From the analysis as above, it is crystal clear that the warrants issued to the Collector of Dhaka by the convicting Court are deemed to be decrees and the nearest Civil Court of that District shall execute the decrees according to the provisions of the Code of Civil Procedure as to execution of decrees. But in order to realize the fine amounts from the offender, that is to say, the convict-petitioner, the Collector of the District (in this case, Dhaka) may not be in a position to know the particulars of his movable and immovable properties for execution of the decrees in accordance with the provisions of the Code of Civil Procedure. In order to obviate this difficulty, the respondent no. 2-complainant shall be at liberty to furnish the particulars of the movable and immovable properties of the convict-petitioner to the Collector of Dhaka District for proper and effectual execution of the decrees according to the civil process.

14. The Public Demands Recovery Act, 1913 (Act No. III of 1913) was enacted in order to consolidate and amend the law relating to the recovery of public demands in Bangladesh. The term “public demand” has been defined in sub-section (6) of section 3 of the Public Demands Recovery Act, 1913. As per that sub-section (6) of section 3, “public demand” means any arrear or money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon up to the date on which a certificate is signed under part II. Unquestionably the sentence of fine passed by any Criminal Court is not a “public demand” within the meaning of the Public Demands Recovery Act, 1913. As it is not a “public demand” within the meaning of the Public Demands Recovery Act, the question of realization of the fine amounts through initiation of the Certificate Case Nos. 427(Fine) of 2015, 428(Fine) of 2015 and 429(Fine) of 2015 is out of the question. So those Certificate Cases, now pending before the General Certificate Officer, Dhaka, are an abuse of the process of law. The General Certificate Officer should have been aware of the relevant provisions of section 386 of the Code of Criminal Procedure and accordingly he should have sent the warrants back to the Collector of Dhaka for realization of the fine amounts in accordance therewith.

15. What we are driving at boils down to this: the realization of any fine amount under any sentence of fine of any Criminal Court cannot be effected by resorting to the provisions of the Public Demands Recovery Act, 1913. As the Certificate Case Nos. 427(Fine) of 2015, 428(Fine) of 2015 and 429(Fine) of 2015 are *coram non judice* and an abuse of the process of law, they need to be quashed forthwith. Therefore all the Certificate Cases being Nos.

427(Fine) of 2015, 428(Fine) of 2015 and 429(Fine) of 2015, now pending before the General Certificate Officer, Dhaka, are hereby quashed. The Collector of Dhaka is directed to realize the amounts of fine from the convict-petitioner in accordance with the provisions of section 386(1)(b) and (3) of the Code of Criminal Procedure, 1898 as discussed in the body of this judgment.

16. With the above observations and findings, all the Rules are disposed of with costs of Tk. 1,00,000/- (one lac) to be realized from the convict-petitioner according to law for giving a damn to the order of surrender dated 24.01.2019 passed by the Appellate Division in the Civil Petition For Leave To Appeal No. 4711 of 2018.

17. Let a copy of this judgment be immediately transmitted to the Collector of Dhaka and the General Certificate Officer, Dhaka (respondent no. 1) for information and necessary action.

18. Let a copy of this judgment be also immediately transmitted to all the District Collectors of Bangladesh for information and necessary guidance.