

In The Supreme Court of Bangladesh
High Court Division

(Criminal Miscellaneous Jurisdiction)

PRESENT:

**MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN
AND
MR. JUSTICE KHANDAKER DILIRUZZAMAN**

CRIMINAL MISCELLANEOUS CASE NO. 10887 OF 2021

With

CRIMINAL MISCELLANEOUS CASE NO. 10937 OF 2021

With

CRIMINAL MISCELLANEOUS CASE NO. 10889 OF 2021

With

CRIMINAL MISCELLANEOUS CASE NO. 10936 OF 2021

With

CRIMINAL MISCELLANEOUS CASE NO. 10888 OF 2021

Mohammad Fazlul Quadir Chowdhury.....Accused-petitioner
-Versus-

The State and another.....Opposite parties

Mr. B.M. Elias with

Mr. Md. Mahabubur Rahman Kishore, Advocates

.....For the petitioner

[In all Criminal Miscellaneous Cases]

Mr. Faysal Hasan Arif, Advocate

...For the opposite party No. 2

[In all Criminal Miscellaneous Cases]

Mr. K.M. Masud Romy, DAG with

Mr. Mehadi Hasan (Milon), AAG with

Mr. Md. Ahsan Ullah, AAG and

Ms. Aleya Khandker, AAG

.....For the state

Heard on: 10.08.2023, 08.10.2023 and 15.10.2023

Judgment on: The 17th of October, 2023

ABU TAHER MD. SAIFUR RAHMAN, J.

These Rules concern of facts akin to each other arising
between the same parties and involve common questions of law

and, as such, taken up together for hearing and are being disposed of by this single judgment.

In Criminal Miscellaneous Case No. 10887 of 2021, the Rule was issued on an application filed by the accused–petitioner under Section 561-A of the Code of Criminal Procedure calling upon the opposite parties to show cause as to why the proceedings of Special Sessions Case No. 41 of 2015, arising out of C.R. Case No. 200 of 2014 (Shahbagh) under section 138 of the Negotiable Instruments Act, 1881 now pending in the Court of Special Court No. 3, Dhaka should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

At the time of issuance of this Rule, the Court was pleased to stay the further proceedings of the aforesaid Special Sessions Case No. 41 of 2015 till to disposal of this Rule.

In Similar terms, the Rules were also issued in Criminal Miscellaneous Case Nos. 10937 of 2021, 10889 of 2021, 10936 of 2021 and 10888 of 2021 and at the time of issuance of those Rules, this Court was also pleased to stay the further proceedings of the respective Special Sessions Case Nos. 33 of 2015, 43 of

2015, 36 of 2015 and 41 of 2015 under section 138 of the Negotiable Instrument Act, 1881 which are now pending before the concerned Special Court No. 3, Dhaka.

For disposal of these Rules, the relevant facts may briefly be stated as follows:

In all aforesaid cases, the opposite party No. 2, as a complainant filed the all aforesaid cases against the accused-petitioner alleging inter alia that the accused-petitioner and the complainant opposite party executed a memorandum of understanding (MOU) dated 21.10.2009 to sale out the land measuring 10 (ten) kathas plot at Dhanmondi residential area which was belong to the accused-petitioner and accordingly the accused-petitioner received the amount of **Tk. 12,75,715/-** on several dates from the complainant-opposite party. Subsequently on being request, the accused-petitioner further received a personal loan amounting to **Tk. 10,00,00,000/-** (Taka Ten crore) from the complainant opposite party. In this way, the accused-petitioner received total amount of **Tk. 22,12,75,715/-** from the complainant. However, subsequently the sale was not executed. Thereafter, in order to repay the said amount, the accused-

petitioner issued several cheques in favour of the complainant opposite party which was dishonored due to insufficient of fund. Accordingly, the complainant opposite party filed the all aforesaid cases against the accused-petitioner under section 138 of the Negotiable Instruments Act, 1881. Later on, the accused-petitioner appeared before the Court below and obtained the bail. Thereafter, the Trial Court framed a charge against the accused-petitioner. Being aggrieved, the accused-petitioner filed an application before this Court under section 561A of the Code of Criminal Procedure for quashing the proceeding of the all aforesaid cases and obtained the Rule and stay.

In support of those Rules, Mr. B.M. Elias, the learned Advocate for the accused-petitioner mainly submits that the accused-petitioner has received the amount of **Tk.12,75,715/-** from the complainant opposite party but not the amount of **Tk. 22,00,00,000/-**. He further contended that the complainant opposite party No. 2, forcefully obtained the 5 (five) impugned cheques from the accused-petitioner and subsequently by putting various figure in those cheques filed the all aforesaid cases against the accused-petitioner under section 138 of the

Negotiable Instrument Act, 1881 and as such the impugned proceedings against the accused-petitioner is nothing but an abuse of the process of the Court which is liable to be quashed for the end of justice.

He further contended that regarding the aforesaid matters the accused-petitioner also filed a Title Suit No. 207 of 2014 before the Senior Assistant Judge, 4th Court, Dhaka against the complainant opposite party for declaration that the impugned cheques are void along with direction to return the impugned cheques in favour of the accused-petitioner which is still pending and as the aforesaid proceeding is liable to be quashed.

As against this, Mr. Faysal Hasan Arif, the learned Advocate for the opposite party submits that after complying with all legal formalities of section 138 of the Negotiable Instruments Act, 1881 the all aforesaid cases was filed against the accused-petitioner. In the aforesaid cases, the accused-petitioner have no ground at all to invoke the provision of section 561A of the Code of Criminal Procedure and as such the instant Rules are liable to be discharged.

Heard the submissions of the learned Advocates of both sides and perused the petitioner's applications and other materials on record thoroughly.

In the instant case, the accused-petitioner mainly contended that the impugned cheques were obtained forcefully from the accused-petitioner and regarding this matter the accused-petitioner filed a Title Suit No. 207 of 2014 challenging the impugned cheques which is still pending. The contention as raised by the accused-petitioner is absolutely a matter of evidence which not be decided at this stage under section 561A of the Code of Criminal Procedure.

Under the given facts and circumstances of the case and the reasons as stated above, we do not find any substances of these Rules.

As a result, the Rules in Criminal Miscellaneous Case Nos. 10887 of 2021, 10937 of 2021, 10889 of 2021 and 10936 of 2021 and 10888 of 2021 are discharged.

The order of stay granted earlier by this Court in connection with the Special Sessions Case No. 41 of 2015, arising out of C.R. Case No. 200 of 2014, Special Sessions Case

No. 33 of 2015, arising out of C.R. Case No. 202 of 2024, Special Sessions Case No. 43 of 2015, arising out of C.R. Case No. 197 of 2014, Special Sessions Case No. 36 of 2015, arising out of C.R. Case No. 201 of 2014 and Special Sessions Case No. 41 of 2015, arising out of C.R. Case No. 196 of 2014 now pending in the Court of Special Court No. 3, Dhaka are hereby stands vacated.

The concerned Trial Court below is hereby directed to proceed with the case expeditiously in accordance with the law without giving any unnecessary adjournments to either party.

Communicate this judgment and order at once.

Khandaker Diliruzzaman, J:

I agree

