

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. 1243 of 2021

With
Criminal Miscellaneous Case No. 1244 of 2021

With
Criminal Miscellaneous Case No. 1247 of 2021

Rakibur Rahman.....Accused-Petitioner

-Versus-

The State and another.....Opposite parties
Mr. Saqeb Mahbub, Advocate

....For the accused-petitioner
[In all Criminal Miscellaneous Cases]

Mr. Tushar Kanti Das, Advocate

...For the opposite party No. 2
[In all Criminal Miscellaneous Cases}

Mr. Imran Ahmed Bhuiyan, DAG with
Mr. Mehadi Hasan (Milon), AAG and
Ms. Aleya Khandker, AAG

.....For the state

Heard on: 09.08.2023 and 13.08.2023

Judgment on: The 23rd of August, 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, are taken up together for hearing and are being disposed of by this single judgment.

In Criminal Miscellaneous Case No. 1243 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 impugned proceedings of the Metropolitan Sessions Case No. 8160 of 2017, arising out of C.R. Case No. 1172 of 2016 under sections 138/140 of the Negotiable Instruments Act, 1881 now pending in the Court of 2nd Joint Metropolitan Sessions Judge Court, Chattogram should not be quashed and/or such other or further order or orders passed to this Court may seem fit and proper.

At the time of issuance of the Rule, the Court was pleased to stay all further proceedings of the aforesaid Metropolitan Sessions Case No. 8160 of 2017 for **6 (six)** months from the date, which was subsequently extended till to disposal of the Rule.

In Similar terms, the Rules were also issued in Criminal Miscellaneous Case Nos. 1244 of 2021 and 1247 of 2021 challenging the proceeding of the Metropolitan Sessions Case No. 6969 of 2017, arising out of C.R. Case No. 1116 of 2016 and Metropolitan Sessions Case No. 8158 of 2017, arising out of C.R. Case No. 1170 of 2016 respectively under sections 138 and 140 of the Negotiable Instrument Act, 1881.

At the time of issuing of those Rules, the Court was pleased to stay all further proceedings of the aforesaid Metropolitan Sessions Case Nos. 6969 of 2017 and 8158 of 2017 for 6 (six) months which was subsequently extended till to disposal of the aforesaid Rules.

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

That the opposite party No. 2, National Bank Limited as complainant filed all aforesaid criminal cases against the accused-petitioner alleging inter alia that the accused No. 1 Mostafa Paper Complex Limited has obtained the various

loan facilities from the complainant bank. Subsequently, in order to repay the aforesaid loan, the accused-petitioner as Managing Director of the said company issued several cheques on several dates in favour of the complainant bank which was dishonored due to insufficient of funds. Accordingly, the complainant bank filed all aforesaid cases against the accused-petitioner under sections 138 and 140 of the Negotiable Instruments Act, 1881. Thereafter, the accused petitioner appeared before the Court below and obtained bail. Later on, the charge was framed against the accused petitioner. Being aggrieved, the accused-petitioner preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing the proceeding of all aforesaid cases and obtained the Rule and stay.

In support of the aforesaid Rules, Mr. Saqeb Mahbub, the learned Advocate for the accused-petitioner mainly submits that the impugned cheques were given as a security cheques which does not cover the provision of section 138

of the Negotiable Instrument Act, 1881, and as such the impugned proceeding is liable to be quashed. He further contended that during the pendency of the aforesaid cases, the accused-petitioner filed an applications dated 08.11.2020 to the complainant bank under the BRPD Circular Nos. 4 and 13 along with the deposited the amount of Tk. 2% (equivalent to **Tk. 3,64,68,000/-**) of the principal amount for rescheduling the loans as availed by the accused-petitioner which are still pending and as such the impugned proceedings are liable to be quashed.

He also submits that though the accused-petitioner was a Managing Director of the company but the then Chairman of the said company was Mr. Taisir Rahman who holds the executive power of the company and as such the accused-petitioner is not liable for the offence committed by the company and as such the aforesaid proceedings are liable to be quashed.

Mr. Tushar Kanti Das, the learned Advocate for the opposite party No. 2 appeared before this Court but did not

submit any counter affidavit which is very unfortunate and undesirable. However, he verbally submits that after complying with all legal formalities of section 138 of the Negotiable Instruments Act, 1881, all the aforesaid cases were filed against the accused-petitioner, and as such the accused-petitioner has no ground at all to invoke the provision of section 561A of the Code of Criminal Procedure.

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

It is admitted fact that the accused-petitioner was a Managing Director of the company named Mostafa Paper Complex Limited (accused No. 1) who obtained the various loan facilities from the complainant bank-opposite party No. 2. It is also admitted fact that the impugned cheques were issued by the company in favour of the complainant bank which was dishonored due to insufficient of fund.

In the instant case, the accused-petitioner mainly contended that the impugned cheque was given as a security cheque which does not cover the provision of section 138 of the Negotiable Instrument Act, 1881. However, this issue has already been settled by the Hon'ble Appellate Division, in the case of Majed Hossain and others as reported in 17 BLC (AD) 177 wherein it was held that-

“A reading of Sub-section (1) of section 138 of the Act, 1881 shows that an offence under the section shall be deemed to have been committed, the moment a cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account is returned by the bank unpaid on any of the grounds mentioned therein. Sub-section (1) of section 138 has not made any qualification of the cheque so returned unpaid either post dated given as a security for repayment of the loan availed by a loanee as alleged by the accused or any other cheque

issued by the drawer for encashment currently”.

So far the issue of application for rescheduling of the loan is concerned, we are of the view that the Court has nothing to do about the application of rescheduling of the loan filed by the accused-petitioner which is completely depend upon the complainant bank. So, the contention as raised by the learned Advocate for the accused-petitioner is not acceptable.

In such view of the aforesaid legal position, we do not find any substances of these Rules.

As a result, the Rules in Criminal Miscellaneous Case Nos. 1243 of 2021, 1244 of 2021 and 1247 of 2021 are discharged.

The order of stay granted earlier by this Court in connection with Metropolitan Sessions Case No. 8160 of 2017, arising out of C.R. Case No. 1172 of 2016, Metropolitan Sessions Case No. 6969 of 2017, arising out of C.R. Case No. 1116 of 2016 and Metropolitan Sessions Case No. 8158 of 2017, arising out of C.R. Case No. 1170 of 2016 now pending in the Court of 2nd Joint Metropolitan Sessions Judge Court, Chattogram 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

