

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. 29380 of 2018

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With

Criminal Miscellaneous Case No. 7279 of 2021

With

Criminal Miscellaneous Case No. 12351 of 2021

Md. Mizanur Rahman.....Accused-Petitioner

-Versus-

The State and another.....Opposite parties

Mr. Rezaul Karim, 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: 31.07.2023 and 08.08.2023

Judgment on: The 8th 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. 29380 of 2018, 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 Sessions Case No. 1317 of 2016, arising out of C.R. Case No. 2047 of 2013 under section 138 of the Negotiable Instruments Act, 1881 now pending in the Court of Joint Metropolitan Sessions Judge, 5th Court, Chittagong 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 Sessions Case No. 1317 of 2016 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. 7279 of 2021 and 12351 of 2021 challenging the proceeding of the Sessions Case No. 5284 of 2017, arising out of C.R.

Case No. 1025 of 2016 and Sessions Case No. 4121 of 2017, arising out of C.R. Case No. 913 of 2016 respectively under section 138 of the Negotiable Instrument Act, 1881.

At the time of issuance of those Rules, the Court was pleased to stay all further proceedings of the aforesaid Sessions Case Nos. 5284 of 2017 and 4121 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 C.R. Case Nos. 2047 of 2013, 1025 of 2016 and 913 of 2016 respectively against the accused petitioner under sections 138/140 of the Negotiable Instrument Act, 1881 alleging inter alia that the accused petitioner obtained the various loan facilities from the complainant bank. Subsequently, to adjust the partial loan amount, the accused-petitioner issued several cheques on several dates in favour of the complainant bank which were 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 these applications before this Court under section 561A of the Code of Criminal Procedure for quashing the proceeding of all aforesaid cases and obtained the instant Rule and stay.

In support of the aforesaid Rules, Mr. Rezaul Karim, 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 are liable to be quashed.

He further contended that to recover the unpaid dues amounting to Tk. **131,25,67,558/-**, the complainant bank also filed an Artha Rin Suit No. 251 of 2013 against the accused petitioner in the Court of Artha Rin Adalat No. 1, Chittagong and as such the initiation of the aforesaid criminal 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 unexpected 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 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 materials on record thoroughly.

In all the aforesaid cases, the accused-petitioner mainly contended that the impugned cheques were 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”.

In view of the aforesaid observations, we are unable to accept the contention as raised by the learned Advocate for the petitioner so far as relates to the security cheque is concerned.

We have further noticed that regarding the recovery of unpaid dues, the complainant bank also filed an Artha Rin Suit No 251 of 2013 against the accused petitioner which is civil in nature. On the other hand, the impugned proceedings were filed under section 138 of the Negotiable Instruments Act, 1881 which are criminal in nature.

In the case of Amir Ali Mostofa Vs. Shah Md. Nurul Alam as reported in 74 DLR (AD) (2022) page-79 wherein the Hon'ble Appellate Division was held that-

“Only because of the subject matter of the criminal case and civil litigation being the same, it will not be a bar for continuation of the criminal proceedings, rather the criminal case will run in its own way.”

In the case of Khandoker Mahtabuddin Ahmed Vs. the State as reported in 49 DLR (AD) 132 wherein it was held that-

“Both the civil and criminal case may run simultaneously in respect of criminal offense as well as for recovery of the amount misappropriated.”

Regarding the aforesaid issue, numerous decisions have been passed by our Apex Court. 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. 29380 of 2018, 7279 of 2021 and 12351 of 2021 are discharged.

The order of stay granted earlier by this Court in Sessions Case No. 1317 of 2016, arising out of C.R. Case No. 2047 of 2013, Sessions Case No. 5284 of 2017, arising out of C.R. Case No. 1025 of 2016 and Sessions Case No.

4121 of 2017, arising out of C.R. Case No. 913 of 2016 are hereby stand vacated.

The concerned trial Courts are hereby directed to proceed all the aforesaid cases expeditiously in accordance with the law.

Communicate this judgment and order at once to the concerned Court below.

Khandaker Diliruzzaman, J:

I agree

