

In The Supreme Court of Bangladesh
High Court Division
(Criminal Miscellaneous Jurisdiction)

PRESENT:

MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN
AND
MR. JUSTICE MD. ATABULLAH

CRIMINAL MISCELLANEOUS CASE NO. 4535 OF 2012

Sigma Marketing Limited and othersAccused-petitioners

-Versus-

The State and another.....Opposite parties
None appears...For the accused-petitioners
Mrs. Shayema Chowdhury, Advocate
.....For the opposite party No. 2
Mr. K.M. Masud Rummy, DAG with
Mr. Mehadi Hasan (Milon), AAG and
Ms. Aleya Khandker, AAG
.....For the state

Heard on: 12.05.2024

Judgment on: The 19th of May, 2024

ABU TAHER MD. SAIFUR RAHMAN, J.

This Rule was issued on an application filed by the accused-petitioners under section 561A of the Code of Criminal Procedure calling upon the opposite parties to show cause as to why the proceedings of Metro. Sessions Case No. 8794 of 2010, arising out of C.R. Case No. 994 of 2009 under sections 138 and 140 of the Negotiable Instruments Act, 1881, now pending in the Court of 5th Additional Sessions Judge, Dhaka should not be quashed

and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court was pleased to stay all further proceedings of the aforesaid proceedings of Metro. Sessions Case No. 8794 of 2010 for 6 (six) months which was time to time extended by the Court.

For disposal of this Rule, the relevant facts may briefly be stated as follows:

That the opposite party No. 2, Shahjalal Islami Bank Limited as complainant filed a C.R. Case No. 994 of 2009 against the accused-petitioners under sections 138 and 140 of the Negotiable Instruments Act, 1881 alleging inter alias that the accused-petitioner has obtained the various loan facilities from the complainant bank. Subsequently in order to partial adjustment of the aforesaid loan, the accused-petitioners issued the impugned cheque dated 23.12.2008 amounting to Tk. **4,08,81,186.93/-** which was dishonored due to insufficient of fund. Hence, the aforesaid case was filed against the accused-petitioner under sections 138 and 140 of the Negotiable Instrument Act, 1881. Thereafter, the accused petitioner duly appeared before the Court

below and obtained bail. Later on, the charged was framed against the accused petitioners under sections 138 and 140 of the Negotiable Instrument Act, 1881 for quashing the aforesaid proceeding and obtained the Rule and stay.

No one appears for the accused petitioners to support the Rule. However, the accused-petitioner has mainly stated in his application that the impugned cheque was given as a security cheque as against the loan availed by the accused-petitioners 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.

Mrs. Shayema Chowdhury, the learned Advocate for the opposite party No. 2 submits that after complying with all legal formalities of section 138 of the Negotiable Instrument Act, 1881, the impugned proceeding was initiated against the accused-petitioners under sections 138 and 140 of the Negotiable Instrument Act, 1881 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 Advocate for the opposite party No. 2 and perused the petitioner's application along with materials on record thoroughly.

The only issue for determination of this Rule is to see whether the impugned proceeding of Metro. Sessions Case No. 8794 of 2010 is liable to be quashed.

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”.

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

As a result, the Rule is discharged.

The order of stay granted earlier by this Court is hereby stand vacated.

Since it is a very old case, the concerned trial Court is hereby directed to proceed with the case expeditiously as early as possible in accordance with the law.

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

Md. Atabullah, J:

I agree

