

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

**PRESENT:**

**MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN  
AND  
MR. JUSTICE MD. BASHIR ULLAH**

**CRIMINAL MISCELLANEOUS CASE NO. 50606 OF 2023**

Md. Salah Uddin.....Accused-petitioner

-Versus-

The State and another.....Opposite parties

Mr. Md. Golam Rabbani, Advocate

.....For the petitioner

Mr. Sanjib Kumar Biswas, Advocate

...For the opposite party No. 2

Heard and judgment on: **The 29<sup>th</sup> of January, 2024**

**ABU TAHER MD. SAIFUR RAHMAN, J.**

This Rule was issued on an application filed by the accused-petitioner under section 561A of the Code of Criminal Procedure, 1898 calling upon the opposite parties to show cause as to why the proceedings of Kashi C.R. Case No. 64 of 2023 under sections 406/420 of the Penal Code now pending in the Court of Chief Judicial Magistrate, Gopalganj 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

Kashi C.R. Case No. 64 of 2023 for **6 (six)** months from date.

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

That the opposite party No. 2 as a complainant filed a C.R. Case No. 64 of 2023 under sections 406/420 of the Penal Code against the accused-petitioner alleging inter alia that the complainant and the opposite party both are businessmen. The accused-petitioner purchased 2010 guite (গাইট) (packet) of jute from the complainant opposite party from 04.08.2016 to 14.08.2016. Each packet contained 50 K.G. of jute. The total price of the aforesaid goods was for **Tk. 45,80,785/-** (Taka Forty five lac, Eighty thousand and Seven hundred eighty five) and out of said amount, the accused-petitioner paid amounting to **Tk. 31,60,000/-**. At present the total outstanding amount remaining at **Tk. 14,80,785/-**. Subsequently, the accused-petitioner refused to pay the aforesaid amount. Hence, the aforesaid case was filed against the accused-petitioner under sections 406/420 of the Penal Code. Thereafter, the accused-petitioner appeared before the Court below and obtained bail. Thereafter, the accused-petitioner filed an application

before this Court under section 561A of the Code of Criminal Procedure for quashing the proceeding of the aforesaid case and obtained the instant Rule and stay.

Mr. Md. Golam Rabbani, the learned Advocate for the accused-petitioner mainly submits that the allegation as contained in the petition of complaint is arising from the business transaction which is civil in nature and does not constitute any criminal offence and as such the instant Rule is liable to be made absolute.

Mr. Sanjib Kumar Biswas, the learned Advocate for the opposite party No. 2 mainly submits that there is a prima facie case against the accused-petitioner. Moreover, the charge is not yet framed against the accused-petitioner and as such in the instant Rule is not maintainable.

Heard the submissions of the learned Advocates of both sides and perused the materials on record thoroughly.

On perusal of the petition of complaint it transpires that the accused-petitioner has categorically mentioned that the accused-petitioner has purchased 210 guite of jute from the complainant opposite party on several dates amounting to **Tk. 45,80,785/-** (Taka Forty five lac,

Eighty thousand and Seven hundred eighty five). It is also admitted fact that out of said amount the accused-petitioner has already paid amount of **Tk. 31,60,000/-** (Taka Thirty one lac and Sixty thousand). At present, the total outstanding amount remains at **Tk. 14,80,785/-**.

So, the alleged transaction in between the complainant and the accused-petitioner is clearly and admittedly a business transaction which is civil in nature. We have further noticed that the accused-petitioner has already made an part payment amounting to **Tk. 31,60,000/-** out of **Tk. 45,80,785/-**. The failure on the part of accused-petitioner to pay the complainant the balance amount does not warrant any criminal proceeding as the obligation to pay the money is of civil nature.

Our this view gets support from the decisions as reported in 7 BLT (AD) 1999 page-227, 45 DLR (AD) 1993 page-27, 56 DLR (2000) page-169.

In the case of Ali Akkash Vs. Enayet Hossain as reported in 17 BLD (AD) (1997) page-44 wherein it was held;

“Interference even at an initial stage may be justified where the facts are so preposterous that

even on admitted facts no case stands against the accused.”

So the contention as raised by the learned Advocate for the complainant opposite party is not acceptable.

Under the given facts and circumstances of the case and the reasons as stated above, we find substances in the contention of the learned Advocate for the accused-petitioner.

As a result, the Rule is made absolute.

The proceedings of C.R. Case No. 64 of 2023 under sections 406/420 of the Penal Code now pending in the Court of learned Chief Judicial Magistrate, Gopalganj is hereby set aside.

However, in order to recovery the unpaid dues, the complainant opposite party is at liberty to file a civil suit as against the accused-petitioner if so advice.

Communicate this judgment and order at once.

**Md. Bashir Ullah, J:**

I agree

