

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. 5907 OF 2017

Md. Jahangir Alam.....Accused-petitioner

-Versus-

The State and another.....Opposite parties

Mr. Md. Khalilur Rahman Bhuiyan, Advocate

.....For the accused-petitioner

Mr. Faysal Hasan Arif, Advocate

.....For the opposite party No. 2

Mr. K.M. Masud Romy, DAG with

Mr. Mehadi Hasan (Milon), AAG and

Ms. Aleya Khandker, AAG

.....For the state

Heard on: 29.10.2023 and 09.11.2023

Judgment on: The 9th of Novemver, 2023

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 calling upon the opposite parties to show cause as to why the impugned proceeding of Sessions Case No. 526 of 2016, arising out of C.R. Case No. 501(1) of 2015 under section 138 of the Negotiable Instrument Act, 1881, now pending in the Court of learned Joint District and Sessions Judge, 2nd Court,

Jamalpur 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 Sessions Case No. 526 of 2016 for 6 (six) months from the date which was time to time extended by the Court.

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

That the opposite party No. 2 as complainant filed a C.R. Case No. 501(1) of 2015 against the accused petitioner under section 138 of the Negotiable Instrument Act, 1881 alleging inter alia that the accused-petitioner has obtained a loan amounting to **Tk. 10,00,000/-** (Taka Ten lac) from the complainant. Subsequently, to adjust the aforesaid loan, the accused petitioner issued the impugned cheque dated 16.02.2015 which was discharged due to insufficient of fund. Hence, the instant case was filed against the accused petitioner under section 138 of the Negotiable Instrument Act, 1881. Thereafter, the accused petitioner appeared before the Court below and obtained bail. Later on, the charge was framed against the accused petitioner under section

138 of the Negotiable Instrument Act, 1881. Being aggrieved, the accused petitioner preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing the aforesaid proceeding and obtained the Rule and stay.

Mr. Md. Khalilur Rahman Bhuiyan, the learned Advocate for the petitioner mainly submits that without complying with the provision of section 138(1) of the Negotiable Instrument Act, 1881, the instant case was filed against the accused petitioner which is not sustainable in law. In support of his contention he pointed out that in the instant case, the notice was served upon the accused petitioner on 06.05.2015 which is out of time as provided under section 138 of the Negotiable Instrument Act, 1881, and as such the impugned proceeding is liable to be quashed.

Mr. Faysal Hasan Arif, the learned Advocate for the opposite party No. 2 submits that the contention as raised by the accused petitioner is a matter of fact which cannot be decided at this stage under section 561A of the Code of Criminal Procedure and as such the instant Rule is liable to be discharged.

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

In the instant case, the accused-petitioner mainly contended that the notice was served upon the accused petitioner on 06.05.2015 which was out of time as provided under section 138(1) of the Negotiable Instrument Act, 1881. The contention as raised by the accused petitioner is a matter of fact which cannot 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 the Rule.

As a result, the Rule is discharged.

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

The trial Court is hereby directed to proceed with the case in accordance with the law.

Communicate this judgment and order at once.

Md. Bashir Ullah, J:

I agree

