

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. 64548 OF 2022

Erphan Shehabul Matin and others.....Petitioners

-V E R S U S-

The State and others.....Opposite parties

With

CRIMINAL MISCELLANEOUS CASE NO. 109 OF 2023

Sujeet Kumar Pai Sarvotham.....Petitioner

-V E R S U S-

The State and another.....Opposite parties

With

CRIMINAL MISCELLANEOUS CASE NO. 52965 OF 2022

Erphan Shehabul Matin and another.....Petitioners

-V E R S U S-

The State and others.....Opposite parties

With

CRIMINAL MISCELLANEOUS CASE NO. 147 OF 2023

Sujeet Kumar Pai Sarvotham.....Petitioner

-V E R S U S-

The State and another.....Opposite parties

Mr. Tanjib Ul Alam with

Mr. Kazi Ershadul Alam, Advocates

.....For the petitioners (in all criminal miscellaneous case)

Mr. Mahbub Shafiq with

Mr. Md. Arafat Kawsar, Advocates

...For the opposite party No. 2 (in all criminal miscellaneous case)

Mr. Mehadi Hasan (Milon), AAG with

Mr. Md. Ahsan Ullah, AAG and

Ms. Aleya Khandker, AAG

.....For the state

Heard on: 14.08.2023, 12.10.2023, 15.10.2023 and 17.10.2023

Judgment on: The 19th of October, 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 taken up together for hearing and are being disposed of by this single judgment.

In Criminal Miscellaneous Case No. 64548 of 2022, the Rule was issued calling upon the opposite parties to show cause as to why the proceedings of C.R. Case No. 1200 of 2022 under sections 406/420/427/506 of the Penal Code, 1860 now pending in the Court of learned Chief Metropolitan Magistrate, Dhaka so far it relates to the petitioners 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, the Court was pleased to stay the aforesaid proceedings of C.R. Case No. 1200 of 2022 for 6 (6) months which was time to time extend by the Court.

In similar terms, the Rules were also issued in Criminal Miscellaneous Case Nos. 109 of 2023, 52965 of 2022 and 147 of 2023 challenging the proceedings of C.R. Case Nos. 1200 of 2022 and 915 of 2022 respectively. At the time of issuance of those Rules, the Court was pleased to stay all further proceedings of the aforesaid cases for 6 (six) months which was time to time extended by the Court.

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

In all aforesaid Cases, the opposite party No. 2 as complainant filed a C.R. Case No. 1200 of 2022 against the accused-petitioners under sections 406/420/427/506 of the Penal Code, 1860, alleging inter alia that the complainant was appointed as distributor of the Linde Bangladesh Limited. The

accused petitioners are the directors and employees of the said company (Linde Bangladesh Limited). As per terms of the contract, the complainant transported total 4982 empty cylinders from different depots to Linde's factory for refueling the gases into the cylinders between the period of 07.01.2019 to 08.02.2022 and submitted the bills amounting to **Tk. 18,99,756/-** which was not paid as yet. Hence, the aforesaid case was filed against the accused petitioners.

In connection with similar allegations regarding the unpaid dues, the opposite party as the complainant also filed C.R. case No. 915 of 2022 against the accused petitioners under sections 341 /403 /406/ 418/ 420/427 /506(2) of the Penal Code, 1860. Later on, the accused petitioners appeared before the concerned Court below and obtained bail. Thereafter, the accused petitioners have preferred these applications before this Court under section 561A of the Code of the Criminal procedure for quashing the aforesaid proceeding and obtained the instant Rules and stay.

Mr. Tanjib ul Alam, the learned Advocate for the accused petitioners mainly submits that the nature of the allegation, as stated 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 impugned proceedings are liable to be quashed.

As against this, Mr. Mahbub Shafiq, the learned Advocate for the opposite party No. 2 submits that as per the petition of complaint, there is a prima case against the accused-petitioner

which needs to be decided at the time of trial, and as such the aforesaid Rules are liable to be discharged.

He further contended that in all aforesaid cases, the charge is not framed as yet against the accused petitioners and at this stage, the application filed by the accused petitioners under section 561A of the Code of Criminal Procedure is not maintainable, and thereafter all the aforesaid Rules are 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.

We have to keep in mind that inherent powers as vested in a High Court under section 561A of the Code of Criminal Procedure to be exercised in extraordinary cases. The jurisdiction under section 561A of the Code of Criminal Procedure is of an extraordinary nature intended to be used only in extraordinary cases, where there is no other remedy available and cannot be utilised where there is other express remedy provided by the Criminal Procedure Code.

Out this view gets support from the decisions in the case of Muhammad Samiullah Khan Vs. State as reported in 15 DLR (SC), page-150. On perusal of the petitioners' applications it transpires that in all aforesaid cases, the charge is not framed as yet against the accused-petitioners. At the time of framing of charge, the accused-petitioners could have raised this issue before the trial Court under section 241A of

the Code of Criminal Procedure. Since the alternative remedy is available to the accused petitioners, the applications filed by the accused petitioners under section 561A of the Code of Criminal Procedure is not maintainable at this stage. Accordingly, we are not inclined to examine the merits of aforesaid cases.

As a result, the Rules in Criminal Miscellaneous Case Nos. 64548 of 2022, 109 of 2023, 52965 of 2022, and 147 of 2023 are hereby discharged.

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

The concerned Court below is hereby directed to proceed with the aforesaid C.R. Case Nos. 1200 of 2022 and 915 of 2022 expeditiously in accordance with the law

Communicate this judgment and order at once.

Khandaker Diliruzzaman, J:

I agree