

Present:

Mr. Justice Mohammad Marzi-ul-Huq

and

Mr. Justice Md. Ruhul Quddus

Criminal Revision No.56 of 2001

Dilip Bhadra

... Petitioner

-Versus-

The State and others

... Opposite Parties

No one appears for the petitioner

Mr. Khizir Hayat, D.A.G. with Mr. Yousuf Mahmud
Morshed and Mrs. Syeda Rabia Begum, A.A.Gs.

...for the State-opposite party

Judgment on 19.4.2012

Md. Ruhul Quddus, J:

This Rule at the instance of the sole accused was issued on an application under section 561A of the Code of Criminal Procedure for quashment of the proceedings in C. R. Case No. 408 of 2000 under section 406 and 420 of the Penal Code pending in the Court of Chief Metropolitan Magistrate, Chittagong.

Opposite Party No. 2 Milon Kanti Sen filed a petition of complaint on 4.4.2000 before the Chief Metropolitan Magistrate, Chittagong alleging, *inter alia*, that the petitioner took Taka two lacs from him on 2.4.1997 to hand over possession of a shop room within 30.9.1998 on execution of an agreement. After expiry of the stipulated time, the complainant requested him on several occasions to hand over the possession of the shop room in his favour, which he avoided on different

pleas. Finding no way the complainant informed the local Ward Commissioner about the matter on 11.10.1998, knowing which the petitioner threatened him for dire consequence. The complainant recorded General Diary No.962 with Panchlish Police Station, Chittagong on 18.10.1998 to that effect. He, however, opted for getting back his money, but the petitioner did not pay heed rather rented out the shop room in question to one Khokon Banik and Harun Das, who started their business there under the name and style of Satkania Cloths Store. Still the petitioner had not given him the money back and initiated a criminal case being C. R. No. 514 of 1999 against him to escape the liability. On the said complaint, an enquiry was held by the police and a report was submitted on 10.2.1999 with a finding of falsehood in the allegation.

The concerned Metropolitan Magistrate of Chittagong examined the complainant and being satisfied issued process against the petitioner taking cognizance of offence under sections 406 and 420 of the Penal Code. The Metropolitan Magistrate subsequently framed charge against the petitioner under the said penal sections and fixed the next date for evidence by order dated 21.11.2000.

In that event the petitioner moved in this Court with the instant criminal revision for quashment of the proceedings under section 561A of the Code of Criminal Procedure and obtained the Rule with an order of stay.

The matter has been appearing in the cause list for several days. It was taken up for hearing on 17.4.2012, but no one for the petitioner appeared. In view of its long pendency we took it up for disposal and allowed the Deputy Attorney General to make his submissions.

Mr. Khizir Hayat, learned Deputy Attorney General appearing for the State-opposite party submitted that according to the petition of complaint, the petitioner took money from the complainant on promise of giving possession of a shop room in his favour. But thereafter, he (petitioner) neither delivered him the possession of the shop room nor gave the money back. In this way he committed the offence of cheating and criminal breach of trust. The Metropolitan Magistrate after examining him on oath took cognizance of offence against the petitioner and issued process against him. Subsequently the learned Magistrate framed charge against him and proceeded with trial. In doing so the learned Magistrate did not commit any illegality or abuse the process of the Court, he concluded.

We have gone through the record and considered the submissions of the learned Deputy Attorney General. It appears that the petitioner has taken a ground that the allegation made against him is of civil nature, for which no criminal case lies.

This is correct that there is civil liability arising out of breach of contract on the part of the petitioner, for which the aggrieved party has

remedy in civil Court. But it is also correct that there are ingredients of criminal offence against the petitioner in the present case. In such a position, there is no legal bar to proceed with a civil and criminal case simultaneously on same fact. This view lends support from Md. Monzur Alam Vs. The State and another, 11 BLT (AD) 156.

In the present case no civil litigation reportedly has been initiated to address the grievance of the complainant. Since both civil and criminal case on same fact can proceed simultaneously, there can be no wrong in proceeding with a prior criminal case. In that view of the matter, we do not find any reason to interfere with the impugned proceedings on the plea that the allegation made in the complaint is of civil nature.

The Rule is, therefore, discharged. Stay granted at the time of issuance of the Rule is vacated.

Communicate a copy of the judgment.

Mohammad Marzi-ul-Huq, J:

I agree.