

In the Supreme Court of Bangladesh  
High Court Division  
(Criminal Revisional Jurisdiction)

Bench:

Mr. Justice Muhammad Abdul Hafiz  
and  
Mr. Justice Md. Ruhul Quddus

Criminal Revision No.203 of 2013

In the matter of :

An application under section 439 and 435 of the Code  
of Criminal Procedure

And

In the matter of :

Hazi Md. Rafiqul Islam, son of Hazi Mohammad Ali of  
26, Iqbal Road, Fisheryghat, Patharghata, Police  
Station- Kotowali, District- Chittagong.

...Petitioner

-Versus-

1. Shibnath Kor, son of Bishojhit Kor of village-49  
No. Dokkhin Nalapara Sadarghat Police Station-  
Doublempooring. At present: Proprietor-Sadel Pik  
Chinese Restaurant, Metro Plaza 79/A, Sadarghat  
Road, Police Station-Kotowali, District-Chittagong

2. The State

... Opposite Parties

Mr. A.K.M. Faiz, Advocate

... for the petitioner

Mr. Mansur Habib, Advocate

... for opposite party 1

Judgment on 21.01.2014

*Md. Ruhul Quddus, J:*

This Rule at the instance of an accused was issued challenging  
the legality of order dated 30.01.2013 passed by the Metropolitan  
Sessions Judge, Chittagong in Session Case No. 69 of 2013 framing

charge against the accused-petitioner under section 138 of the Negotiable Instrument Act, 1881 on rejection of an application filed under section 265C of the Code of Criminal Procedure for his discharge.

Opposite Party 1 Shibnath Kor filed a complaint being C. R. Case No. 1611 of 2011 (Kotwali) under section 138 of the Negotiable Instrument Act before the Metropolitan Magistrate, Cognizance Court No.1, Chittagong bringing allegations, *inter alia*, that the accused-petitioner in order to pay his debt issued him (complainant-opposite party) a cheque dated 15.12.2010 for an amount of Taka 50,00,000/- (fifty lac), which he placed for encashment for the first time on 02.05.2011, but it was dishonoured for insufficiency of fund. Then he communicated the petitioner and on his assurance, opposite party 1 again placed the cheque on 01.06.2011, which was also dishonoured with an endorsement payment stopped by the drawer and refer to drawer. The complainant-opposite party served a statutory legal notice by publication in a daily news paper on 05.06.2011 and since the accused-petitioner failed to make the payment within next thirty days, he filed the complaint.

The petitioner surrendered before the Metropolitan Magistrate's Court and obtained bail. In due course, the case was sent for trial to the Metropolitan Sessions Judge, Chittagong and was registered as Metropolitan Sessions Case No. 69 of 2013, wherein the petitioner filed

an application for his discharge under section 265C of the Code of Criminal Procedure on the grounds taken therein. The learned Metropolitan Sessions Judge heard the application, rejected the same and framed charge against the petitioner by order dated 30.01.2013, challenging which he moved in this Court with the instant criminal revision, obtained the Rule and an interim order of stay. The Rule issuing Bench also directed the petitioner to pay the amount covered by the cheque in question by two equal installments, against which he moved in the Appellate Division with Criminal Petition for Leave to Appeal No. 153 of 2013. The Appellate Division on setting aside the interim order sent the case to this Bench for hearing and disposal within two months.

Mr. A. K. M. Faiz, learned Advocate who obtained the Rule and interim order on behalf of the accused-petitioner apprises us that the petitioner has taken back the brief and is no more in contract with him. Since Mr. Faiz has not filed any application seeking leave of the Court to withdraw the power, we ask him whether he would make any submission on merit, but he declines.

Mr. Mansur Habib, learned Advocate for the complainant-opposite party submits that the learned Metropolitan Sessions Judge rightly framed charge against the petitioner. There is nothing wrong to be interfered with by this Court.

We have gone the records. The statements made in the application for discharge involving questions of facts cannot be decided without holding trial. There is nothing in record to establish that the petitioner did not issue the cheque or that it was not bounced or that the notice was not served upon the accused and the complaint case was not filed within the period of limitation. The Metropolitan Sessions Judge on perusal of the materials on record found a prima facie case under section 138 of the Negotiable Instrument Act against the accused-petitioner and accordingly framed charge against him. We do not find any thing wrong in the impugned order.

Accordingly, the Rule is discharged. The order of stay granted earlier stands vacated. The trial Court is directed to proceed with the case and dispose it of as expeditiously as possible.

Muhammad Abdul Hafiz, J:

I agree.